

27

In the Court of State Commissioner for Persons with Disabilities
National Capital Territory of Delhi
25- D, Mata Sundari Road, Near Guru Nanak Eye Centre, New Delhi-2
Phone-011-23216002-04, Telefax: 011-23216005, Email: comdis.delhi@nic.in
[Vested with powers of Civil Court under the Rights of
Persons with Disabilities Act, 2016]

Case No. 4/1447/2017-Wel/CD/ 667-68

Dated: 6/6/17

In the matter of:

Sh. Hemant Kumar,
Flat No.A-107, Type-III,
Delhi Administration Flats, Shalimar Bagh,
Near Haiderpur Dispensary,
Delhi-110088.

..... Complainant

Versus

The Director (Planning),
Level-6, N-Wing, Delhi Sectt.,
New Delhi-110002.

.....Respondent

Date of hearing: 22.05.2017

Present: Sh. Hemant Kumar, Complainant.

Ms. Manju Sahoo, Deputy Director, Planning Department

Ms. Jayashree Krishanan, Asstt Director, Planning Department

ORDER

The complainant, a person with 80 % locomotor disability vide his complaint received through email dated 25.11.2016 submitted that he has been transferred three times vide Order dated 20.01.2016 from the Directorate of Economics and Statistics(DES) to Education Deptt., Order dated 12.04.2016 from DES to Babu Jagjivan Ram Memorial (BJRM) Hospital and vide Order dated 25.10.2016 from DES to Directorate of Family Welfare (DFW) (his transfer from DES to BJRM Hospital was cancelled on 02.06.2016 on the same day he was transferred there). He alleged that Dy.Director of the Cadre Controlling Unit (CCU) was biased against the employees with disabilities having bad intention to harass him. He also alleged that the Dy. Director & Asstt. Director, CCU themselves have remained in the same Department and cadre for more than 10 years. The complainant further alleged that with the intention to harass him, he was transferred in violation of Para "H" of the DoP&T's OM No. 36035/3/2013-Estt(Res) dated 31.03.2014 as per which employees with disabilities may be exempted from rotational transfer policy/transfer and be allowed to continue in the same job, where they would have achieved the desired performance.

2. The complaint was taken up with the Director (Planning) vide communication dated 02.11.2016. Respondent submitted his reply vide letter dated 10.11.2016 to which the complainant submitted his rejoinder dated

Court of State Commissioner for Persons with Disabilities
National Capital Territory of Delhi
Room No. - 1
25-D, Mata Sundari Road, New Delhi-02

23.12.2016. Thereafter, the complainant submitted the copies of his rejoinder to the Secretary (Social Welfare) on 07.12.2016 and to the Chief Secretary on 28.02.2016 requesting them to hold personal hearing in his case.

3. The respondent submitted his comments on the rejoinder also vide letter dated 01.02.2017. The respondent inter-alia submitted that Sh. Hemant Kumar Joined Dte. of Economics and Statistics (DES) situated in the 3rd Floor, Vikas Bhawan-II, Civil lines Delhi -54 as Statistical Assistant on 17.05.2010. He continued to work in DES for a period of 5 years and six months. Thereafter, he was transferred to Education department in January, 2016. He gave a representation stating that he may be retained in the same office and his order was cancelled. As per record in Planning Department, the residence of Sh. Hemant Kumar is Jahangir Puri. Keeping in mind the proximity of his residence, his transfer to Education department was cancelled and he was posted in Babu Jag Jivan Ram Hospital in Jahangir puri itself. However, he again represented stating that hospital where he was transferred was not accessible and hence his transfer order may be cancelled. He was thus allowed to continue in DES.

4. The respondent further stated that 79 new Statistical Assistants recruited through DSSSB joined Planning Department. Most of the new recruitment (34 out of 79) got posted in DES as DES provides a good platform to begin with and to learn statistical and economics works as their core competency. An administrative decision was taken by the Department to transfer the existing Statistical Assistants completing 5 years and above to other Departments of GNCT of Delhi to accommodate the new recruits. Therefore Sh. Hemant Kumar was transferred to Dte. of Family welfare which is in the same office building i.e Vikas Bhawan-II Civil lines, Delhi -110054 where he is presently working so that no inconvenience is caused to him in coming to office and moreover he earlier represented to remain in the same complex. The issue of posting and transfer is routine matter and an administrative issue to manage the cadre in the best possible and efficient manner in public interest so that office work does not suffer and at the same time the officials, get enriched by varied experience and knowledge which is, for the betterment of the individual. Moreover the decision of transfer and postings is duly approved by the competent authority and there is no question of any bias or any harassment by any individual officer as alleged by Sh. Hemant Kumar in the representation.

5. It has further been stated that the officers/officials of Planning Department are not given any special favour. On promotion, an officer at any level is usually posted out of the department except in departments requiring specific skills, which are specific to that department or officers who have competence in dealing with certain matters, where they will be able to contribute better in comparison to those who do not have any exposure to such subjects/departments and hence are retained in the same department.

6. The transfer/posting of official are made based on completion of minimum tenure of 05 years, proximity to residence, any specific medical/family problem, easy accessibility for differently abled official etc.

Court of Commissioner (Disabilities)
National Capital Territory of Delhi
Room No. - 1
25-D, Mata Sundari Road, New Delhi-02

7. Upon considering the written submissions of the parties, the matter was scheduled for hearing on 27.04.2017.

8. On 27.04.2017, none appeared on behalf of the respondent. The complainant submitted that when he was transferred from DES, Vikas Bhawan-II to Education Department, Luchnow Road, Timarpur, which is located on 2nd floor, he requested for cancellation of his transfer as that Office was not accessible. Instead of retaining him in DES, he was transferred to BJRM, which was also not accessible. Besides, he needed to cross the high way to reach his office. Although his request for cancellation of his transfer from BJRM Hospital was acceded to and he was transferred from BJRM Hospital to DES on the same date i.e. 02.06.2016, he was relieved by the Hospital only on 14.06.2016 A/N. As per him this indicates the intention of the officers in the CCU to harass him. They should not have transferred him to BJRM Hospital as they had to cancel his transfer to Education Department on the ground of inaccessibility of that office. With regard to exemption of persons with disabilities from the rotational transfer policy and to allow them to continue in the same job where they would have achieved the desired performance, he added that his superior officers in the DES had recommended his retention in their office on the ground of his good performance. Therefore his transfer from DES to DFW was in violation of Para "H" of DoP&T OM Dated 31.03.2012. He further added that there are sufficient number of vacancies in DES and there should be no difficulty in posting him there as he is familiar with the work and environment of DES. He was directed to submit copy of the recommendation on or before the next date of hearing on **22.05.2017 at 11.30 AM**. A copy of reply of the respondent dated 01.02.2017 was also handed over to the complainant so as to enable him to come prepared on the next date of hearing.

9. In compliance with the direction during the ROP of 27.04.2017, the complainant submitted a letter dated 03.05.2016 of Dy. Director of DES addressed to DD (CCU) that Sh. Hemant Kumar has been working in the capacity of Statistical Asstt in DES for a very long period and was well accustomed with the concepts and work relating to registration of births and deaths. Therefore he may be retained in that Directorate till the joining of fresh Statistical Asstt. The complainant added that many other persons with more than five years of service were not transferred and DOP&T's instructions on exemption from rotational transfer of persons with disabilities were not brought on file. He also pointed out that in his service record, his residential address was GTB Nagar and Jahagir puri was only for correspondence address in the beginning of his service as he was staying there.

10. The representative of the respondent on the other hand reiterated the written submissions and added that there was no intension to harass him and in fact all his requests were considered positively. While getting the transfer proposal processed in the file, the relevant order of DOP & T and other applicable orders are usually mentioned.

Court of Commissioner (Disabilities)
National Capital Territory of Delhi
Room No. - 1
25-B, Mata Sundari Road, New Delhi-02

11. Upon perusal of the record in the case file and the submissions of the parties, it is observed that the complainant is anguished by the fact that while some other Statistical Assistants who have been working in their respective places for longer than him were retained, he was transferred despite DOP&T's instructions providing for exempting persons with disabilities from rotational transfer policy. He expected the concerned authorities to have been more proactive in taking the initiative to retain him in DES in the first place.

12. Paragraph II of the DOP&T's OM dated 31.03.2014 reads as:

“(a) As far as possible, the persons with disabilities may be exempted from the rotational transfer policy/transfer and be allowed to continue in the same job, where they would have achieved the desired performance. Further, preference in the place of posting at the time of transfer/promotion may be given to the persons with disabilities subject to the administrative constraints.

(b) The practice of considering choice of place of posting in case of persons with disabilities may be continued. To the extent feasible, they may be retained in the same job, where their services could be optimally utilised.

(c) Every Ministry/Department in consultation with the office of the Chief Commissioner for Persons with Disabilities would arrange for training of the Liaison Officer on “Disabilities Equality and Etiquettes”.

(d) All the Ministry/Departments are requested to bring the above instructions to the notice of all appointing authorities under their control, for information and compliance. The Department of Public Enterprises may ensure to give effect the above guidelines in the all the Central Public Sector Enterprises”.

13. In light of the provision of the guidelines, even while accepting the contention of the respondent that the said transfers were not done deliberately with the intension to harass the complainant on the ground of his disability, there was ample scope and occasion for a more favourable and positive decision by considering his posting to an office of his choice in accordance with the policy of the Government. That would have avoided a less than friendly dispensation to the complainant. The respondent may therefore consider if the complainant can be posted to DES, in the spirit of the guidelines issued by DOP & T vide OM dated 31.03.2014 particularly Para No “II” of the said OM.

14. Action taken in the matter may be intimated within three months from the date of receipt this order in accordance with Section 81 of the Rights of Persons with Disabilities Act, 2016.

The matter is dispose of accordingly

Given under my hand and the seal of the Court this 05th day of June, 2017.



Commissioner for Persons with Disabilities

(Signature)
Court of Commissioners (Disabilities)
(T.D. Dhariyal)
National Capital Territory of Delhi
23-D, Maita Garden Road, New Delhi-02