



न्यायालय मुख्य आयुक्त निःशक्तजन  
Court of Chief Commissioner for Persons with Disabilities  
सामाजिक न्याय एवं अधिकारिता मंत्रालय  
Ministry of Social Justice & Empowerment  
निःशक्तता कार्य विभाग / Department of Disability Affairs

**Case No.562/1022/2013**

**Dated:-11-02-2014**

**In the matter of:**

Shri Ashok Kumar Adhikary,  
Flat No.C/303, Block 2,  
Sri Jagannath Enclave,  
Damana, Chandrasekharpur,  
Bhubaneswar – 751 016.

..... Complainant

Versus

Canara Bank,  
PM Section  
(Through Chairman and Managing Director)  
HR Wing, head Office,  
12, J.C. Road,  
Bangalore – 560 002.

.... Respondent

**Date of hearing : 28.01.2014**

**Present :**

1. Shri Ashok Kumar Adhikary, complainant.
2. S/Shri C.P. Giri, Deputy General Manager & Ajeet Kumar Srivastava, Manager (Law) on behalf of Respondent.

**O R D E R**

The above named complainant, a person with 55% locomotor disability filed a complaint dated 16.10.2013 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding transfer from Bhubaneswar to West Bengal.

2. The complainant submitted that he is working as an Officer Scale I in Canara Bank. In September, 2013, the bank conducted a one-time promotion process from JMG Scale I to MMG Scale II. The conditions applicable to the promotion were that promotee would be posted/ transferred anywhere in India on promotion where vacancy may be available and that the promotion shall be effected on joining the transferee branch. In the promotion process, he was promoted and transfer/posting order was issued for a far off place in West Bengal. He approached the bank for his retention at Bhubaneswar in accordance with the concessions and reliefs available to persons with disabilities as per the Govt. orders but the bank turned down his request. ....2/-

3. As per Ministry of Finance, Department of Economic Affairs (Banking Division) letter No.302/33/2/07-SCT (II) dated 15.02.1988, subject to the administrative exigencies, the physically handicapped persons employed in public sector banks in all cadres should normally be exempted from the routine periodic transfers. Such persons should not be normally transferred even on promotion if a vacancy exists in the same branch/office/town/city. If the transfer of a physically handicapped employee becomes inevitable on promotion to a place other than his original place of appointment due to non-availability of vacancy, it should be ensured that such employees are kept nearest to their original place of posting and in any case are not transferred to far off/remote places.

4. The matter was taken up with the respondent vide this Court's letter dated 24.10.2013.

5. Chief General Manager vide letter No.HRW-PM:SC-ST:7491:2013:SKP dated 24.10.2013 submitted that the bank conducted its regular promotion process for the application as on 01.04.2013 for the year 2013 and had promoted 995 JMG Scale I officer to MMG Scale II. Despite this promotion, to meet the emergent administrative requirements the bank had to conduct a Special Promotion process from JMG Scale I to MMG Scale II on 01.09.2013. The purpose of the Special promotion process was clearly spelt out in their bank memo specifically indicating that the promotee Managers will be posted to other circles and states. Accordingly knowing fully well and after giving consent/willingness to undergo this Special promotion process with its mandatory stipulations, the complainant underwent the promotion process and was promoted to JMG Scale I to MMG Scale II. After promotion initially the complainant was posted at Domkal branch of Kolkata. The complainant himself made a request orally to post him to Guwahati Circle to avail dual residential facility. The bank considered his request favourably and referred his name to Guwahati Circle and relieved him on 21.10.2013. The complainant after giving his representation in this Court on 16.10.2013 had even drawn Transport Allowance in advance of Rs.30,000/- on 21.10.2013 for proceeding to the transfer place i.e. Guwahati.

6. A copy of the reply dated 24.10.2013 received from the respondent was sent to the complainant vide this Court letter dated 01.11.2013 for submission of his comments, if any.

7. The complainant in his rejoinder dated 14.11.2013 inter-alia submitted that he made a request for his retention vide letter dated 03.10.2013 but his request was denied by the bank vide letter dated 10.10.2013 which is illegal and unjustified. The competent authority vehemently rejected his request without any valid reason. As the bank rejected his retention request, he had no option but to seek reversion of his promotion due to obvious reason of his physical disability. He requested that his transfer order to Guwahati be annulled with direction to the bank to reverse his order and post him at Bhubaneswar on promotion as he had not violated any guideline of the bank on promotion.

6. After considering respondent's letter dated 24.10.2013 and complainant's rejoinder dated 14.11.2013, the case was scheduled for hearing on 28.01.2014.

8. During the hearing on 28.01.2014, reiterating his written submissions, the complainant submitted that he, one Shri Manoj Rath and Smt. Neeta Ojha were promoted and transferred out of Bhubaneswar. He was transferred to Domkal (Kolkata Region) which is 265 kms. from Kolkata. All the

three chose to forego the promotion in writing. However, Shri Manoj Rath subsequently agreed to move to the Smt. Neeta Ojha's posting place under Kolkata Circle instead of going to Guwahati. Smt. Ojha's request for foregoing the promotion was accepted and she was posted in Bhubaneswar. However, the complainant's request for foregoing promotion was not accepted and he was posted to Guwahati in place of modified place of posting of Smt. Ojha. Prior to this, he sought to be posted in Kolkata. He did not make any request verbally or in writing for posting to Guwahati. After the complainant was relieved from Bhubaneswar under duress, the Bank promoted Smt. Ojha to the post of Manager and retained her in Bhubaneswar Circle. His contention is that since there was a vacancy in Bhubaneswar and there are instructions of Government of India for retaining persons with disabilities, he should have been retained in Bhubaneswar Circle on his promotion. He further submitted that it is very difficult for him to continue in Guwahati, more particularly, as his mother is sick and is undergoing medical treatment. He is ready to forego his promotion for a posting in Bhubaneswar. The complainant added that in the meantime he has also been further transferred within Guwahati Circle to a place called Lumding which is 230 kms. from Guwahati.

9. The representative of the respondent submitted that the Bank commenced Special Recruitment Drive in August, 2013. It was specifically made clear that the officials giving willingness, will be subject to transfer anywhere in India. Shri Adhikary submitted his willingness without any subjectivity. He was promoted and as per administrative exigencies, he was transferred to Kolkata Circle for his placement. On his oral request, his transfer was modified to Guwahati Circle in order to avail the facility of dual residential accommodation and other benefits including the option of getting a transfer to his choice place after two years. He had drawn the T.A. advance of Rs.30,000/- for proceeding to Guwahati accordingly. As far as the reversion applications of Smt. Neeta Ojha and Manoj Rath are concerned, as per Bank records, they have not applied for reversion. Shri Adhikary applied for reversion but the required undertaking was given by him after his release, for which he was advised to submit the same in Guwahati Circle which he has not submitted till date. As far as Smt. Neeta Ojha's retention in Bhubaneswar Circle is concerned, it was permitted as her husband is also posted in Bhubaneswar. The transfer of the complainant out of Bhubaneswar Circle was based on his earlier movements in his career even after acquiring disability and even on promotion. He further submitted that since the complainant had already joined in Guwahati Circle and it takes time to find a substitute for him, if he applies for inter-circle transfer to Bhubaneswar Circle, the same will be examined provided he resumes his duties in Guwahati Circle as he is not attending office at Guwahati after joining.

10. It is observed that the complainant, apparently with other officers, gave his willingness for promotion in the full knowledge of the fact that he is liable to be transferred anywhere across the country and further since that was a special promotion process as one time measure, the promotion was to be made effective after the promotees report at the transferee branch/office without seeking any modification in placement. In the light of this provision and the fact that the complainant did not object to the said clause at the time of undergoing the process of promotion, namely, examination, interview etc., the instructions issued by Banking Division, Ministry of Finance vide their letter No.302/33/2/87-SCT(A) dated 15.02.1988 that persons with disabilities should not normally be

transferred even on promotion if a vacancy exists in the same branch/office, town/city, it would not be of much help to him. It would, however, be appropriate to note that the respondent Bank did make an exception to the Memo. No.67/13 dated 10.08.2013 in the case of Smt. Neeta Ojha by retaining her in Bhubaneswar Circle. The respondent-Bank also apparently does not have a written policy as to which ground would have higher weightage in the event of a situation of competing claims against a single vacancy. There is not much material available in record with this Court as to the constraints that the Bank had in accepting the request of the complainant as was done in the case of Mrs. Neeta Ojha.

11. In the above view of the matter and keeping in mind the intricate at times conflicting details, this Court is of the view that the complainant should resume active duty with immediate effect and on assumption of such active duty by the complainant, the respondent should actively examine and reconsider the complainant's case afresh keeping in mind the relevant guidelines and hardship, if any, faced by the complainant. The said process of active examination and reconsideration afresh by the respondent bank may be completed within three months from the date of assumption of active duty by the complainant under intimation to this Court.

12. The matter stands disposed off accordingly.

Sd/-  
**( P.K. Pincha )**  
Chief Commissioner  
for Persons with Disabilities