



सत्यमेव जयते

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.545/1022/2013

Dated:-01.04.2013

In the matter of:

Shri Pradeep K. Agarwal,
4, Vidyut Abhiyanta Colony,
Malviya Nagar,
Jaipur -302 017.

..... Complainant

Versus

Indian Overseas Bank,
(Thru Chairman & Managing Director),
763, Anna Salai,
Chennai – 600 002.

.... Respondent

Date of hearing : 12.03.2014

Present :

1. Shri Pradeep K. Agrawal, complainant alongwith his father Shri S.R. Agarwal.
2. S/Shri Kunal Tandon, Sanjay K. Trivedi, Nilanjana Sengupta, on behalf of Respondent.

O R D E R

The above named complainant, a person with 60% locomotor disability filed a complaint dated 14.10.2013 under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as the Act regarding his transfer to Jaipur (hometown) from Delhi..

2. He submitted that he was working as Chief Manager in Indian overseas Bank and has been transferred from Jaipur (home town) to Delhi on 19.08.2013. He made a number of requests to his office for his transfer back to Jaipur but no decision was taken by the bank.

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 normally be 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 regional place of posting and in any case are not transferred to far off/remote places.2/-

4. The matter was taken up with the respondent vide this Court's letter dated 21.10.2013.

5. The respondent vide his letter No.PAD/Sup/177/60 dated 08.11.2013 submitted that the complainant on promotion to Scale III during February, 2009 was retained in Jaipur as there was a vacancy at Jaipur in Scale III. Subsequently, he was posted to Delhi on his elevation to Senior Management Grade Scale IV with the consent of the member as his services were required in a big city viz. Delhi and as there was no vacancy in Jaipur. However, the officer has now been transferred back to Jaipur on reversion to the grade at his request.

6. The complainant in his rejoinder dated 09.12.2013 inter-alia submitted that since he requested time and again for justice, the bank kept mum till they received his letter dated 15.10.2013 and as a punishment ordered his reversion while transferring him to Jaipur. He also pointed out that Jaipur itself is a big city being capital of the State of Rajasthan and Indian Overseas Bank itself has 01 Regional Office and 14 branches at Jaipur city itself. Mention of place by the bank is just an excuse/pretext to deny him posting at Jaipur. Regarding no post of Grade IV available at Jaipur, it is totally incorrect. Out of 325 promoted officers to Scale IV, one of them, Mr. Baldev Singh, R. No. 34695 is transferred from Delhi to Jaipur and is presently posted at RO, Jaipur since 19.08.2013 (i.e. the day on which he joined at Delhi).

7. Upon considering the respondent's letter dated 08.11.2013 and complainant's rejoinder dated 09.12.2013, the case was scheduled for hearing on 12.03.2013.

8. After hearing out the parties on the date of hearing, the factual matrix of the case is as follows:-

The complainant, Shri Pradeep K. Agarwal is a person with 60% locomotor disability (right lower limb and left upper limb). He is an officer in the respondent bank. He joined the Indian Overseas Bank as Manager (Scale-II) in August, 2004. Subsequently, he was promoted to the post of Senior Manager (Scale-III) in February, 2009. Thereafter, he was further promoted to the post of Chief Manager (Scale-IV) in August, 2013 and was initially sought to be posted in Mumbai. However, the complainant citing his hardship prayed for his retention in Jaipur itself on promotion by representing to the appropriate authority. As a result, the Competent Authority instead of retaining him in Jaipur on promotion as prayed for, transferred him to Delhi where he was asked to join latest by 19.08.2013, failing which, he stood the risk of forfeiting his promotion. Accordingly, the complainant joined on promotional post as Chief Manager in Delhi; but soon he found that he was facing a lot of hardship on account of being away from home and change of location. Therefore, he submitted a representation to the competent authority in which he had prayed as under:-

"It is humbly requested that suitable directions may kindly be issued to Bank's administration to abide by Government of India office orders and transfer me back to Jaipur (Home Town) at the earliest."

9. Following this, the complainant was transferred to Jaipur but was reduced in rank inasmuch as he was reverted back to his position as Senior Manager (Scale-III)

10. In the light of the aforesaid facts, the complainant reiterating his written submissions alleged violation of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and full Participation) Act, 1995 and also of Ministry of Finance, Department of Economic Affairs (Banking Division) letter No.302/33/2/07-SCT (II) dated 15.02.1988 which, among other things, says as follows:-

“It was decided that 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. It has been decided that such persons should not normally be 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.”

11. The complainant also stated that he could have been retained in Jaipur even on promotion as there exists about 4 or 7 posts of Chief Managers (Grade-IV). He particularly cited the example of one Shri Baldev Singh, who was transferred from Delhi to Jaipur on promotion as Chief Manager (Scale-IV). Responding to the respondent's submissions that Shri Baldev Singh who was transferred as stated by the complainant looks after vigilance and inspection work which requires enormous amount of mobility, the complainant asserted that this statement of respondent was an exaggerated one and that he is, for all practical purposes, not required to keep travelling so much. Besides, the complainant also stated that he too had undertaken tours as and when required and that he could still perform since Bank permits officials for hiring of vehicles. The complainant also contended that he possesses all the necessary expertise, skills and domain expertise necessary for carrying out the functions which are attached to rank/grade of Chief Manager (Scale-IV) and that there is no reason why he cannot function as a Chief Manager. He further stated that some vacancies in the post of Chief Manager still exist in the Bank and that the number of such vacancies put together in the entire Jaipur city would be 7 or thereabout.

12. The representative of the respondent at the outset submitted that the vacancies which existed as on the date of complainant's promotion in Jaipur city were - 1 vacancy in Security Department, 1 vacancy in the Vigilance Department and 2 vacancies in the Branches in Scale-IV. All these 4 vacancies require enormous deal of mobility and were mainly field jobs and not suitable for the complainant. Furthermore, the issue of mobility is not to be seen from the point of providing vehicle or other transport but from the point of view of visiting different branches and going on to different places as the duty of that particular job requires. Further, it is submitted by the respondent bank that the complainant was transferred to Mumbai in Sale-IV and immediately upon his representation, the said transfer was cancelled and he was transferred to Delhi in Scale-IV as Chief Manager (Credit). On 15.10.2013, the complainant again submitted a representation, whereby the complainant sought transfer to Jaipur either in Scale-IV if sufficient posts existed otherwise requested for reversion to the previous status as Scale-III Officer in Jaipur. Acting upon this letter, the Bank transferred the

complainant to Jaipur as Senior Manager at Regional Office at Jaipur whereby the complainant was primarily looking after credit and given the task job as earlier. It is further submitted that even as per the Circular dated 15.02.1988 of Ministry of Finance, Department of Economic Affairs (Banking Division), the complainant could have been retained at Jaipur even on promotion only if the vacancies suitable to him existed otherwise the complainant could have been transferred to a place other than his original place of appointment due to non availability of vacancy subject, however, to him being kept nearest to his original place, in this case, Delhi being nearest to Jaipur. It is further submitted that even when the complainant was promoted earlier from Scale-II to III, the complainant was retained at Jaipur due to availability of vacancy at Jaipur at the relevant time. It is further submitted that since no vacancy existed suitable for the complainant, there cannot be any violation of Section 47 of the Act. It is further denied by the Bank that any action of the Bank is motivated or violative of any right of the complainant.

13. After hearing out all concerned, it would be in the fitness of things for this Court to observe that in the first place, the post of Bank Officer is identified vide Ministry of Social Justice & Empowerment, Department of Disability Affairs Notification No. 16-15/2010-DD-III dated 18.03.2007 and Notification No. 16-15/2010-DD.III dated 29.07.2013 respectively. Chief Manager is a Bank Officer and there are examples where persons with disabilities have risen to such posts in the Banking Sector. It is also observed that the respondent has not obtained any exemption under Proviso to Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and full Participation) Act, 1995 in respect of the concerned posts. Besides, after hearing out the complainant first hand, this Court is convinced that it is quite likely that he (the complainant) vide his representation dated 15.10.2013, among other things, prayed under compelling circumstances that if transferring him back to Jaipur to his promotional post was not acceptable to the Bank, he could be transferred and posted in his immediately preceding status of Senior Manager (Scale-III). It would be so utterly unfair to lose sight of the enormous difficulties which the complainant must have countered for want of adoptable and accessible toilets, non availability of residential accommodation on the ground floor, non availability of Doctor/Physio-Therapist who were attending to him etc. Besides, the complainant also go deprived of the family support which he was getting. This Court has also noticed that the respondent failed to give the latest status with regard to existing or otherwise of vacancies in their Jaipur Region.

14. After carefully considering the submissions made by the respondent, this Court has reasons to suspect that there existed and there still exists vacancies in post of Chief Manager (Grade-IV), it is also likely that such vacancies have existed on the date on which the complainant was transferred back to Jaipur and reverted to Scale-III post of Senior Manager.

15. In view of the foregoing and in the light of Section 47(1) of Persons with Disabilities (Equal Opportunities, Protection of Rights and full Participation) Act, 1995 and circular No. 302/33/2/07-SCT (II) dated 15.02.1988 of Ministry of Finance, Department of Economic Affairs (Banking Division), the respondent is hereby directed to promote the complainant and retain him in the Jaipur Region in case there exists any vacancy of Scale-IV post of Chief Manager within two months from the date of receipt

of this order under intimation to this Court with all consequential benefits on and from the date on which he was promoted to the post of Chief Manager (Scale-IV) i.e. 01.08.2013.

16. The matter stands disposed off with the above directions.

Sd/-

(P.K. Pincha)
Chief Commissioner
for Persons with Disabilities