

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
Original Application No. 295/2021.**

Dated this the 13th August, 2021.

CORAM:

Hon'ble Sh. Jayesh V. Bhairavia, Member (J)

Hon'ble Dr. A.K. Dubey, Member (A)

1. Dr. Teena Khatik,
D/o. Shyamal Khatik,
Aged: 30 years,
Working as ADMO at Divisional Hospital,
Pratapnagar, Vadodara – 390 011.Applicant

(By Advocate Ms. S. S. Chaturvedi)

V/s.

1. Union of India,
Notice to be served through, General Manager,
Western Railway, Churchgate, Mumbai – 400 020.

2. Chief Medical Superintendent
Railway Hospital, Western Railway, Pratapnagar,
Vadodara – 390 004.

3. Divisional Railway Manager,
Western Railway, Pratapnagar,
Baroda – 390 004.Respondents

(By Advocate Mr. M. J. Patel)

ORDER (ORAL)

PER: Hon'ble Shri Jayesh V Bhairavia, Member (J)

1 Aggrieved by transfer order dated 26.07.2021 (Annexure A/1), the applicant has filed the present OA seeking following reliefs:-

“Para 8

(a) *Lordship be pleased to admit this petition and be pleased to issue order quash and setting aside order bearing No. E(G) 838/10 (Inter Division) dated 26.07.2021 (Annexure A/1) as highly arbitrary, illegal against to extent rules and unconstitutional and issue consequently set aside the impugned order bearing no. CMS/ON/2021 dated 27.07.2021 and direct the respondents to retain him at the present post and pass such other order or further orders*

as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

- (b) *That the Tribunal may be kindly pleased to call for the entire record of the applicant in possession of the respondent for its kind perusal.*
- (c) *Any other relief which the Tribunal in the facts and circumstances of the present case may further be pleased to grant cost of the application to the applicant.”*

2 The brief facts as pleaded by the applicant are as under:-

- 2.1 The applicant is working as ADMO (Assistant Divisional Medical Officer) at Pratapnagar Hospital, Vadodara. She has 78% Loco Motor Disability (handicapped by leg).
- 2.2 Vide impugned transfer order dated 26.07.2021 bearing number E(G)838/10 (inter Division) issued by the office of General Manager (E) HQ, Western Railway, Mumbai i.e., respondent no. 1 herein (Annexure A/1), the applicant herein has been ordered to be transferred from Division Hospital PRTN/BRC(Baroda) to Health Unit COR/RTM i.e., at Ratlam vice Dr. Lokesh Kumar Jain, DMO/COR/RTM. In the said transfer order it is also mentioned that:-

“Note: Dr Teena Khatik is to be spared immediate without any Reliever”

- 2.3 On the next day i.e., on 27.07.2021 the respondent no.2 i.e. Chief Medical Superintendent, Railway Hospital, Western Railway, Vadodara issued letter/note (Annexure A/2) wherein it is stated that with reference to GM's letter dated 26.07.2021, Dr Teena Khatik i.e. applicant herein – ADMO – RRC, was served with the transfer order and relieving order on 27.07.2021 at 10.20 hrs which she refused to acknowledge saying that she can't go, she has Court case in Vadodara. The letter was served in the presence of office staff PWLI, AMO and PS/11-CMM and applicant has been stated to have been relieved on 27.07.2021. Certification of relinquishment of charge has

been handed to CA to CMS (Annexure A/3). The respondent no. 2 had also written a complaint and information dated 27.07.2021 address to the Police Inspector Makarapura Police Station, Vadodara by stating therein that Doctor Teena Kathik, Assistant Divisional Medical Officer, Divisional Railway Hospital, Pratapnagar, Vadodara has been transferred to her hometown by Head Office and the said transfer order was not accepted by her though she was advised by the seniors that the transfer is part of the Government service. But she did not listen and left the chamber stating that she would be committing suicide and Railway Authority would be responsible for the same. Therefore, necessary preventive measure should be initiated. (Annexure A/4 & 5). In this regard, counsel for the applicant submits that in fact, the applicant had not stated anything as alleged.

2.4 On receipt of impugned transfer order dated 26.07.2021, the applicant had submitted her detailed representation before the General Manager (E), Western Railway, Mumbai and the CMC/BRC on 28.07.2021 (Annexure A/6) stating therein that she had filed criminal case of sexual harassment against Ex-CMS Vadodara and presently the trial of said criminal case was going on before the Criminal Court at Vadodara. Further, it is stated therein that (i) Court of Chief Commissioner for Persons With Disabilities (DIVYANGJAN) in his/her order dated 15.01.2021 had already directed that the applicant should not be transferred beyond 14 KMs. In spite of it the office has transferred her to COR/Ratlam which is situated at far distance of more than 100 km from Vadodara. Thereby, the office has disobeyed the order passed by the Disability court.

(ii) In Vadodara Division there are number of Doctors who have been continued in one place without any transfer even once in the last 23 years but in the case of applicant, within a span of three years, the office has issued three transfer orders against the applicant.

(iii) The applicant belongs to weaker section community having 75% disability, lonely lady and in spite of knowing about all the above facts, O/O CCMG, CMS is harassing her.

(iv) Though the applicant registered a complaint against Dr. Bhrampakash for sexual harassment, the administration has not taken due care and action in time. Not only that, she has been receiving threat to withdraw the complaint/criminal case filed by the applicant or else, she should be ready for transfer and consequences. Therefore, it is contended by the applicant that the impugned transfer has been issued only for revengeful reason.

(v) It is also stated in the said representation that though the applicant was on duty, the CMS/BRC had considered her as “deemed relieved.” As such, there is no rule or Railway Guideline that too in this pandemic situation as “Deemed Relieved”. A person like the applicant who is suffering 75% disability have been declared to be “Deemed Relieved” only because applicant belongs to weaker section, the discriminatory treatment has been adopted against her. For the aforesaid reason she had requested the respondent no. 1 & 2 to cancel her transfer order. (Annexure A/6, A/7 & A/8).

2.5 In response to her representation, vide letter dated 28.07.2021 (Annexure A/9) respondent no.2 informed the applicant that the Head quarter letter dated 26.07.2021 was complied with. The note mentioned therein that “Dr Teena Khatik is to be spared immediate without any Reliever.” The due procedure to transfer has been followed and the transfer is a part of Central Government service and there is no mention of any case in above (Annexure A/9).

2.6 The applicant has placed on record the order dated 15.01.2021 passed by Court of Chief Commissioner for Persons With Disabilities in complaint case of the applicant (Annexure A/10).

3 Learned counsel Ms S S Chaturvedi for the applicant based on the aforesaid pleading and attached Annexures mainly submitted that:

- 3.1 the impugned order has been passed not in any public interest or any administrative exigency; the same has been issued only to harass the applicant for the reason that she had registered a criminal case against Ex. CMS and trial of the said case is going on at present before the Criminal Court, Vadodara.
- 3.2 The applicant has 75% physical disability (in her leg). By way of impugned transfer order she has been ordered to perform her duty at Ratlam i.e. more than 300 KMs away from Vadodara, as such, the said impugned order has been issued in violation of transfer policy as also against the spirit of RPwD Act 2016.
- 3.3 It is submitted that earlier the applicant was transferred on 30.07.2020 from Pratapnagar to Vadodara Yard during pandemic situation, which is in an isolated and forest area. Thereafter she was sent 80 KMs away i.e. Godhra on duty and she was insisted upon to attend Trains call and she had to cross the platform through stairs as there was no other option such as availability of lift etc.

As the applicant was subjected to continuous harassment, she was compelled to file complaint before Court of Chief Commissioner for persons with disabilities, Department of Empowerment of persons with disabilities (Divyangjan) and same was registered as case no.12286/1023/202. After hearing the applicant and the representative of CMS, the commissioner for Persons with Disabilities vide its order dated 15.01.2021 recommended to the respondent that since the applicant (original complainant) had to travel 14 KMs daily in order to reach the place of work, respondents shall assign duties to the complainant at a place near her place of residence, so that applicant need not travel long distance for the purpose of her job. It was further observed and recommended that the guidelines issued by the DoP&T during Covid-19 Pandemic, exempts PWD from attending office and allows them to work from home and the said guidelines are still in continuation and the respondents shall take these guidelines into

consideration while assigning the duties to the complainant. With reference to complaint of applicant about death threats given to her, it was observed and recommended by the Commissioner that respondents shall get this issue examined by the organisation head who shall reach the logical end as soon as possible, so that a Divyang person can feel safe at workplace. If required, appropriate disciplinary action shall be initiated against the CMS. By referring the said observation and recommendation of Commission for PWD Therefore it is contended by the counsel for the applicant that the respondent has totally ignored the aforesaid directions of the Commissioner, (Divyangjan) and erroneously issued the impugned order.

- 3.4 Ld. Counsel for the applicant further, submits that the respondent has also ignored the guidelines/instructions issued by DoP&T in OM dated 31.03.2014 (Annexure A/14) for providing certain facilities to persons with disabilities who are already employed in Government for efficient performance of their duties such as special casual leave, Preference in transfer/posting of the disabled person contained in para 2 (H) of the said OM. In the present case the respondent has not followed the said mandatory guidelines and hence the impugned order is bad in law and the same is vitiated for the same reason.
- 3.5 It is contended that based on the aforesaid policy dated 31.03.2014 Ministry of Railways also answered the unstarred question no.3394 in Loksabha on 10.08.2015 (Annexure A/15) with reference to whether the railways have been providing facilities to persons with disabilities as mandated by the Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act 1995 to the effect that *“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. Preference in place of posting at the time of transfer/promotion may be given to the persons with disability subject to the administrative constraints. The practice of considering choice of place of posting in case of Persons with Disabilities may be continued.”*

3.6 The counsel further submits that vide letter dated 31.08.2015 (Annexure A/11) the railway board issued comprehensive transfer policy for railway officers, which stipulates that the case of transfer of doctors within and outside the zone should be decided by the railway/board at appropriate level and on case to case basis. The impugned order has been issued in violation of the said policy as also the respondents have ignored the five year exemption granted to the disabled person with respect to transfer and posting.

3.7 Further, it is submitted that in compliance to direction issued by Hon'ble Apex Court in WP(C) 82/2011 order dated 31.10.2013 the Railway Board issued the instruction dated 10.06.2014 (Annexure A/16) whereby, General Managers of All Indian Railways/Production Units were informed that there should be Placement Committee to recommend transfer/postings of all railway servants as per Hon'ble Supreme Court's decision. The details of various Placement Committees constituted for different category of employees had been informed vide said instructions. In the present case, the respondent has not followed the said instructions before issuance of the impugned order.

3.8 The learned counsel has placed reliance on the order passed in OA 245/2007 in the case of Tirupathi Rao v/s. General Manager, East Coast Railway by CAT, Hyderabad Bench (Annexure A/12), to contend that before transfer of PwD employee the instructions/guidelines in vogue required to be followed.

3.9 Counsel for applicant submits that applicant had never applied under own request transfer. The respondent has not stated any reason whatsoever in the impugned transfer order. As such the impugned order has been issued in violation of transfer policy, as also against the mandate of the right of Persons with Disability Act 2016 as the applicant transferred 3 times within 1 year.

4 Per contra, the respondents on receipt of notice issued by this Tribunal have filed their counter reply whereby they denied the contention of the applicant. On the basis of said reply, Learned standing counsel Shri M J

Patel for the respondents submits that the applicant herein is working as ADMO since 2018 and she has loco motor disability due to post polio residual deformity of 78% in one lower limb. By taking into consideration, applicant's frequent complaints to various authorities during last few months, wherein she complained that she feels loneliness, sense of being unsafe and insecure as she is a single lady residing in the private accommodation away from her workplace, she has been transferred to Ratlam which is near her native place i.e., Chittorgarh where her parents reside. This transfer will solve her problems of feeling insecure, unsafe, loneliness and insecurity. It is contended that respondents have not received any certificate of relinquishment of charge from the applicant. The applicant should have reported to CMS/RTM for joining her duty as per her transfer order. However, she failed to do this.

It is contended that she had threatened to commit suicide in the presence of DRM and other officers and later took away 120 tablets of sedative (Larpose 01 mg), by her own prescription slip and the police of Makarpura and Manjalpur had been informed due to her threat. The CMS/BRC is not empowered to cancel a transfer order which has been issued from Headquarter.

It is further contended that as per the recommendation and observation made by Commissioner for Persons with Disabilities in its order dated 15.01.2021, the respondents had enquired into the matter with regard to allegation against the Ex CMS and the competent authority had exonerated him from the charges. However, said officer was transferred to Dahod at the relevant time.

It is stated that the present transfer order of the applicant is not vindictive as the same is normal transfer as like routine administrative transfer. The transfer is a part of Central Government service and the applicant being a government employee is liable to be transferred to any place in India. Though the applicant is required to accept the transfer order, she refused to accept it. Therefore, necessary counselling was given to the applicant. However, the applicant is not ready and willing to accept her duty

to follow the administrative order of transfer. As such, the applicant is not entitled to object her transfer.

It is stated that though applicant has applied for casual leave, it was suggested to PS to CMS to convey her that she could avail joining leave or apply to CMS Ratlam. However, the applicant did not follow it. Subsequently, the matter was discussed with DRM and her casual leave request was sanctioned. The CMS/RTM was informed about the same. It is stated that a team of Psychiatrist and Counsellor had come from Mumbai to counsel her but she did not meet them claiming that she had never said about committing suicide. As such, she had changed her version.

It is stated that on receipt of complaint from the applicant against the Ex CMS, he was immediately transferred in March 2021. It is stated that the allegations of the applicant about sexual harassment against Ex-CMS had been examined by Railway Authorities and found no evidence with regard to said allegations. Accordingly, CO was exonerated as per the ICC report.

The transfer order and relieving letter was handed over to the applicant in presence of two witnesses and still she refused to acknowledge the same and left the O/o. CMS by herself. Therefore, there was no option but to treat her as “deemed relieved.”

It is submitted that the applicant belongs to Chittorgarh which is nearer to Ratlam than the present place of work i.e. Vadodara. As such, the administration has done a favour by transferring her to a place near her hometown, otherwise being an officer in Central Government Service; the applicant is liable to be transferred to any place in India. It is stated that since the transfer of applicant is general in nature and not due to any other reason as alleged by her, the applicant has no vested right to claim posting at one particular place.

5 As against the aforesaid submissions of the respondents, the learned counsel for applicant submits that the applicant is not allowed to enter her office at Vadodra and could not collect her papers etc. resulting in not being able to file rejoinder. However, the applicant denied the contentions and submissions of the respondents. It is submitted that applicant had never

applied for her transfer. It is also not correct that the place to which she has been transferred i.e. Ratlam is nearer to Chittorgardh which is more than 200 KMs away from Ratlam. Only because applicant had selected examination centre at Jaipur with regard to her ongoing study for Masters through National Board of Examination, the respondents by relying upon copy of said admit card (Annexure A/13), tried to make out an absolutely vague ground to justify the impugned transfer of applicant to Ratlam. This indicates the applicant is subjected to victimisation.. In fact, with a view to pressurise the applicant to withdraw the criminal case filed by her against the Ex-CMS, the respondents have transferred the applicant to a distant place. It is submitted the reason stated by the respondents for her transfer is in violation of mandatory guidelines pertaining to disabled persons/employees working with the government.

- 6 Heard Ms S S Chaturvedi, learned counsel for the applicant and Shri M J Patel, learned counsel for the respondents and perused the materials placed on record.
- 7 This Tribunal is mindful of the settled principles of law that a government servant has no vested right to remain posted at a place of his choice nor can he/she insist that he/she must be posted at one place or the other. He/She is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. The Courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides.
- 8 In the case at hand undisputedly the applicant is “a Doctor” by profession with 75% physical disability, belonging to weaker section is working as ADMO at Divisional Hospital, Vadodara of Western Railway. She had registered criminal complaint against a senior officer of the railway department on the charges of sexual harassment. The trial of the said criminal case is presently going on before the Criminal Court at Vadodara. She had also lodged her complaint before the Court of Chief Commissioner for persons with disabilities, Department of Empowerment of persons with

disabilities (Divyangjan) against one Dr. Bhramaprkash, Chief Medical Superintendent (CMS) about her frequent transfer and continuous harassment. The said matter was taken up under section 75 of the RPWD Act 2016 and after hearing both the sides and based on the documents on record; the Commissioner had issued recommendations on 15.01.2021 to the effect that respondents shall expedite proceedings conducted by the Internal Complaints Committee (ICC), Respondent shall assign duties to the complainant nearby her place of residence, so that she need not travel long distance for the purpose of her job. In addition to above, we also take note of guidelines for providing facilities in respect of persons with disabilities who are already employed in government to enable them to effectively discharge their duties. The said facility also includes preference in transfer/posting, special casual leave, etc., and the DoP&T vide OM dated 31.03.2014 (Annexure A/14) directed that the guidelines should be made applicable in respect of such persons with disabilities. The para H of said OM reads as under:-

“H. Preference in transfer/posting

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 place of posting at the time of transfer/promotion may be given to the persons with disability subject to the administrative constraints.

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.

3. 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 "Disability Equality and Etiquettes".

It is clear from the above that persons with disabilities may be exempted from the rotational transfer policy/transfer and are required to be allowed to continue in the same job where they would have achieved the desired performance. However, preference in place of posting is also required to be given to such employees. The respondents have time and again issued

directions to protect the interest and rights of PwD employees and as such, they are not subjected to rotational/general transfer.

- 8 In view of the above factual matrix and the guidelines issued by DoP&T in terms of PwD Act, we are of the considered opinion that although we would have refrained from interfering in a transfer matter, but in the case on hand, intervening with the impugned transfer order has become imperative as the interest of applicant in this particular case requires to be protected because the explanation offered by the respondents justifying their action of transferring the applicant is contrary to their own instructions and policy on transfer and therefore is not tenable. Taking into consideration the direction of the Court of Chief Commissioner for PwD, non compliance of the conditions and stipulations in the transfer policy of the respondents as well as instructions of DoPT on the issue of transfer of **Divyangjan**, the impugned orders suffer from infirmities and hence, we are constrained to quash and set aside the impugned orders dated 26.07.2021 and 27.07.2021 (Annexures A/1 & A/2) with a direction to respondents to allow applicant to join as ADMO at Divisional Hospital, Pratapnagar forthwith.
- 9 With the above observation and direction, OA is allowed. There shall be no orders as to costs.
- 10 Registry is directed to send copy of this order by Email to the counsel for parties immediately.

(A K Dubey)
Member(A)

(Jayesh V Bhairavia)
Member(J)

abp

