



2023: DHC: 9447



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order : 15th December, 2023**
+ **W.P.(C) 12404/2022, CM APPL. Nos. 37256/2022 & 10458/2023**

BHAVNEET SINGH Petitioner
Through: **Ms.G.M.Padma Priya, Advocate**
versus

**IRCON INTERNATIONAL LIMITED THROUGH CHAIRMAN
AND MANAGING DIRECTOR & ORS.** Respondents
Through: **Mr.Debarshi Bhadra, Advocate**

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL. No. 10458/2023

Learned counsel appearing on behalf of the petitioner does not seek to press the present application.

The application is thus dismissed as not pressed.

W.P.(C) 12404/2022 and CM APPL. No.37256/2022

1. The petitioner vide the present petition under Article 226 of the Constitution of India seeks the following reliefs:

“A.Issue appropriate writ/order/directions for quashing/setting aside the Transfer Order dated 22.08.2022 being Office Order No. 643/2022 bearing no. IRCON/HRM/TRANS/3121 and the Relieving Order dated 23.08.2022 being Officer Order No.645/2022 bearing no. IRCON/HRM/PF/10001610 passed by the



*Respondent No.1 for transferring the Petitioner to Chattisgarh Rail Project;
B. Allow the present Petition with costs in favour of the Petitioner, and pass any other order/further orders(s) as the Hon'ble Court may deem fit."*

2. The facts leading to the instant petition are as follows:
- a. Petitioner is an orthopedically Handicapped person with 72% locomotor disability and the respondent no. 1, IRCON International Ltd. is a Government company incorporated by Central Government (Ministry of Railways) under the Companies Act, 1956. The respondent no. 1 is a leading turnkey construction company in public sector and 86% of it's shares are held by the Ministry of Railways. The respondent No.2 is currently posted at respondent no. 1 and the respondent No.3 is currently posted at respondent no.1.
 - b. On 15th December 2017, the petitioner joined as Deputy Manager HRM at Human Resource Management Department in the respondent no.1's corporate office and was subsequently transferred from the respondent no.1's corporate office to it's wholly owned subsidiary vide office order no. 131/2020 dated 30th March 2020.
 - c. The respondent's Corporate Office vide Office Order No 139/2020 dated 10th April 2020 and took over the charge of respondent no.1's wholly owned subsidiary w.e.f. 11th April 2020.



- d. On 18th January 2022, the petitioner initiated representation before the Competent Authority to challenge promotion of the petitioner in the respondent organization through e-office which was rejected on 2nd March 2022 and the petitioner's request to consider his candidature for the promotion was dismissed.
- e. On 9th March 2022, the petitioner was transferred from Ircon ISL, Noida to respondent no.1's Corporate Office vide Office order number IISL 6/2022. The petitioner's filed complaint before the Court of Chief Commissioner for Persons with Disabilities against IRCON for non-adherence with the legal provisions under Rights of Persons with Disabilities Act, 2016.
- f. The petitioner further filed a Representation-cum-Demand for Justice Petition on 18th July 2022 before the respondent no.1 through its counsel against denial of promotion to the petitioner but no response.
- g. A Show-cause notice was issued to the petitioner on 8th August 2022 on the basis of pseudonymous/anonymous complaint received by the Department and the petitioner was asked to furnish an explanation for not applying for leave and for not marking attendance via biometric card.
- h. In August 2022, the petitioner was again transferred from respondent no.1's Corporate Office, Saket to Chhattisgarh Rail Project.



- i. Hence, the petitioner herein being aggrieved by the impugned orders of transfer dated 22nd August 2022 and the order of relieving dated 23rd August 2022 passed by the respondent no. 1 has filed the instant writ petition.
2. Learned counsel appearing on behalf of the petitioner submitted that the impugned orders are violative of the fundamental rights of petitioner under Article 14 and 16 of the Constitution of India and further violates the petitioner's right under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 as the petitioner has been subjected to unnecessary and relentless harassment.
3. It is submitted that the place to which the petitioner has been transferred, there would be no one to help the petitioner with his everyday chores and most basic daily needs. He would be deprived of the constant medical care and access to health care that he needs due to his special and severe medical condition. The respondent no.1, being an agency of State, shall aid and provide a healthy working environment and equal opportunities to the specially-abled, instead of victimizing them.
4. It is submitted that the analogous case of Mr. Sandeep Sharma, a person with 50% visual impairment, who was also employed in the respondent no.1 as AM (HRM), was transferred to Chhattisgarh Rail Project and the Chief Commissioner observed that Persons with Disabilities should not be deprived of their legitimate rights. Eventually the respondent Organization transferred Mr. Sandeep Sharma back to Delhi. Despite being aware of the legal position and the illegality of their conduct, the



respondents have acted in an identical manner with the petitioner in the instant case.

5. It is submitted that vide IRCON Circular No. 34/2022 dated 3rd August 2022, with the subject as Willingness for Transfer on Job Rotation Policy, states that the HRM department of the respondent no.1 invited those employees of respondent no.1 who have completed 3 or more years in the same place of posting and those employees of respondent no.1 who have completed or are about to complete 5 years, must submit their willingness mandatorily, otherwise it will be presumed that they have no preference for posting and their posting shall be decided by the management.

6. It is further submitted that the respondent's conduct is *male fide* in transferring the petitioner as there are many employees who have completed more than 3 years and 5 years in the same posting i.e. at HRM Section Corp Office. Moreover, there are many employees at respondent no.1, at the same/similar rank and with same /similar qualifications, who can easily work at Chhattisgarh in the given job role and they are working for a much longer period at the same place than the petitioner, therefore, the respondents ought to consider them prior to the petitioner for this position.

7. It is further submitted that such act of transfer is contrary to Office Memorandum No. 360353/3/2013-Estt.(Res) dated 31st March 2014 and other various Office Memorandums issued by the Department of Personnel and Training (hereinafter DoP&T) dated OM. No 14017/41/90 dated 10th May 1990, OM No. 14017/16/2002 dated 13th March 2002, No E(NG)I-2003/TR/7 dated 29th April 2003, OM No. 42011/3/2014 dated 6th June



2014, OM No. 42011/3/2014 dated 17th November 2014, OM No. 42011/3/2014 dated 5th January 2016 and OM No. 42011/3/2014 dated 8th October 2018 as per which 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.

8. It is submitted that as per the aforesaid Office Memorandums, preference in place of posting at the time of transfer/promotion may be given to the persons with disability subject to the administrative constraints.

9. It is contended that the guidelines issued by the DoPT are to be adhered to and non-adherence of the said guidelines clearly lead to breach of various Office Memorandums with regard to transfer and posting of specially abled employees.

10. It is submitted that petitioner wears a knee length prosthetic known as an Ankle Foot Orthosis (AFO) in his left leg for which he is under the supervision of a para-medical professional from the last seven years and the said AFO needs regular maintenance for its wear and tear for which the petitioner needs to visit their workshop/clinic situated in Delhi.

11. It is further submitted that the petitioner is also under the supervision of Dr. Atampreet Singh, a Neurologist at Fortis Hospital, Noida for more than a decade. He has to undergo MRI tests of C- Spine, L-spine and other diagnostic tests as and when prescribed, and other Orthopaedic counterparts to keep a track of degenerative changes taking place in the petitioner's spine in particular and therefore the said transfer can act as an embargo in his regular medical treatments.



12. It is submitted that this Court in a catena of judgments has taken a view that while it is true that transfer is an incidence of service and the right of an employee to resist transfer is subservient to administrative exigencies but this principle would not apply where a party asserts his/her rights under a Legislation i.e. the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which has been enacted in furtherance of international commitments and to ensure equal treatment to persons with disabilities.

13. It is submitted that the impugned orders passed by the respondents are in violation of the provisions of the Section 20 Right of Persons with Disabilities Act, 2016, which states that Government establishment shall ensure that there is discrimination against any person with disability in any matter relating to employment and the appropriate Government may frame policies for posting and transfer of employees with disabilities. Therefore, the intention of the legislation in enacting the afore discussed legislation was to assimilate physically disabled persons in mainstream, however the respondents' actions are contrary to the same.

14. It is further submitted that the professional growth of the petitioner and his mental peace is affected by the impugned orders which are bad in law, and arbitrary in nature and therefore, liable to be set aside.

15. In view of the foregoing submissions, the counsel for the petitioner prayed that the petition may be allowed, and the reliefs as claimed by the petitioner may be granted by this Court.



16. *Per Contra*, the learned counsel appearing on behalf of the respondent vehemently opposed the present petition submitting to the effect that the petitioner has not approached the Court with clean hands and is guilty of *suppressio veri* and *suggestion falsi* as the petitioner has concealed relevant facts and attempted to mislead this Hon'ble Court by way of false and incorrect statements and documents.

17. It is further submitted that the present petition suffers from misjoinder of parties in so far as the respondents no. 2 and 3 are neither necessary nor proper parties. Hence, no reliefs have been sought against *Respondent* no. 2 and 3 and the instant petition has been filed only to intimidate and harass respondent nos. 2 and 3.

18. It is contended that the petitioner has invoked the Persons with Disabilities Act, 2016 and hence, the right forum would be before the Chief Commissioner for Persons with Disabilities. Therefore, the present petition before this Court is premature and may be rejected.

19. It is submitted that the petitioner in the appointment letter specifically accepted the condition that he could be posted anywhere in project/office of the respondent no. 1 and the same condition was expressly advertised in the advertisement for the said position.

20. It is submitted that the present transfer is based on the need for an experienced HR professional at a project based out of Bilaspur, which is a well-developed city and has the headquarters of multiple CPSEs as well as Zonal HQ of Railways with well-connected route to Delhi by air, rail, and road. Moreover, the city has extensive medical facilities, the cost of which is



already borne by the respondent no.1 and additionally the petitioner would be eligible for free bachelor accommodation, free pick-up and drop facility apart from increased financial emoluments @2% of Basic Pay.

21. It is contended that if the transfer was out of any malice, notwithstanding the conduct of the petitioner, it may have been to some remote project site without basic amenities or medical facilities, but certainly not to a place which would be beneficial to the petitioner, both financially as well as professionally.

22. It is submitted that the transfer of employees is purely administrative decision based on the professional interest, need and limitations of the employee and on the considerations of the requirement of resources at various projects/offices of the respondent company, and if the present petition is allowed, it would set a bad precedent and open floodgates for further similar litigation.

23. It is further submitted that petitioner was placed under probation for an extended period of six months after a general one year of probation starting from 15th December 2017 due to petitioner's inconsistent and erratic performance.

24. It is submitted that the remarks of the Controlling Officer stated that the petitioner lacks the speed of response and quality of his output is poor and despite being counselled on multiple occasions he has not been able to perform upto the acceptable standards.

25. It is further submitted that the petitioner's probationary period was finally closed on 15th June 2019 but in the said probation closure report, the



Controlling Officer observed that the petitioner shall improve his efficiency, punctuality and would effectively and timely complete the work assigned to him.

26. In light of the foregoing submissions, the learned counsel appearing on behalf of the respondents prayed that the present petition, being devoid of any merits, may be dismissed.

27. Heard the learned counsel for the parties and perused the records.

28. It is the case of the petitioner that the petitioner being a person with special needs shall not be transferred to Chhattisgarh since, the same shall result in undue harassment and health issues to the petitioner. The petitioner would be deprived of the constant medical care and access to health care that he needs due to his special and severe medical condition.

29. In rival contention, the respondent no. 1 has submitted that the petitioner has been transferred based on the needs and requirement of the respondent no. 1, hence, there is no malice on the part of the respondent no. 1 in transferring the petitioner. Furthermore, the city to which the petitioner has been transferred has access to health care and is well- connected with Delhi by all means of transport.

30. Before adjudicating the case on merits, this Court shall revisit the law pertaining to the transfer of the handicapped government employees.

31. The Parliament enacted a legislation i.e., The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 to ensure that there is compliance to 1992 Economic Commission for Asia and Pacific Region who adopted Proclamation for the persons with



disabilities. India being a party to the aforesaid Proclamation enacted the aforesaid Act.

32. The key objectives of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, is as follows:

- To make the State obligated for the protection of the rights of persons with disabilities, provide them with the requisite medical care, education, training, employment, etc
- To create a conducive environment for the learning and growth of the person with disabilities
- To ensure that there is no discrimination against the persons with disabilities and they are being equally given the opportunity like any enabled person.

33. In the year 2006, the United Nations General Assembly adopted UN Convention on Rights of Persons with Disabilities (hereinafter CRPD). Since, India was one of the countries to sign and ratify the treaty, the State enacted new law in furtherance of the commitments under CRPD. Hence, in the year 2016, Parliament enacted Rights of Persons with Disabilities Act, 2016.

34. The objectives of the aforesaid Act are reproduced herein below:

- “(a) respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;*
- (b) non-discrimination;*
- (c) full and effective participation and inclusion in society;*



- (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;*
(e) equality of opportunity;
(f) accessibility;
(g) equality between men and women;
(h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities;”

35. This Court shall also discuss Section 20 of the Rights of Persons with Disabilities Act, 2016 as per which the government establishment shall provide reasonable accommodation, appropriate barrier free and conducive environment to all persons with disabilities. Furthermore, the aforesaid Section aims at ensuring that there shall be policies framed by the appropriate Government for the purpose of posting and transfer of the persons with disabilities.

36. Furthermore, this Court will reiterate the various Office Memorandums issued by the Executive in relation to postings and transfer of the person with disabilities.

- Office Memorandum No. 14017/41/90 dated 10th May 1990 issued by DoP&T- provides that employees belonging to Group C and D must be posted near to their native place.
- Office Memorandum No. 14017/16/2002 dated 13th March 2002 issued by DoP&T - clarifies rule laid down in Office Memorandum dated 10th May 1990 and further extended this rule for employees belonging to group A and B as well.



- Office Memorandum No. 36035/3/2013, dated 31st March 2014 issued by DoP&T -lays down certain guidelines for providing facilities to persons with disabilities employees of government establishments. Under heading 'H' of the Office Memorandum two guidelines with respect to transfer and posting of persons with disabilities employees are laid down. Firstly, it is laid down that persons with disabilities employees may be exempted from rotational transfer and allowed to continue in the same job where they would have achieved the desired performance. Secondly, the Office Memorandum provides that at the time of transfer/promotion, preference in place of posting may be given to the Persons with Disabilities subject to the administrative constraints.

37. The Hon'ble Supreme Court recently in the judgment of ***Net Ram Yadav v. State of Rajasthan, 2022 SCC OnLine SC 1022*** discussed on the aspect of posting and transfer of Persons with Disabilities and held as follows:

“26. The marginalization of the disabled/handicapped is a human rights issue, which has been the subject matter of deliberations and discussion all over the world. There is increasing global concern to ensure that the disabled are not sidelined on account of their disability.

27. A series of meetings, discussions and deliberations on the issue of human rights of persons with disabilities, led to adoption by the General Assembly of the United Nations, of the United Nations Convention on the Rights of Persons with Disability (UNCRPD), aimed at protecting the human rights and dignity of persons with disability. Adopted in 2006, the UNCRPD came into force in May



2008. About 177 countries including India have ratified the UNCRPD.

28. The UNCRPD consists of 50 Articles, which outline the inherent rights and liberties of persons with disabilities. The Articles of the UNCRPD are based on certain general principles, the most important of which is respect for inherent dignity and individual autonomy of persons with disability. Equally important is the right of non-discrimination, which would include reasonable accommodation and/or concessions for full and effective participation and inclusion in society. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity lies at the core of the dignity of persons with disability.

29. UNCRPD has been ratified by India. The State is obliged to give effect to the UNCRPD. All Statutes, Rules, Regulations, Bye-laws, Orders and Circulars for the benefit of the Physically Disabled necessarily have to be given a purposive interpretation in harmony with the principles of UNCRPD.

30. Even otherwise, human rights are rights inherent in civilized society, from the very inception of civilization, even though such rights may have been identified and enumerated in international instruments such as the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10th December 1948, or other international conventions and instruments including UNCRPD. Furthermore, the disabled are entitled to the fundamental right of equality enshrined in Articles 14 to 16 of the Constitution of India, the fundamental freedoms guaranteed under Article 19 including the right to carry out any occupation, profession, the right to life under Article 21, which has now been interpreted to mean the right to live with dignity, which has to be interpreted liberally in relation to the disabled.

31. One of the hindrances/disadvantages faced by the physically disabled persons is the inability to move freely and easily. In consideration of the obstacles encountered by persons with disabilities, the State has issued the said notification/circular dated 20th July 2000 for posting disabled persons to places of their choice,



to the extent feasible. The object of this benefit to the physically disabled is to, inter alia, enable the physically disabled to be posted at a place where assistance may readily be available. The distance from the residence may be a relevant consideration to avoid commuting long distances. The benefit which has been given to the disabled through the Circular/Government Order cannot be taken away by subjecting the exercise of the right to avail of the benefit on such terms and conditions, as would render the benefit otiose.”

38. The Hon’ble Supreme Court held that the State shall ensure that the rights of the Persons with Disabilities are being safeguarded by the State. Moreover, the Hon’ble Court held that the benefits/ perks which are rendered to the Persons with Disabilities by way of any circular/ government order, the said benefits cannot be taken away from them by subjecting them to various terms and conditions since, the same would render such benefits of no use for the Persons with Disabilities.

39. In view of the aforesaid discussion, it is concluded that the India being a welfare State embarks on ensuring that there is provision of equal opportunity to the Persons with Disabilities. Moreover, it aims at ensuring that the Persons with Disabilities are not subjected to any discrimination either at place of education, place of work, any public place, etc and further aims at ensuring of giving them access to the requisite education training, medical facilities, etc and therefore, the State has enacted various laws, and has signed various International treaties to fulfil the said objective.

40. Moreover, to ensure that there are equal opportunities provided to the persons with disabilities at workplace, the State has issued various Office memorandums pertaining to posting and transfers of Persons with



Disabilities and a few of them have been discussed hereinabove. The State by various enactments and Office Memorandums has the objective of ensuring that the transfers and job postings of the Persons with Disabilities shall be in such a way that they shall be given the choice to be posted at their preferred place of posting and may even be exempted from rotational transfers as mandated for other employees.

41. State shall ensure that the Persons with Disabilities are not subjected to unnecessary and relentless harassment by being transferred/posted at places where they are unable to get an environment which is conducive for their working. Furthermore, it aims at ensuring that the Persons with Disabilities shall have the requisite medical facilities, etc. available at the place they are posted.

42. Now adverting to the adjudication of the case on the merits.

43. The impugned transfer Order dated 22nd August 2022 being Office Order No. 643/2022 bearing no. IRCON/HRM/TRANS/3121 is reproduced herein below:

“2. Accordingly, the above employees(s) is/are requested to report to concerned Project/Functional Head For further orders.

3. Responsibilities of Relieving Project/Functional Head.

a) Ensure handing/taking over before relieving from the project.

b) Project/Functional Heads should relieve the concerned official(s) on or before 05.09.2022, otherwise it will be presumed that concerned official(s) stands relieved and their salary shall not be charged until they join the new place of posting.



c) Relieving order should include the Following with a copy to HR/Corporate Office. .-

il Date of relieving from the Project.

ii) Confirm, if any D&A Case is pending against the employee.

iii) Confirm, if the employee are undergoing any punishment or punishment is yet to be implemented. If yes, copy of punishment orders are to be enclosed. -

d) Following documents are to be sent to the Project where employee is being transferred (within 10 days of relieving) [not applicable for temporary posting]:

i) Details to pending D&A case. If any. with a copy to HR. Corp. Office.”

ii) Leave record duly completed.

iii] LPC.

4. Responsibilities of Project Head/Functional Head where employee will report.

i) Inform Date of Joining to HR Dept., Corp. Office by sending joining report on email-id:”

44. The impugned relieving Order dated 23rd August 2022 being Office Order No.645/2022 bearing no. IRCON/HRM/PF/10001610 is reproduced herein below:

“In terms of Corporate Office Order No. 643/2022 dated 22.08.2022, Shri Bhavneet Singh, Dy. Manager/I-IRM., (Employee Code No. 10001610) is hereby relieved on transfer from HRM Section, Corporate Office with effect from 23.08.2022 (A/N) to Chhattishgarh Rail Project. Accordingly, he is directed to report to Project Head, Chhattishgarh Rail Project for further orders.”

45. The petitioner has pleaded before this Court that he needs medical attention which can only be provided at his current place of posting i.e., at Delhi. Since, the petitioner wears a knee length prosthetic known as an



Ankle Foot Orthosis (AFO) in his left leg, and that he is under the supervision of a para-medical professional for the last seven years and that the said AFO needs regular maintenance for its wear and tear for which the petitioner needs to visit their workshop/clinic which is in Delhi.

46. Furthermore, the petitioner is also under the supervision of a Neurologist at Fortis Hospital, Noida for more than a decade. He has to undergo MRI tests of C- Spine, L-spine and other diagnostic tests as and when prescribed, and other Orthopaedic counterparts to keep a track of degenerative changes taking place in his spine.

47. It is a well settled principle that while adjudicating upon such delicate matters, the Court has to be more sensitive and empathetic to the plight of a persons with disability and also to ensure that values provided in Articles 14, 15, 16 and 21 of the Constitution of India are duly protected. The aforesaid principle has been reiterated by the Hon'ble Supreme Court in the judgment of *Justice Sunanda Bhandare Foundation v. Union of India*, WP (C) NO. 116 of 1998 dated 26th March 2014 which held as follows:

“As a matter of fact, the role of the governments in the matter such as this has to be proactive. In the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief oriented and not obstructive or lethargic. A little concern for this class who are differently abled can do wonders in their life and help them stand on their own and not remain on mercy of others. A welfare State, that India is, must accord its best and special attention to a section of our society which comprises of differently abled citizens. This is true equality and effective conferment of equal opportunity.”



48. In the instant matter, this Court is of the view that taking into consideration the medical conditions and the ongoing treatment of the petitioner, the petitioner should not be transferred to any other State as the same may create hindrances to the treatment of the petitioner.

49. In view of the aforesaid discussions, this Court deems it necessary to interfere and set aside the impugned orders. The respondent no.1 acted in violation of the Article 14 of the Constitution of Indian since it ignored the special needs of the petitioner and posted him to a far- off place.

50. Accordingly, the writ is allowed and the transfer Order dated 22nd August 2022 being Office Order No. 643/2022 bearing no. IRCON/HRM/TRANS/3121 and the relieving Order dated 23rd August 2022 being Office Order No.645/2022 bearing no. IRCON/HRM/PF/10001610 passed by the respondent No.1 transferring the petitioner to Chhattisgarh Rail Project, are set aside.

51. Accordingly, the instant petition stands is disposed of along with pending applications, if any.

52. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

DECEMBER 15, 2023
SV/DB/AV

[Click here to check corrigendum, if any](#)