

Bharat Sanchar Bhawan,
HC Mathur Lane, Janpath,
New Delhi : 110001,
Off : 011 - 23765181
Fax : 011 - 23766143



भारत संचार निगम लिमिटेड
(भारत सरकार का उपक्रम)
BHARAT SANCHAR NIGAM LIMITED
(A Govt. of India Enterprise)

No. BSNLCO-COMN/18(11)/4/2024-CLO/SCT

Dated: 15.02.2024

To

1. All the Head of Telecom Circles, BSNL
2. All Cadre Controlling Authorities, BSNL Corporate Office, New Delhi
[CGM (Arch)/CGM (BW)/CGM (EW)/PGM (Estt.)/PGM (Pers.)/PGM (EF)]

Subject: Legal framework related to posting/transfer/retention of employees with disabilities and Caregivers to dependent persons with disabilities-regarding.

The undersigned is directed to forward herewith a copy of letter No. 01-03/2024-SCT dated 24.01.2024 received from Under Secretary, Department Of Telecommunication (SCT Section) on subject mentioned above vide which a copy of letter No.13972/1022/2023 dated 14.01.2024 of Court of Chief Commissioner for Persons with Disabilities (DIVYANGJAN, New Delhi has been sent. In this regard, all concerned are requested for strict compliance and necessary action for handling of issues such as posting/transfer/retention of PwD Employees and Caregivers to dependent PwDs in accordance with guidelines contained under above endorsements.

This is issued with the approval of the Competent Authority.

Enclosures: As above.


(Santosh Kumar)

Dy. General Manager (SCT)
E-mail ID:scticcbsnl@gmail.com

Copy for kind information to:-

1. PPS, CMD, BSNLCO, New Delhi.
2. PPS, Director (HR), BSNL Board, New Delhi.
3. Shri Amit Rajan, US, DOT w.r.t. letter dated 24.01.2024.
4. BSNL Intranet.

7F
07/07/24

No. 01-03/2024-SCT
Government of India
Ministry of Communications
Department of Telecommunications
(SCT Section)

G.M. D. (G.S.M.)
GENERAL
Dy. No. 163-2
Date: 06/2/2024

O/o Dir (HR)
No. 169-
Date 6/2
BSNL CO.

CMD - mkt of PGM

Room No. 415, Sanchar Bhawan
New Delhi, 24-01-2024 DIR (HR)

To:

1. Chairperson, TDSAT
2. Secretary, TRAI
3. The Chairman-cum-Managing Director, MTNL, New Delhi
4. The Chairman-cum-Managing Director, BSNL, New Delhi
5. The Chairman-cum-Managing Director, TCIL, New Delhi
6. The Chairman-cum-Managing Director, ITI Ltd., New Delhi
7. The Chairman-cum-Managing Director, BBNL, New Delhi
8. CEO, C-DoT
9. Director, Wireless Monitoring Organisation
10. Dy. CGCA (Admin.), O/o CGCA

in mtg pd.
6/2
PGM(SR)
PAM(Admin)
M & C (SCT)

Subject: Legal framework related to posting/transfer/retention of employees with disabilities and caregivers to dependent persons with disabilities- regd.

Sir,

I am directed to forward herewith a copy of letter bearing No. 13972/1022/2023 dated 14.01.2024 received from Dy. Chief Commissioner, Court of Chief Commissioner for Persons with Disabilities-CCPD (Divyangjan) and to request that in compliance of various statutory enabling provisions/ government guidelines enunciated therein, all cadre controlling authorities are advised to look into the issue pertaining to the posting/transfer/retention of employees with disabilities and caregivers to dependent persons with disabilities and furnish an Action Taken Report to this office latest by 9th February, 2024 positively.

8/2/24
PAM(SR)
8/2/24
DM (SCT-F)

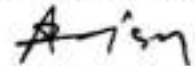
2. To substantiate its position, O/o CCPD has inter-alia conveyed that an overwhelming number of representations/grievances received by them pertain to posting/transfer/retention of employees with

disabilities and caregivers to dependent persons with disabilities. CCPD has emphasised that statutory enabling provisions have been laid down which are required to be adhered to while considering representations/ requests received from divyang employees/ caregivers and that the transfer policy of any government establishment has to be aligned with the provisions of RPwD Act, 2016 & RPwD Rules, 2017.

3. The matter may please be given your personal intervention and treated as **TIME BOUND**.

Encl.: as above

Yours sincerely,



(Amit Rajan)

Under Secretary to the Govt. of India

amit.rajan@nic.in

Tel. 2303 6968



न्यायालय मुख्य आयुक्त दिव्यांगजन

COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES (DIVYANGJAN)
 दिव्यांगजन सशक्तिकरण विभाग/Department of Empowerment of Persons with Disabilities (Divyangjan)
 सामाजिक न्याय और अधिकारिता मंत्रालय/Ministry of Social Justice & Empowerment
 भारत सरकार/Government of India

3rd फ्लोर, एन.एस.डी. भवन, जी-2, सेक्टर-10, नई दिल्ली-110075; दूरभाष : (011) 20892364
 3rd Floor, N.I.S.D. Bhawan, G-2, Sector-10, New Delhi-110075; Tel.: (011) 20892364
 Email: ccpd@nic.in; Website: www.ccd disabilities.nic.in

Case No. 13972/1022/2023

To

The Secretary,
 Ministry of Communication
 Department of Telecommunication
 Sanchar Bhawan, 20 Ashoka Road
 New Delhi- 110001
 Email: secy-dot@nic.in

Sub: Legal framework related to posting/transfer/retention of employees with disabilities and caregivers to dependent persons with disabilities

Madam/Sir,

I am directed to refer to the communications in the matter above and to bring to your knowledge the following legal Provisions/guidelines relating to the transfer/posting of divyang employees and those who are caregivers of divyang persons:-

2. Statutory Provisions and Guidelines

a) **Article 41 of the Indian Constitution** – The state shall make effective provisions for securing the right to work, education, and public assistance in cases of unemployment, old age, sickness, and disablement.

b) **Section 20 (2) of RPwD Act, 2016** – Sub Section 2 of Section 20 states that government establishment shall provide reasonable accommodation, appropriate barrier-free and conducive environment to divyang employees.

c) **Section 20 (5) of RPwD Act, 2016** – Sub Section 5 of Section 20 provides that the appropriate government may frame policies for posting and transfer of employees with disability.

d) **Section 21 of the RPwD Act:**

"21. Equal opportunity policy.—(1) Every establishment shall notify equal opportunity policy detailing measures proposed to be taken by it in pursuance of the provisions of this Chapter in the manner as may be prescribed by the Central Government. (2) Every establishment shall register a copy of the said policy with the

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Chief Commissioner or the State Commissioner, as the case may be."

e) **Rule 8 of the RPwD Rules, 2017 prescribing the manner of preparing and notifying the Equal Opportunity Policy under Section 21 of the Act:**

"8. Manner of publication of equal opportunity policy.

(1) *Every establishment shall publish equal opportunity policy for persons with disabilities.*

(2) *The establishment shall display the equal opportunity policy preferably on their website, failing which, at conspicuous places in their premises.*

(3) *The equal opportunity policy of a private establishment having twenty or more employees and the Government establishments shall inter-alia, contain the following, namely:*

(a) *facility and amenity to be provided to the persons with disabilities to enable them to effectively discharge their duties in the establishment;*

(b) *list of posts identified suitable for persons with disabilities in the establishment;*

(c) *the manner of selection of persons with disabilities for various posts, post-recruitment and pre-promotion training, preference in transfer and posting, special leave, preference in allotment of residential accommodation if any, and other facilities;*

(d) *provisions for assistive devices, barrier-free accessibility and other provisions for persons with disabilities;*

(e) *appointment of liaison officer by the establishment to look after the recruitment of persons with disabilities and provisions of facilities and amenities for such employees.*

(4) *The equal opportunity policy of the private establishment having less than twenty employees shall contain facilities and amenities to be provided to the persons with disabilities to enable them to effectively discharge their duties in the establishment."*

(3) In this regard the DOP&T, being the nodal ministry of the central government on personnel matters have issued the following instructions which have also been circulated by other cadre controlling authorities such as the DFS, the DPE, the railway board, etc:-

(i) F.No. 302/33/2/87-SCT (B) dated 15.02.1988 issued by Ministry of Finance - This O.M. provides guidelines related to posting of Divyang employees at their native place and exemption of such employees from routine transfer. This O.M. also provides that employees should not even be transferred on promotion if a vacancy exists in the same branch or in the same town. Further, this O.M. provides that if it is not possible to retain Divyang employee at his place of posting, due to administrative exigencies, even then he must be kept nearest to his original place, and in any case, he should not be transferred at far off or remote place of posting.

(ii) No. A-B 14017/41/90-Estt (RR) dated 10.05.1990 issued by DoP&T - This O.M. provides that employees belonging to Groups C and D may be posted near their native place.

(iii) O.M. No. 14017/16/2002-Estt(RR) dated 13.03.2002 issued by DoP&T- This O.M. clarifies rule laid down in No. A-B 14017/41/90-Estt (RR) dated 10.05.1990. The said O.M. laid down that Government employees belonging to Group C and Group D may be posted near to their native place. O.M. of the year 2002 further extended this rule for employees belonging to groups A and B as well.

(iv) No. 36035/3/2013-Estt(Res) dated 31.03.2014 issued by DoP&T - This O.M. lays down certain guidelines for providing facilities to divyang employees of government establishments. Under the heading 'H' of the O.M. two guidelines with respect to the transfer and posting of divyang employees are laid down. Firstly, it is laid down that divyang 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 O.M. provides that at the time of transfer/promotion, preference in place of posting may be given to Persons with Disabilities subject to administrative constraints.

(v) No. 42011/3/2014-Estt.(Res) dated 06.06.2014 issued by DoP&T – This O.M. is related to the posting of government employees who are caregivers of Divyang children. Considering challenges that are faced by the caregiver of a divyang child, this O.M. provides that the caregiver of a divyang child may be exempted from routine transfer/rotational transfer.

(vi) No. 42011/3/2014-Estt(RR) dated 08.10.2018 issued by DoP&T – This O.M. extended the scope of O.M. dated 06.06.2014. This O.M. lays down that a government employee who serves as the main caregiver of a dependent daughter/son/parents/spouse/brother/ sister may be exempted from the exercise of routine transfer.

4. Analysis of the Provisions & Guidelines

4.1 It is noteworthy that even before Section 20(5) was conceptualized, DoP&T and other departments of the government framed policies relating to the exemption of divyang employees from routine transfer and transfer at their native place. As rightly laid down in DoP&T O.M. dated 31.03.2014, the focus behind exempting from routine transfer or behind giving preference in transfer and posting is to provide an environment to divyang employee in which they can achieve the desired performance and where their services can be optimally utilized. A combined reading of all the guidelines further makes it clear that the government's approach to the issue of transfer is progressive and forward-looking. In 1990 DoP&T issued O.M. exempting Group C and D divyang employees from routine transfer. This was extended to Group A and B divyang employees in the year 2002. Similarly, the Ministry of Finance (MoF) created an exception for divyang employees in the year 1988, long before the 2016 Act was enacted. MoF in O.M. dated 15.02.1988 went on to exempt divyang employees from routine transfer even in case of promotion of such employee.

4.2 Even in the case of an employee who serves as a caregiver of a divyang dependent, the approach is progressive. Till 2018, the caregiver of divyang dependent child was exempted from routine transfer by DoP&T OM dated 08.10.2018, divyang dependent spouse/brother/sister/parents were also added.

4.3 The objective behind exempting caregivers must also be understood. DoP&T O.M. dated 06.06.2014 rightly lays down that rehabilitation of a divyang dependent is an indispensable process that enables a divyang person to reach and maintain physical, sensory, intellectual, psychiatric, and social functional levels. If the caregiver of such a person is subjected to routine periodic transfer, it will have an adverse impact on the rehabilitation process of divyang dependent. It is certainly the duty of a government employee to serve with utmost dedication. However, this fact does not take away his right to take care of his divyang dependents. Hence, the objective behind DoP&T guidelines is to strike a balance between the two aspects.

5. Objections and issues raised by respondents in complaints before this Court and cases before Hon'ble High Courts, Central Administrative Tribunals

5.1 Issues– Exempting divyang employee from transfer, if Service Rules prescribed for mandatory transfer.

Case) A case was filed before the Hon'ble Delhi High Court in which Respondent Bank submitted that a divyang employee cannot be exempted from the routine transfer at a remote rural branch because as per Service Rules for promotion every employee has to serve for a fixed period at a rural branch. ANJU MEHRA v. CANARA BANK;

W.P. (C) 7927/2020, judgment dated 05.11.2020

Held) The Court did not accept the contentions forwarded by the Respondent Bank and held that divyang employees must be exempted from routine transfer and posting at rural locations. Court relied upon DoP&T O.M. dated 31.03.2014 and held that divyang employees must be exempted from the routine transfer. Court also relied upon O.M. No. 69/2018 dated 13.12.2018 issued by Canara Bank, whereby divyang employees with disability percentage of 65% or above are exempted from mandatory service at rural locations.

5.2 Issue – Since transfer is an incidence of service should employees follow transfer Orders without exception?

Held) This issue is often raised by the Respondents. Hon'ble Delhi High Court answered this issue in ANJU MEHRA v. CANARA BANK; W.P. (C) 7927/2020, judgment dated 05.11.2020. The court held that this principle is not applicable in cases pertaining to the transfer of divyang employees. The court held that when an employee is agitating his rights under the RPwD Act, 2016 or PwD Act, 1995, principles of general nature are not applicable in such cases because both Acts are enacted in furtherance of international commitments and to ensure equal treatment to Persons with Disabilities.

5.3 Issue – Can an employee be exempted if he is intimated about the transferable nature of the job at the stage of joining?

Case) Respondents often submitted that the employee was intimated at the time of initial recruitment about the transferable nature of the job hence, he cannot be exempted from the transfer.

Held) To support this contention Respondents, rely upon case laws of the Hon'ble Supreme Court. Hon'ble court in UNION OF INDIA v. S.L. ABBAS (AIR 1993 SC 2444) and in B.VARDHA RAO vs. STATE OF KARNATAKA (AIR 1989 SC 1955) held that transfer is incidence of service and courts must not interfere in transfer issues unless such transfer is vitiated by malafides or is made in violation of transfer policy.

Held) The contention has been rejected by various High Courts. Hon'ble High Court of Madhya Pradesh in SUDHANSHU TRIPATHI v. BANK OF INDIA; W.P. No. 148/2017; judgment dated 27.04.2018, Hon'ble High Court of Delhi in V.K. BHASIN v. STATE BANK OF PATIALA; LPA No. 74/2005, judgment dated 03.08.2005 and Hon'ble Central Administrative Tribunal in PRADEEP KUMAR SRIVASTAVA v. CENTRAL BUREAU OF INVESTIGATION; OA No 2233/2017, Order dated 08.02.2018 held that law laid down in S.L. ABBAS and B. VARDHA RAO is not applicable in the cases related to transfer of Divyang employees. Courts held that transfer policies framed by various government establishments are framed to cover normal circumstances. When a divyang employee challenges his transfer under the RPwD Act, 2016 or the PwD Act, 1995, or various guidelines that are passed from time to time, such challenge is under special statutes that are enacted in furtherance of international commitments. Further, courts also laid down that when transfer policy is silent on some issue, then government establishment is bound to follow statutory provisions and government guidelines on such issues. The court further laid down that when a transfer is not challenged under transfer policy, the government establishment is bound to consider the exclusive/special circumstances prevailing at the time of effecting the transfer of the government employee.

Held) In V.K. BHASIN judgment, the Delhi High Court also held that in transfer

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matters court does not sit as a court of appeal, but the court cannot also lose sight of special legislation, rules, and O.Ms. enacted for Divyangjan because the objective of these provisions and O.Ms. is to fulfill the international commitments and give equal treatment to Persons with Divyangjan.

5.4 Issue – Various O.Ms. related to the transfer & posting of divyang employees are recommendatory in nature and are not binding on the government establishments.

Held) The Central Administrative Tribunal in the PRADEEP KUMAR SRIVASTAVA Case, while relying upon the judgments of the Hon'ble Supreme Court delivered in SWARAN SINGH CHAND v. PUNJAB STATE ELECTRICITY BOARD; (2009) held that when executive instructions confer special privileges with respect to special circumstances, such guidelines will have to be adhered to and followed by the government establishment as a model employer. Needless to say, all these guidelines are also framed in furtherance of Article 41 of the Indian Constitution.

5.5 Issue – In case an employee who is a caregiver of a divyang dependent is transferred to any place that has good medical facilities, whether or not the exemption guidelines would be applicable.

a) O.Ms. dated 06.06.2014 and dated 08.10.2018 and Hon'ble CAT Order in PRADEEP KUMAR SRIVASTAVA provide guiding principles on this issue. In this judgment tribunal analysed O.M. dated 06.06.2014 and distinguished between 'medical facilities' and 'support system'. In O.M. dated 06.06.2014 and 08.10.2018 availability of medical facilities is not the criterion for determining issue of exemption of transfer. As per the two O.Ms. criterion or point of focus is the 'rehabilitation process' of the divyang child. Support systems and rehabilitation are indispensable processes that help divyang to maintain physical, psychological, and social levels.

b) Support system does not only mean availability of doctors and medicines, but O.M. dated 06.06.2014 also provides the meaning of 'support system' as a system that comprises preferred linguistic zones, school/academic levels, administration, neighbors, tutors, special educators, friends, and medical facilities. It is certain from the plain reading of the O.M. that medical facilities are just one component of a 'support system'. The reason for exempting caregivers of divyang dependents is to provide a conducive and caring environment and not just medical facilities. Needless to say, when the caregiver is subjected to the exercise of routine transfer, it will cause displacement of the divyang dependent as well. Hence, O.M. provides for exemption from routine transfer.

c) It is also to be noted that O.M. dated 06.06.2014 has now been replaced by O.M. dated 08.10.2018, however, O.M. of 06.06.2014 is still relevant to understand the reason for exempting the caregiver from the routine transfer. Moreover, on 08.10.2018, O.M. criterion for exemption has been kept the same, i.e. rehabilitation, change is only made in persons who can be considered as 'dependent'.

6. Other provisions of the Rights of Persons with Disabilities Act, 2016 which are helpful in understanding the intent of the legislation are :-

4. Women and children with disabilities.—

- (1) The appropriate Government and the local authorities shall take measures to ensure that women and children with disabilities enjoy their rights equally with others.
- (2) The appropriate Government and local authorities shall ensure that all children with disabilities shall have right on an equal basis to freely express their views on all matters affecting them and provide them appropriate support keeping in view their age and

disability."

16. Duty of educational institutions.—The appropriate Government and the local authorities shall endeavor that all educational institutions funded or recognized by them provide inclusive education to children with disabilities.

24. Social security.—(1) The appropriate Government shall within the limit of its economic capacity and development formulate necessary schemes and programs to safeguard and promote the right of persons with disabilities to an adequate standard of living to enable them to live independently or in the community: Provided that the quantum of assistance to the persons with disabilities under such schemes and programs shall be at least twenty-five percent higher than the similar schemes applicable to others.

27. Rehabilitation.—(1) The appropriate Government and the local authorities shall within their economic capacity and development, undertake or cause to be undertaken services and programs of rehabilitation, particularly in the areas of health, education, and employment for all persons with disabilities.

38. Special provisions for persons with disabilities with high support.—(1) Any person with a benchmark disability, who considers himself to be in need of high support, or any person or organization on his or her behalf, may apply to an authority, to be notified by the appropriate Government, requesting to provide high support.

2(d) - "care-giver" means any person including parents and other family members who with or without payment provides care, support or assistance to a person with disability.

6.1 Intention of the RPwD Act, 2016 is reflected in above mentioned provisions of the Act. These provisions make it clear that the legislature intended to provide a supporting environment in terms of health, education, social and psychological support. Hence, O.M. dated 08.10.2018, which provides for exemption of caregiver of divyang dependent is framed to achieve intentions and objectives of the Rights of Persons with Disabilities Act, 2016, and hence these guidelines are binding on the government establishments.

7. Some other case laws on the issue of transfer of divyang employee

a) Indian Overseas Bank v. The Chief Commissioner for Persons with Disabilities; Civil Writ Petition No. 14118/2014; judgment of Hon'ble High Court of Rajasthan, dated 24.04.2017 – In this case, divyang employee of the Bank was initially posted in Jaipur. Later he was promoted and posted to Mumbai. He approached the Chief Commissioner for Persons with Disabilities ('CCPD' in short) for retention in Jaipur. CCPD by its Order dated 01.04.2014 recommended for retention of the employee in Jaipur. The bank failed to implement the Order of CCPD. The employee approached the Hon'ble High Court for implementation of the CCPD Order. The bank challenged the CCPD Order, opposed the petition, and contended that the promotion policy provides for transfer on promotion of the employees. Court rejected the bank's contention and held that the grievance of divyang employees must be considered with compassion, understanding, and expediency. Hon'ble Court held that the employee must be retained in the Jaipur branch even after promotion.

b) Samrendra Kumar Singh v. State Bank of India; Writ Petition No. 5695/2013; judgment dated 17.01.2014 – In this case, Petitioner, a divyang employee of the Respondent bank, was posted in Ranchi. Thereafter, he was promoted and posted in Daltonganj, Jharkhand. The petitioner approached the Hon'ble High Court for quashing

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of transfer orders and retention in Ranchi. The Respondent bank relied upon its transfer policy and contended that at the time of promotion, employees are transferred. Further, it was contended that O.Ms. issued by various ministries and departments are recommendatory and are not binding. Hon'ble High Court rejected Respondent Bank's contentions and relied upon Ministry of Finance O.M. dated 15.02.1998 and DoP&T O.Ms. dated 10.05.1990 and 13.03.2002. Hon'ble Court quashed transfer Orders issued by the Respondent bank and directed for employee's retention in Ranchi.

8 . In view of the above, it is advised to look into the matter afresh and take necessary action to resolve the issue pertaining to this case in light of the above provisions and forward an action taken report to this Court within 30 days of issuance of this communication by email to ccpd@nic.in.

**Signed by Praveen Prakash
Ambashta**

Date: 14-01-2024 19:59:35

Reason: Approved

(P. P. Ambashta)
Dy. Chief Commissioner