

Ashwani Kumar Srivastava vs Central Bank Of India Through Its ... on 3 March, 2025

Author: Ajay Bhanot

Bench: Ajay Bhanot

HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R.

Neutral Citation No. - 2025:AHC:29491

Court No. - 5

Case :- WRIT - A No. - 52 of 2025

Petitioner :- Ashwani Kumar Srivastava

Respondent :- Central Bank Of India Through Its Managing Director, Chandennukhi, Nariman

Counsel for Petitioner :- Ritesh Srivastava

Counsel for Respondent :- Gyan Prakash Shrivastava

Hon'ble Ajay Bhanot,J.

1. The judgement is being structured in the following conceptual framework to facilitate the discussion:

I Introduction II Submissions of learned counsels for the parties III Facts IV Statutory Framework/Legal Provisions A. The Rights of Persons with Disabilities Act, 2016 B. Office Memorandum of the Government of India C. Bank Circulars D. Transfer : An incident of service V Rights of care givers and obligations of employers in light of interplay of applicable statutory scheme and legal provisions VI Conclusions I. Introduction

2. The petitioner has assailed the order dated 06.05.2024 passed by the respondent no. 4 transferring the petitioner from Raniganj Branch, District Pratapgarh (Varanasi Region) to the

Central Bank of India, Regional Office, Rajkot.

II. Submissions of learned counsel for the parties:

3. Shri Ritesh Srivastava, learned counsel for the petitioner while assailing the impugned transfer order submits as follows:

I. The petitioner is the care giver of his wife who is a person suffering from disability under the Rights of Persons with Disabilities Act, 2016. II. The impugned order is violative of the mandate of the Disabilities Act, 2016. Attention is called to various provisions of the Disabilities Act, 2016. III. The impugned order of transfer is in the teeth of the Office Memorandum dated 08.10.2018 issued by Government of India, Bank Circular dated 28.06.2022 and transfer policy of the Bank dated 15.03.2024. IV. The petitioner is entitled to exemption from transfer under the aforesaid provisions of the Disabilities Act, 2016, Office Memorandum dated 08.10.2018 issued by Government of India, Bank Circular dated 28.06.2022 and transfer policy of the Bank dated 15.03.2024. V. The mother of the petitioner is also suffering from a disability under the Disabilities Act, 2016. VI. The impugned order suffers from non application of mind and was passed as a matter of routine. Submissions on behalf of respondents

4. Shri Ashok Khare, learned Senior Counsel assisted by Shri Gyan Prakash, learned counsel for the respondent Bank defended the impugned order by contending as under:

I. Transfer is an incident of service. The office memorandum of the Government of India do not impose a complete ban on transfers of employees who are care givers. II. The petitioner has misinterpreted the Disabilities Act, 2016. Such misreading will have an adverse impact on the functioning of the institution as a whole. III. The petitioner has been accommodated over the years to the greatest extent possible by the respondents keeping in mind his duties as a care giver, and to provide support to his wife who suffers from disability. IV. The impugned transfer order is not violative of Office Memorandum dated 08.10.2018 issued by Government of India, Bank Circular dated 28.06.2022 and transfer policy of the Bank dated 15.03.2024. V. No documentation is in the record to support the claim of the mother's disability under the Disabilities Act, 2016. VI. The impugned order was passed after due consideration of all relevant aspects in the facts and circumstances of the case. III. Facts

5. The petitioner is an employee in the Central Bank of India (hereinafter referred to as the Bank). The wife of the petitioner suffers from benchmark disability as defined under Section 2(r) of the Rights of Persons with Disabilities Act, 2016. The nature of disability of the petitioner's wife as recorded in the disability certificate is extracted hereunder:

"(A) She is a case of Locomotor Disability (B) the diagnosis in her case is Gradually Progressive Muscular Dystrophy Right Lower Limb (C) She has 40% (in figure) Forty percent (in words) Permanent Disability in relation to her Right Leg as per the guidelines (Guidelines for the purpose of assessing the extent of specified disability in a person included under RPwD Act, 2016 notified by Government of India vide S.O. 76(E) dated 04/01/2018)"

6. The petitioner claims that his mother is also a person suffering from disability under the Disabilities Act, 2016. However, no certificate of disability of the petitioner's mother issued by the competent authority is in the record. The respondent Bank has specifically refuted the claim of the petitioner regarding his mother's disability. The pleadings made by the Bank are untraversed. The claim of the petitioner as regards the disability of his mother is rejected.

7. The petitioner was posted for 10 years in the Varanasi Region, and for 15 years in Lucknow Region. The petitioner was transferred to Allahabad at his own request. His second request for transfer was also acceded to, and he was retained in Varanasi Region w.e.f. 22.07.2021. By the impugned order the petitioner has been transferred to Rajkot Region.

IV. Statutory Framework/Legal Provisions A. The Rights of Persons with Disabilities Act, 2016

8. The controversy at hand requires an examination of the statute, the Government of India Memorandum and Bank circulars which hold the field.

9. The Rights of Persons with Disabilities Act, 2016² was enacted to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto. The United Nations General Assembly adopted its Convention on the Rights of Persons with Disabilities on the 13th day of December, 2006. The following principles for empowerment of persons with disabilities were laid down in the Convention and guided the legislative intent of the Rights of the Persons with Disabilities Act, 2016.

(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;

10. It would be apposite to extract provisions of the Disabilities Act, 2016 which are germane to the controversy. Section 2(r) of the Disabilities Act, 2016 defines the benchmark disability as under:

"Section 2(r) "person with benchmark disability" means a person with not less than forty per cent. of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority;"

11. Section 2 (s) of the Disabilities Act, 2016 states the definition of disability thus:

Section 2(s) "person with disability" means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;

12. The disability of the petitioner's wife which is relatable to the above said provision has been discussed above.

13. Section 2(d) of the Disabilities Act, 2016 provides for a "care giver" to support a person with disability and reads as under:

"Section 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."

14. "Care givers" directly impact the quality of life of persons with disabilities. Care givers are key facilitators who enable persons with disabilities to realize their rights under the Disabilities Act, 2016.

15. The definition of phrase "care giver" is widely worded and inclusive in nature. While the definition prioritizes family members and parents, other care givers also receive equal recognition under the scheme of the Disabilities Act, 2016. Care givers are important support system under the Disabilities Act, 2016 for persons with disabilities.

16. "Establishment" has been defined in Section 2(i) of Disabilities Act, 2016 as follows:

Section 2(i) "establishment" includes a Government establishment and private establishment;"

17. Section 2 (l) of Disabilities Act, 2016 defines "high support":

Section 2 (l) "high support" means an intensive support, physical, psychological and otherwise, which may be required by a person with benchmark disability for daily activities, to take independent and informed decision to access facilities and participating in all areas of life including education, employment, family and community life and treatment and therapy;"

18. Persons with disabilities are further categorized into persons with disability having high support needs, as provided under Section 2(t) and Section 58 of Disabilities Act, 2016. The provisions are extracted hereunder:

Section 2(t) "person with disability having high support needs" means a person with benchmark disability certified under clause (a) of sub-section (2) of section 58 who needs high support; Section 58. Procedure for certification--(1) Any person with specified disability, may apply, in such manner as may be prescribed by the Central Government, to a certifying authority having jurisdiction, for issuing of a certificate of disability. (2) On receipt of an application under sub-section (1), the certifying authority shall assess the disability of the concerned person in accordance with relevant guidelines notified under section 56, and shall, after such assessment, as the case may be,

(a) issue a certificate of disability to such person, in such form as may be prescribed by the Central Government;

(b) inform him in writing that he has no specified disability.

(3) The certificate of disability issued under this section shall be valid across the country."

19. Section 2 (y) of the Disabilities Act, 2016 serves legislative intent by contemplating "reasonable accommodation" to enable persons with disabilities to enjoy their rights equally with others. The provision is reproduced hereunder:

"Section 2(y) "reasonable accommodation" means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others."

20. With a view to ensuring equality for persons with disabilities, Section 3 of the Disabilities Act, 2016 mandates the appropriate Government to take the required measures. At the same time the provision also underscores the need for reasonable accommodation. The provision is extracted hereunder:

"3. Equality and non-discrimination.--(1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and

respect for his or her integrity equally with others. (2) The appropriate Government shall take steps to utilise the capacity of persons with disabilities by providing appropriate environment. (3) No person with disability shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim. (4) No person shall be deprived of his or her personal liberty only on the ground of disability. (5) The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities."

21. Section 20 of the Disabilities Act, 2016 prohibits discrimination in employment in Government establishments and also requires the appropriate government to frame policies for posting and transfer of employees with disabilities:

"Section 20. Non-discrimination in employment--(1) No Government establishment shall discriminate against any person with disability in any matter relating to employment:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.

(2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

(3) No promotion shall be denied to a person merely on the ground of disability.

(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(5) The appropriate Government may frame policies for posting and transfer of employees with disabilities."

(emphasis supplied) "Section 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 Chief Commissioner or the State Commissioner, as the case may be."

22. The transfer policies expected of appropriate government include policies regarding care givers as well. The said transfer policies have to be aligned with the scheme of the Disabilities Act, 2016.

IV B. Office Memorandum of the Government of India

23. The Government of India in keeping with the intent of the Disabilities Act, 2016 took out Office Memorandum dated 08.10.2018 exempting persons with disability and care givers from routine exercise of transfers/rotational transfer subject to administrative constraints:

"3 With the enactment of the Rights of Persons with Disabilities Act, 2016 on April 17, 2017, the following instructions are issued in supersession of the above-mentioned OMs of even number dated June 6, 2014, November 17, 2014 and January 5, 2016 with regard to the eligibility for seeking exemption from routine exercise of transfer/rotational transfer:

(i) A Government employee who is a care-giver of dependent daughter/son/parents/spouse/brother/sister with Specified Disability, as certified by the certifying authority as a Person with Benchmark Disability as defined under Section 2 (r) of the Rights of Persons with Disabilities Act, 2016 may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints.

(ii) The term "Specified Disability" as defined in the Schedule to the Rights of Persons with Disabilities Act, 2016, covers (1) Locomotor disability including leprosy cured person, cerebral palsy, dwarfism, muscular dystrophy and Acid attack victims (ii) Blindness (iii) Low-vision (iv) Deaf (v) Hard of hearing (vi) Speech and language disabilities (vii) Intellectual disability including specific learning disabilities and autism spectrum disorder (viii) Mental illness (ix) Disability caused due to: (a) Neurological conditions such as Multiple sclerosis and Parkinson's disease (b) Blood disorder- Haemophilia, Thalassemia and Sickle cell-disease and (x) Multiple disabilities (more than one of the above specified disabilities) including deaf blindness and any other category of disabilities as may be notified by the Central Government.

(iii) The term "Specified Disability" as defined herein is applicable as grounds only for the purpose of seeking exemption from routine transfer/rotational transfer by a Government employee, who is a care-giver of dependent daughter /son /parents /spouse / brother /sister as stated in Para 3 (i) above.

4. All the Ministries/Departments are requested to bring these instructions to the notice of all concerned under their control."

IV C. Bank Circulars

24. The aforesaid Government of India guidelines granting exemptions to care givers from routine/rotational transfers were adopted by the respondent Bank with the appropriate limitations. The relevant parts of the transfer of policy are extracted hereunder:

"1. General Provision applicable to all types of transfer:

1.1 Notwithstanding, what is stated in these norms, the management at its own discretion may' post/transfer any officer at any time to any Station/Region/Zone, irrespective of the period of stay thereat, as per the administrative/ business needs of the Bank or any other reason considered valid by the management in its own opinion.

1.2 In respect of transfer/ posting of physically challenged officer, with benchmark disability and Officer who is caregiver of dependent daughter/son/parents/spouse/ brother/ sister with 'Specified Disability' as certified by the certifying authority, as a Person with Benchmark Disability, as defined under Section 2(r) of the Rights of Persons with Disabilities Act, 2016, in terms of DOPT guidelines O.M.No.42011/3/2014-Estt(Res) dated 8 October, 2018, bank shall follow the guidelines issued by Govt. of India from time to time, subject to administrative constraint.

In order to effectively implement rotational transfer exemptions to Care-givers, it has been decided to bestow precedence to employees who are Care-giver of Dependent Spouse & Dependent Children over other family members.

ROTATIONAL TRANSFERS:

3.1 Officers in Scale I/II/III who have (subject to provisions of para 1.2 and 3.2 & 3.5)

- Completed a stay of 3 years in a Branch shall be rotated to another Branch within the Station /Region.
- Completed 5 years of stay in Administrative posting combining immediate previous admin tenure but have not completed continuous 5 years admin tenure in the present office, shall be posted in a branch/office within the same Region. However, the officer shall be transferred out to another Region on completion of continuous 5 years admin tenure in present region.
- Officers posted in CLD/SPBTC/CBOTC/ZAO/ZO/RO/LDMO/CGTMSE CELL and in any other Department/ Offices which is not involved directly in customer dealing shall be treated as administrative posting.
- Completed 6 years of stay in the region as an officer, irrespective of the scale, shall be transferred to another region which could be within the Zone/other Zone.

- Completed 10 years of stay as an officer in a particular zone, irrespective of the scale, shall be transferred to another zone. However based on the Ranking on Performance appraisal in Central Rise, Officers may be retained in the same zone to the extent of fulfilling administrative requirements in order of merit.
- The Officers in Scale I, II & III who have been retained on Promotion in the Present Region/Zone shall be retained in the same Region/Zone till the completion of their term 3 years as the case may be.
- No Officer shall be transferred out of Branch/Administrative office prior to completion of 3 years/5 years tenure respectively without prior approval of GM-HCM Central Office.
- Notwithstanding what is stated above, the transfers will be subject to vacancies, suitability of officers and management exigencies.
- The cutoff date for determining the requisite period of stay in present Region/Zone will be as of 30th of June.

Provided however, officers in JMG Scale I who have been posted to rural branches may be transferred after completion of 2 years of rural stay so as to provide opportunities for other officers who have still to complete the rural stint. Further, officers working at a place declared as Tribal Area by the respective State Government may be given place of their choice out of 3 stations in the same Zone after their stay of 2 years in such Tribal Area.

However, Officers posted as BM in Rural/SU branch should continue for minimum 2 years or upto completion of the stint."

IV D. Transfer: An incident of service

25. Transfer is an incident of service. Transfer is called an exigency of service in service jurisprudence. The employer has a right to transfer the employees subject to statutory provisions and other instruments of law. No employee has a vested right to be posted to any particular place or posting. Transfers expose employees to different situations and environments thus building their capacities and quality of output. Transfers provide opportunities to all employees to serve in different assignments, and prevent creation of vested interests which often result from long continuance of an employee at one place or area. Rational policies of transfer operate to the benefit of the institution, safeguard the interests of employees and also contribute to the efficiency of the organization. Transfers are made in public interest and to enhance institutional efficiency.

V. Rights of care givers and obligations of employers in light of interplay of applicable statutory scheme and legal provisions:

26. The interplay of the statutory scheme of the Disabilities Act, 2016, the Government of India memorandum and the bank circulars, powers of transfer vested in an employer discussed earlier will

determine the rights of care givers, the obligations of the employers and shall finally govern the fate of this case.

27. A conjoint reading of the Disabilities Act, 2016, the Office Memorandum dated 08.10.2018 issued by Government of India, Bank Circular dated 28.06.2022 and transfer policy of the Bank dated 15.03.2024, the right of the employer to transfer an employee has to be made in order to understand the scope of exemptions from transfer for care givers under the said transfer policies. The Government of India Office Memorandum, and Transfer Policy are compatible with the Disabilities Act, 2016 and together they comprise a composite scheme.

28. The Disabilities Act, 2016 contemplates equal opportunities for persons with disabilities in exercise of their rights, enjoyment of life and development of their potentialities. The said legislative enactment envisages that the society at large, appropriate government, governmental institutions and other establishments are fully sensitized to requirements of persons with disabilities and create appropriate support systems and a working ethos for realization of the rights of persons with disabilities.

29. At the same time the Disabilities Act, 2016 also recognizes the limitations of employers which have to be factored in while implementing the beneficent provisions of the Disabilities Act, 2016.

30. The words "reasonable accommodation" as defined in Section 2(y) and applied in Section 3 and Section 20 (2) of the Disabilities Act, 2016 contemplate that establishments/institutions to make necessary policy adjustments to create support systems for persons with disabilities enable to enjoy their rights equally with others. The "care givers" under the Disabilities Act, 2016 are also entitled to the benefit of "reasonable accommodation" under the transfer policies framed by the Government/Government Institutions.

31. However, implicit in the said provisions are the restrictions on the scope of such accommodation/adjustment to be made by the employer.

32. The meaning of "reasonable accommodation" in Black's Law Dictionary Eighth Edition is as follows:

"reasonable accommodation. 1. An action taken to adapt or adjust for a disabled person, done in a way that does not impose an undue hardship on the party taking the action. Under the Americans with Disabilities Act, an employer must make reasonable accommodations for an employee's disability. Examples of reasonable accommodations that have been approved by the courts include providing additional unpaid leave, modifying the employee's work schedule, and reassigning the employee to a more appropriate, vacant position."

33. The phrase "reasonable accommodation" is a very clear and an explicit legislative standard for framing and implementation of transfer policies by the concerned establishments. The legislature has created a successful blend of empathy and pragmatism. The legislation obligates establishments

to create support systems for persons with disabilities, and limits the application of beneficent measures by being cognizant of the constraints of employers. The provision emphasizes the responsibilities of establishments/employers towards persons with disabilities, and advocates flexibility in policy formulation and execution to achieve fruition of the rights of the said class of persons. The said provision simultaneously precludes claims which impose undue hardships upon the establishments/employers while implementing the beneficent intent of the Disabilities Act. The legislature thus recognizes the limitations of the extent of accommodation that can be made by the employer/establishment.

34. Notably the said legislative mandate for providing support to persons with disabilities and care givers is not cast in absolute or non negotiable terms. Free play in the joints is provided to the establishments to frame policies for "care givers". The legislative yardstick of "reasonable accommodation" adopts the path of golden mean, and eschews the option of maximum positions.

35. The said Government of India Memorandum, and the Bank circular containing the transfer policy extracted earlier predicate exemptions granted to care givers from routine exercise of transfers/rotational transfers by certain qualifications.

36. The aforesaid Government of India Memorandum while requiring the government employers to frame policies for exemptions to care givers from transfers employed the word "may", and further limits the applicability of the said policy with the phrase "administrative constraints". As per the said Government of India Office Memorandum, the employees who are seeking exemptions from transfer have to be "care giver" to their dependant daughter, son, parents, spouse, brother, sister.

37. The phrase "administrative constraints" is also employed in the said Bank circular which regulates the transfers and exemptions for care givers. "Administrative constraints" qualifies the policy of exemptions for care givers, and states the restrictions in the exemptions from transfer granted to them. The said "administrative constraints" includes consideration of public purpose served by the establishment, institutional interests which are catered to by the policy of transfers, and also encompasses the rights of other employees.

38. The composite scheme of Disabilities Act, 2016, the Government of India Office Memorandum dated 08.10.2018 and the bank circular dated 28.06.2022, does not place absolute restraints or perpetual exemptions from transfer for care givers.

39. The reasons for not creating a scheme for complete ban on transfers of care givers are not far to seek. A blanket ban on transfers will fully denude the employer of the power of transfer, and have a disproportionately negative impact on institutional interests. A full embargo on transfers of "care givers" would thus impose onerous demands on the institution and create a disarray in its functioning or cause disruption in the institutional policies.

40. Such extreme interpretation of the policy of exemptions from transfers will lead to supersession of institutional needs, degrade the capacity of institutions to achieve the public purpose they serve, negate the rights of other employees, and ultimately would be detrimental to public interest.

41. The Disabilities Act, 2016 and the aforesaid Government of India Memorandum and the Bank Circular respectively have to be read in harmony to give effect to the intendment of the legislative enactment and achieve the aim of executive policy. Reasonable accommodation in favour of Care Givers envisages acceding to their requests or adjusting to their needs, but also requires the employers not to neglect institutional interests. The outer limit of "reasonable accommodation" is reached when acceptance of demands of care givers exceeds institutional interests or causes undue hardship to the establishment. Administrative constraints embedded in the transfer policy also prevent the employer from superseding institutional interests or overriding the rights of other employees beyond acceptable limits.

42. Broadly speaking the aforesaid statutory mandate of the Disabilities Act, 2016 the Government of India Office memorandum and the Bank circulars can be implemented by two prolonged actions. Realization of the said goals require accommodation of the exemption claims of care givers in the facts and circumstances of each case. Simultaneously paramount establishment/institutional purposes and requirements, interests served by the policy of transfers, right of other employees, interests of establishment/institutional efficiency and public interest also merit examination in the process. The decision will have to balance the rights of persons with disabilities and needs of their care givers, and the imperatives of institutional purpose and requirements.

43. In practical terms such exercise would entail a consideration of relevant factors while processing the claim for exemption from transfer made by care giver. Every request for exemption from transfer will have to be dealt with in the peculiar facts and circumstances of the case after due application of mind. The first step in such enquiry would require examination of the condition of the person with disability. The duties of a care giver and the nature of support they give to the person with disability would have to be factored in while taking a final decision. Infact the Disabilities Act, 2016 acknowledges different categories of disabilities including those disabilities which have high support needs. The employer will have to determine whether the person with disability is a dependant of the care giver. Empathy towards the persons with disabilities/care givers, and commitment to implement the beneficent provisions of the Disabilities Act, 2016 should be depicted in the actions of the employer. Genuine efforts have to be made by the employer to accommodate the "care giver" at the place of choice or grant exemption from transfer.

44. Institutional purpose and requirements and public interest served by the institution will also be given due weight in the process. Repeated acceptance of exemption requests made by the care giver and prolonged continuance in a particular region, and need of the employee for a wider exposure are among relevant criteria to be factored in the final decision. Indefinite posting of a care giver employee at a particular place will annul the concept of transfers, permanently foreclose the opportunities of other employees for said assignments and undermine the institutional interests of the bank. These vital aspects cannot be overlooked while implementing the exemption policy.

VI.Conclusions:

45. In wake of the preceding discussion it now remains to be seen whether an exercise of the above nature was undertaken by the respondent Bank in this case.

46. The petitioner's requests for transfers have been regularly acceded to by the Bank. The petitioner repeatedly was given postings of his choice. He was retained in one zone for more than a decade. The petitioner was accommodated as a care giver to the greatest extent possible.

47. Further the Bank has rightly examined the extent of the disability suffered by the wife of the petitioner. The petitioner's wife is an Assistant Teacher in a Primary School. Even though she suffers from disability has been discharging her functions as an Assistant Teacher independently and without blemish. Wife of the petitioner does her daily chores, lives with dignity, and has attained excellence in her chosen profession. The wife of the petitioner has an independent income. The lady is an inspiring example to the society at large.

48. The respondent bank has also accorded appropriate attention to the institutional requirements of transferring the petitioner in the overall interests of the institution and the career profile of the petitioner.

49. Empathetic considerations were made by the Bank on various transfer requests forwarded by the petitioner evidences the approach of an employer who is sensitive to the needs of a person with disability, and is committed to implement the Disabilities Act, 2016, Office Memorandum and Bank circular in regard to exemption of care givers from routine transfers.

50. In these facts and circumstances, the transfer of the petitioner does not fall in the category of routine/rotational transfer and disentitles him to claim exemption under the transfer policy.

51. Competing demands of institutional interests and individual rights have been neatly balanced with due application of mind by the Bank while passing the impugned order. The impugned transfer order has factored in all relevant criteria and is in consonance with the observations made in the judgement. The conduct of the employer/ respondent Bank satisfies the test of "reasonable accommodation" to protect the interests of the petitioner. Denial of the petitioner's claim for further continuance at a place of his choice is within the ambit of "administrative constraints" of the respondent Bank. The impugned order is consistent with the provisions of the Disabilities Act, 2016 Government of India Office Memorandum, Bank circular containing the transfer policy.

52. The judgement rendered by this Court in Neeraj Chaturvedi Vs. Central Bank of India and others reported at 2022 (4) AWC 3722 and relied upon by the petitioner will now be referenced. Neeraj Chaturvedi (supra) is distinguishable and is not applicable to the facts of this case. In Neeraj Chaturvedi (supra) the wife of the petitioner was suffering from 100% disability. In Neeraj Chaturvedi (supra) the person with disability was neither working nor drawing an independent salary.

53. No infirmity in the impugned order could be established. The impugned transfer order is not liable to be interfered with.

54. In wake of the preceding discussion the writ petition is liable to be dismissed and is accordingly dismissed.

55. Considering the mandate of the Disabilities Act, 2016 it would be pertinent to part with these observations. The critical place of care givers for realizing the rights of persons with disabilities, and also the obligations casts on employers have been discussed at length in the judgement. In case care givers are transferred the concerned employers should explore the feasibility of facilitating alternate care givers for the persons with disability or smooth shifting of the latter to the new place of posting.

56. Copy of this order be placed before the respective employers namely Principal Secretary, Basic Education, Government of UP and Managing Director, Central Bank of India for considering development of a policy in regard to care givers in the above light. In case such policy is evolved the petitioner and his wife will be entitled to its benefits.

Order Date :- 3.3.2025 Dhananjai Sharma