

Mukesh Kumar vs National Power Training Institute And ... on 2 April, 2025

Author: Tushar Rao Gedela

Bench: Tushar Rao Gedela

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 25.03

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Judgment delivered on: 02.0

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LPA 980/2024, CM APPL. 57774/2024, CM APPL. 57775/2024, APPL. 57776/2024, CM APPL. 57777/2024 & CM APPL. 12362/2025

MUKESH KUMAR

Through: Mr. Rahul Bajaj and Mr. Tasneem, Advs.

versus

NATIONAL POWER TRAINING INSTITUTE AND ORS.

.....Respondents

Through: Mr. Prashant Shukla and Mr. Vivek Sharma, Senior Counsel with Ms. Prerni Adv. for R-2 and R-3.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

DEVENDRA KUMAR UPADHYAYA, C.J.

1. Heard learned counsel appearing for the parties.

2. Proceedings of this intra-Court appeal under Clause 10 of the Letters Patent have been instituted taking exception to the judgment and order dated 02.09.2024. passed by the learned Single Judge whereby, W.P.(C) 11104/2024, filed by respondent no.1/National Power Training Institute has been allowed and the order dated 02.08.2024, passed by the Chief Commissioner for persons with disabilities (hereinafter referred to as the 'CCPD') to the extent, it directed respondent no.1 to keep the transfer order of the appellant in abeyance, has been set aside.

FACTS

3. The appellant, who is working as a Deputy Director (T/F) with respondent no.1, is a person suffering from Locomotor Disability and is diagnosed as a case of Post Polio Residual Paralysis. He has been certified by the appropriate authority of the Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, Government of India to have 70% Permanent Disability in relation to his left leg as per the guidelines issued for the purposes of assessing the extent of disability under the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as the '2016 Act').

4. By means of an order dated 19.06.2024, the appellant was transferred from Corporate Office of respondent no.1 at Faridabad to its Eastern Zone Office at Durgapur in public interest. Pursuant to the said order of transfer dated 19.06.2024, a relieving letter was also issued to the appellant on 02.07.2024, directing him to submit his joining at Durgapur.

5. The appellant filed a complaint on 21.07.2024/22.07.2024, with the CCPD under Section 75 of the 2016 Act, alleging therein that he has been subjected to frequent transfers which reflected mala fide and which amounted to harassment to a person with disability (hereinafter referred to as the 'PwD') at the hands of his employer. Notices were issued on the complaint instituted by the appellant to respondent no.1 and on hearing, orders were reserved on 30.07.2024 to be pronounced at a later date. However, on 02.08.2024, CCPD passed an order directing respondent no.1 to keep the transfer order in abeyance till the matter was pending before the CCPD. By the order dated 02.08.2024, the CCPD also directed respondent no.1 to furnish certain information/documents.

6. Feeling aggrieved by the order dated 02.08.2024, respondent no.1 instituted W.P.(C) 11104/2024, which has been decided by the learned Single Judge by means of the order under challenge herein dated 02.09.2024. As observed above by the order dated 02.09.2024, the learned Single Judge has set aside the operative portion of the order dated 02.08.2024, passed by CCPD whereby, it was directed that the transfer order of the appellant shall be kept in abeyance. It is this judgment and order dated 02.09.2024, which is under challenge in these proceedings of the letters patent appeal.

ISSUES

7. On the basis of pleadings of the respective parties available on record and also having considered the respective submissions made by learned counsel representing the parties, the issues which emerge for consideration of this Court are: -

(a) What is the extent of powers and jurisdiction of CCPD under Section 75 read with Section 76 of the 2016 Act and as to whether, such powers vested in the CCPD permits it to interfere in the service-

related matters such as a transfer order concerning an employee with disability.

(b) As to whether, the order passed by CCPD in exercise of its powers and functions under Section 75 read with Section 76 of 2016 Act is binding on the authority to whom the order is made or it is only recommendatory in nature.

(c) As to whether, while considering/adjudicating any complaint made by it under Section 75 of 2016 Act, CCPD can issue and interim directions.

ARGUMENTS ON BEHALF OF THE APPELLANT

8. Taking strong exception to the judgment under challenge herein passed by the learned Single Judge, learned counsel representing the appellant Mr. Rahul Bajaj, has vehemently argued that having regard to the provisions contained in Section 76 of 2016 Act, the findings recorded by the learned Single Judge in the order under appeal herein to the effect that the CCPD does not possess the authority to pass interim order that halts actions such as transfers etc. pending further enquiry, is erroneous.

9. He has also argued that the judgments relied upon by learned Single Judge to arrive at his conclusion in the impugned order were rendered taking into consideration the earlier statutory regime relating to rights of PwDs as provided for by The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as the '1995 Act') which stands repealed by virtue of operation of Section 102 of 2016 Act and accordingly, the findings of learned Single Judge run contrary to the provisions of 2016 Act, provision akin to which did not exist in the earlier enactment.

10. Referring to Section 75 of 2016 Act which outlines the functions of CCPD, it has been argued by Mr. Rahul Bajaj, that CCPD not only suo motu but even otherwise, which would mean entertaining an application or complaint, is empowered to identify the provisions of any law or policy or programs which are inconsistent with the 2016 Act and accordingly, can take corrective steps. He has also argued that under the said provision, specifically under Section 75(1)(b) of 2016 Act, on an application or complaint, CCPD is empowered and well within his jurisdiction to enquire deprivation of rights of PwDs. He has further stated that CCPD can also enquire about infringement of safeguards available to PwDs and since in the instant case transfer of the appellant was in complete disregard to the rights of equality and other rights available to the appellant, who is a PwD, CCPD was well within his powers to have passed the order dated 02.08.2024 whereby, transfer of the appellant was stayed.

11. Specific reference by Mr. Rahul Bajaj has been made to Section 76(1) of 2016 Act which provides for the action by the appropriate authority in respect of the orders passed by CCPD. He has stated that whenever, CCPD makes a recommendation to an authority under Section 75(1)(b) of the 2016 Act, such an authority is under statutory mandate to take necessary action on such recommendation/orders passed by CCPD. Such an authority, according to Mr. Rahul Bajaj, is also mandated to inform the CCPD of the action taken within three months from the date of receipt of such recommendation/orders made/passed by CCPD.

12. He has extensively referred to a Hand Book published by Hon'ble Supreme Court concerning PwDs and has submitted that it is incumbent on all authorities to ensure justice for PwDs and also to create inclusive work places for such persons.

13. Mr. Rahul Bajaj, has placed reliance on a Division Bench judgment of this Court in *Ircon International Ltd. v. Bhavneet Singh*, 2024 SCC OnLine Del 4952 and has also referred to Sections 3, 20 and 21 of the 2016 Act along with Rule 8(3)(c) of the Rights of the Persons with Disabilities Rules, 2017 made there under (hereinafter referred to as the '2017 Rules') and has argued that any mechanism regulating transfer of employee by any establishment has to be subservient to the provisions contained in 2016 Act and the 2017 Rules.

14. Reference has also been made by Mr. Rahul Bajaj to the judgment of this Court in *Dilbagh Singh v. Delhi Transport Corpn.*, 2005 SCC OnLine Del 821 to submit that the statutory provisions contained in 2016 Act gives sufficient indication that functions of CCPD are not purely recommendatory rather it decides the issue of entitlement of individuals and in such a situation, it must necessarily be inferred that in absence of any provision to the contrary, full and effective adjudicatory powers are granted to the CCPD.

15. Learned counsel representing the appellant has also referred to the judgment of Hon'ble Supreme Court in *Rajive Raturi v. Union of India*, 2024 SCC OnLine SC 3217 wherein, directions have been issued to Union of India, State and Union Territories to ensure that the consequences prescribed in Section 44, 45, 46 and 89 of the 2016 Act are implemented. He has also drawn our attention where Hon'ble Supreme Court in the said judgment has issued certain directions for carrying out the exercise by the Union of India and State Governments for effective implementation of the provisions of the 2016 Act.

16. Judgment of the Apex Court in *Savitri v. Govind Singh Rawat*, (1985) 4 SCC 337 has also been referred on behalf of the appellant to emphasize that CCPD is deemed to possess all such powers as are necessary to make its order effective, including the power to pass any interim order pending enquiry/consideration of a complaint before it.

17. Mr. Rahul Bajaj has also referred to yet another Division Bench Judgment of this Court dated 28.01.2025 passed in W.P.(CRL) 2475/2015, titled as *Kiran Singh v. National Human Rights Commission & Ors.* wherein, it has been held that the recommendations made by National Human Rights Commission (hereinafter referred to as the 'NHRC') created under the Protection of Human Rights Act, 1993, are binding in nature and accordingly, drawing parallel between the functions of NHRC and CCPD, it has been argued that any recommendation made by the CCPD in exercise of its powers under Section 75 read with Section 76 shall be binding on the authority concerned. On the aforesaid counts it has, thus, been argued on behalf of the appellant that the judgment under appeal herein whereby the direction issued by CCPD staying the operation of the order of transfer has been set aside, is erroneous being contrary to the provisions of 2016 Act and accordingly in his submission, the instant appeal deserves to be allowed.

ARGUMENTS ON BEHALF OF RESPONDENT NO.1

18. Opposing the prayers made by learned counsel for the appellant, it has been contended by learned counsel representing respondent no.1 that under the scheme of 2016 Act, any adjudication done and orders passed by CCPD are recommendatory in nature and further that though the

authority concerned is to take necessary action on such recommendation as provided for under Section 76(1) of the 2016 Act, however, the proviso appended to Section 76 of the 2016 Act further provides that where an authority does not accept the recommendation, it will convey reasons for such non-acceptance to the CCPD and shall also inform such reasons to the aggrieved person. He has argued that the provisions contained in the proviso appended to Section 76 of the 2016 Act appears to have clearly been lost sight of by the appellant in his submissions and as such the appeal is highly misconceived.

19. It has also been argued on behalf of respondent no.1 that 2016 Act and the Rules framed there under do not empower or vest any jurisdiction in the CCPD to interfere in the internal management of the affairs of employees of an organization especially into the matters related to the service disputes concerning the employees. He has further argued that CCPD lacks jurisdiction to keep an order of transfer in abeyance for the reason that the mandate given to the CCPD under 2016 Act is only to safeguard the interests of disabled persons which will not extend to the extent of interfering in the internal administrative matters, such as transfer of an employee. It is his submission further that such an action on the part of the CCPD exceeds its legal authority and, in fact, disrupts the administrative function of an organization and, accordingly, the mandate available to the CCPD under 2016 Act does not extend to intervening in the administrative decisions, especially in the matters related to transfer of an employee.

20. Further submission on behalf of respondent no.1 is that the transfer of an employee is one of the essential functions which an organization is expected to exercise and so far as the facts in the present case are concerned, the appellant's transfer was a need based transfer in the sense that transfer was made in consideration of operational requirements of the organization and suitability of the employee for the specific role to be performed by him at the particular location. In other words, his submission is that appellant was transferred based on assessment of his qualifications, skills, and the strategic needs of the respondent no.1/Institute and, therefore, by intervening in his transfer, CCPD has not only over stepped its jurisdiction but has disrupted Institute's ability to manage its human resources.

21. Learned counsel representing the respondent no.1 has also argued that in discharge of its functions under Section 75/76 of the 2016 Act, CCPD is not vested with any power to stay the order of transfer of an employee and such an authority clearly lies beyond the scope of powers conferred on it. In essence, the submission on behalf of respondent no.1 is that the order under challenge herein passed by the learned Single Judge does not warrant any interference by this Court in this appeal which is liable to be dismissed.

DISCUSSION AND ANALYSIS Old Statutory Regime concerning Rights of Persons with Disabilities Under the 1995 Act

22. India is a signatory to the Proclamation adopted by the Economic and Social Commission for Asia and Pacific held on 1st-5th December, 1992 at Beijing on Full Participation and Equality of People to Disabilities. The Parliament considered it necessary to implement the said Proclamation and, accordingly, enacted the Act 1995. The Act 1995, provided for various measures and steps to be

taken for ensuring equal rights to PwDs. Section 67 of 1995 Act, provided that Central Government may, by notification appoint a Chief Commissioner for PwDs for implementing the said Act. Section 58 provided that the Chief commissioner shall coordinate the work of the Commissioners, monitor the utilization of funds disbursed by the Central Government, take steps to safeguard the rights and facilities to PwDs and shall also submit reports to the Central Government on the implementation of the Act. Section 58 of the said 1995 Act is extracted "58. Functions of the Chief Commissioner - The Chief commissioner shall -

- a. coordinate the work of the Commissioners;
- b. monitor the utilization of funds disbursed by the Central Government;
- c. take steps to safeguard the rights and facilities made available to persons with disabilities;
- d. Submit reports to the Central Government on the implementation of the Act at such intervals as the Government may prescribe."

23. Section 59 of 1995 Act provided that the Chief Commissioner on its own motion or on the application of an aggrieved person or even otherwise, may look into complaints in respect of the matters relating to deprivation of rights of PwDs and further into non-implementation of laws / rules / bye- laws / regulations / executive orders / guidelines / instructions made by appropriate Governments and the local authorities for the welfare and protection of rights of PwDs and to take up the matters with the appropriate authorities. Section 59 of the 1995 Act runs as under: -

"59. Chief Commissioner to look into complaints with respect to deprivation of rights of persons with disabilities - Without prejudice to the provisions of section 58 the Chief Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to - a. deprivation of rights of persons with disabilities; b. non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights or persons with disabilities, and take up the matter with the appropriate authorities"

24. Section 63 of the 1995 Act provided that the Chief Commissioner and the Commissioners shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908 in respect of summoning and enforcing the attendance of witnesses, requiring the discovery and production of any document, requisitioning any public record, receiving evidence on affidavits and issuing commissions for the examination of witnesses or documents. It further provided that proceedings before the Chief Commissioner and Commissioners shall be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code and that they shall be deemed to be a Civil Court for the purposes of Section 195 and Chapter XXVI of the Cr.P.C. Section 63 of the 1995 Act reads as under: -

"63. (1) Authorities and officers to have certain powers of civil court - The Chief Commissioner and the Commissioners shall, for the purpose of discharging their functions under this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:-

a. summoning and enforcing the attendance of witnesses; b. requiring the discovery and production of any document; c. requisitioning any public record or copy thereof from any court or office;

d. receiving evidence on affidavits; and e. issuing commissions for the examination of witnesses or documents.

(2) Every proceeding before the Chief Commissioner and Commissioners shall be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and the Chief Commissioner, the Commissioner, the competent authority, shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973."

25. The afore-quoted provisions of the 1995 Act came to be considered by the Hon'ble Supreme Court in the case of *State Bank of Patiala v. Vinesh Kumar Bhasin*, (2010) 4 SCC 368 and the Apex Court while noticing the provisions of Section 58, 59 and 63 of the said Act came to the conclusion that neither the Chief Commissioner nor any Commissioner has power to issue any mandatory or prohibitory injunction or other interim directions. The Hon'ble Supreme Court further concluded that merely because the Act empowers them with certain powers of a Civil Court, will not enable them to assume the other powers of a Civil Court which are not vested in them by the provisions of the 1995 Act. The said conclusion was drawn by Hon'ble Supreme Court in paragraph 18 of the judgment in *Vinesh Kumar Bhasin* (supra) which is extracted herein below:

"18. It is evident from the said provisions, that neither the Chief Commissioner nor any Commissioner functioning under the Disabilities Act has power to issue any mandatory or prohibitory injunction or other interim directions. The fact that the Disabilities Act clothes them with certain powers of a civil court for discharge of their functions (which include the power to look into complaints), does not enable them to assume the other powers of a civil court which are not vested in them by the provisions of the Disabilities Act. In *All India Indian Overseas Bank SC and ST Employees' Welfare Assn. v. Union of India* [(1996) 6 SCC 606], this Court, dealing with Article 338(8) of the Constitution of India (similar to Section 63 of the Disabilities Act), observed as follows: (SCC pp. 609 & 611, paras 5 &

10) "5. It can be seen from a plain reading of clause (8) that the Commission has the power of the civil court for the purpose of conducting an investigation contemplated in sub-clause (a) and an inquiry into a complaint referred to in sub-clause (b) of clause (5) of Article 338 of the Constitution.

10. ... All the procedural powers of a civil court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. The powers of a civil court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading of clause (8) of Article 338 of the Constitution."

26. Similar view has been expressed by a learned Single Judge of Bombay High Court in *The Shipping Corporation of India v. Shri. Haripada Shaileshwar Chaterjee*, 2016 SCC OnLine Bom 9562. In the said case, analyzing the provisions of Section 47, 62 and 63 of the 2016 Act, it has been concluded by the Hon'ble Bombay High Court that the order of the Commissioner under 1995 Act, setting aside the termination letter of an employee and directing the organization/authority concerned to reinstate him was contrary to the provisions of 1995 Act. Reliance by learned Single Judge in this judgment was placed on another Division Bench Judgment of Hon'ble Bombay High Court in the case of *Vaishali Walmik Bagul v. Secretary, Prerna Trust, Aurangabad*, 2013 SCC OnLine Bom

68. Paragraph 18 and 19 of the judgment of the Bombay High Court in *Shri. Haripada Shaileshwar Chaterjee* (supra) is relevant to be quoted at this juncture which reads as under:

"18. It is to be noted that the issue involved in the present proceeding is fully covered by the decision of the Division Bench of this Court in the matter of *Vaishali Walmik Bagul v. Secretary, Prerna Trust, Aurangabad* reported in 2013 (5) Mh. L.J. 221. Paragraph 24, reads thus:

"24. Aforesaid provisions of the Disabilities Act refer to taking up the matter/complaint with the appropriate government by the Commissioner, Handicap Welfare. The provisions of the Disabilities Act as are quoted do not appear to confer power to issue directions on the Commissioner i.e. competent authority. His role is to take up the matter with appropriate authority. Thus, the direction issued under order dated 10-8-2009 exceeds the functions under the provisions of sections 61 and 62 of the Disabilities Act."

19. In the present proceeding, the Commissioner set aside the termination letter issued by the Petitioner and also directed the petitioner to reinstate the Respondent which is contrary to the provision of the said Act. Hence, the same is required to be set aside. As the order passed by the learned Commissioner is beyond his jurisdiction and same is required to be set aside, it is necessary in the interest of justice, an opportunity is required to be granted to the Respondent to take appropriate steps according to law, if it is available to protect his interest."

27. Thus, the law under the old statutory regime in terms of 1995 Act as settled by the Hon'ble Supreme Court in *Vinesh Kumar Bhasin* (supra) is clear, according to which the Chief Commissioner or Commissioners under the said Act lacked necessary power, authority, and

jurisdiction to issue any mandatory or prohibitory injunction or other interim orders.

New Statutory Regime concerning Rights of Persons with Disabilities Under the Act 2016

28. As observed above, 1995 Act was enacted to implement the proclamation issued at the meeting held in the year 1992 of the Economic and Social Commission for Asia and Pacific to which India was a signatory. After the said proclamation and enactment of the Act 1995, the United Nations General Assembly adopted its Convention on rights of PwDs on 13.12.2006, laying down certain principles for empowerment of PwDs. India is a signatory to the said Convention and ratified the Convention on 01.10.2007 and accordingly, to implement the said Convention, the Parliament enacted 2016 Act.

29. For the purposes of resolving the issues which have emerged for our consideration in this appeal, certain provisions of 2016 Act need to be noticed. Section 74 of 2016 Act, provides that the Central Government may appoint a Chief Commissioner for PwDs and the State Governments may appoint a State Commissioner for such persons for the purposes of the said Act. Section 75 defines the functions of the Chief Commissioner according to which the Chief Commissioner shall suo motu or otherwise identify the provisions of any law or policy or programme or procedure which are inconsistent with the 2016 Act and accordingly, make necessary recommendations for taking corrective steps. It further provides that the Chief Commissioner shall enquire deprivations of rights of PwDs and safeguards available to them in respect of matters for which Central Government is the appropriate authority. It further provides that Chief Commissioner shall take up the matter with appropriate authority for corrective action. Section 75 of 2016 Act reads as under: -

"75. Functions of Chief Commissioner.--(1) The Chief Commissioner shall--

(a) identify, suo motu or otherwise, the provisions of any law or policy, programme and procedures, which are inconsistent with this Act and recommend necessary corrective steps;

(b) inquire, suo motu or otherwise, deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the Central Government is the appropriate Government and take up the matter with appropriate authorities for corrective action;

(c) review the safeguards provided by or under this Act or any other law for the time being in force for the protection of rights of persons with disabilities and recommend measures for their effective implementation;

(d) review the factors that inhibit the enjoyment of rights of persons with disabilities and recommend appropriate remedial measures;

(e) study treaties and other international instruments on the rights of persons with disabilities and make recommendations for their effective implementation;

(f) undertake and promote research in the field of the rights of persons with disabilities;

(g) promote awareness of the rights of persons with disabilities and the safeguards available for their protection;

(h) monitor implementation of the provisions of this Act and schemes, programmes meant for persons with disabilities;

(i) monitor utilisation of funds disbursed by the Central Government for the benefit of persons with disabilities; and

(j) perform such other functions as the Central Government may assign.

(2) The Chief Commissioner shall consult the Commissioners on any matter while discharging its functions under this Act."

30. Section 76 of the 2016 Act is important to be noticed which provides that whenever the Chief Commissioner makes recommendation to an authority in pursuance of Section 75(1)(b) of the 2016 Act, that authority is bound to take necessary action on it and inform the Chief Commissioner of the action taken. However, the proviso appended to Section 76 of the 2016 Act makes a provision according to which if an authority does not accept the recommendation made by the Chief Commissioner, it shall convey the reasons for such non-acceptance to the Chief Commissioner as also shall inform the aggrieved person of such reasons.

31. Thus, we find that from a bare perusal of Sections 75 and 76 of the 2016 Act is that wherever deprivation of rights of PwDs and safeguards available to them are noticed by the Chief Commissioner, it shall make recommendation for taking corrective steps to the authority concerned and the authority concerned is bound to take necessary action and in case, the authority is unable to accept such a recommendation, the duty cast on it is to convey reasons for such non-acceptance to the Chief Commissioner and also to inform to the aggrieved person of such reasons.

32. The provisions of Section 75 and Section 76 of the 2016 Act came to be considered by a learned Single Judge of this Court in the case of Central Bank of India v. Shakuntala Devi, 2023 SCC OnLine Del 7107 wherein, it has been concluded that the Chief Commissioner cannot pass orders restraining transfer of an employee and that employer in case of administrative exigencies can give reasons to the Chief Commissioner as to why, recommendation cannot be accepted. Though, learned Single Judge of this Court in Shakuntala Devi (supra) refers the judgment of the Apex Court in Vinesh Kumar Bhasin (supra) which is based on a discussion of the provisions contained in 1995 Act, however, it also takes note of Section 75 of the 2016 Act. It is apposite to extract paragraph 19 of the judgment in Shakuntala Devi (supra) which reads as under:-

"19. Even though it is stated that the Chief Commissioner for Persons with Disabilities is recommending the Petitioner/Bank to cancel the transfer order but it

also states that a compliance report has to be given in three months failing which the action of the Petitioner/Bank would be reported to the Parliament. The Commission cannot pass such orders and the Chief Commissioner for Persons with Disabilities has exceeded its jurisdiction in passing orders restraining transfer, and the Bank can, in case of administrative exigencies give reasons to the Chief Commissioner as to why the recommendation cannot be accepted. The impugned order, is, therefore, modified to the extent that it is for the Petitioner/Bank to consider as to whether the transfer of Respondent No. 2 herein is a routine transfer or the transfer is in accordance with the other guidelines issued by the government or whether there are any administrative exigencies because of which Respondent No. 2 is being transferred."

33. We may also note that akin to the provisions contained in 1995 Act, Section 77 of the 2016 Act also empowers the CCPD to exercise same powers of a Civil Court as are vested in a Court under the Code of Civil Procedure in respect of matters such as summoning and enforcing attendance of witnesses, requiring the discovery and production of any documents, requisitioning any public record, receiving evidence on affidavits and issuing commissions for examination of witnesses. Sub-Section 2 of Section 77 of the 2016 Act states that the proceedings before the CCPD shall be judicial proceedings within the meaning of Section of 193 and 228 of the Indian Penal Code and further that it shall be deemed to be a Civil Court for the purposes of Section 195 and Chapter XXVI of the Cr.P.C. Section 77 of the 2016 Act reads as under: -

"77. Powers of Chief Commissioner.--(1) The Chief Commissioner shall, for the purpose of discharging his functions under this Act, have the same powers of a civil court as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely--

- (a) summoning and enforcing the attendance of witnesses;
- (b) requiring the discovery and production of any documents;
- (c) requisitioning any public record or copy thereof from any court or office;
- (d) receiving evidence on affidavits; and
- (e) issuing commissions for the examination of witnesses or documents.

(2) Every proceeding before the Chief Commissioner shall be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Chief Commissioner shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

Comparison between the Old and New Statutory Regimes

34. If the statutory provisions contained in 1995 Act and 2016 Act which have been extracted and discussed herein above are compared, what we find is that 2016 regime provides better armory to the CCPD in its fold to ensure that recommendations made by him for taking corrective steps and measures are implemented. Under the old regime, the recommendations on consideration of any complaint or noticing any infringement or violation of rights of PwDs by the Chief Commissioner would result in a recommendation to be made to the authority concerned, however, it was not binding. Implementation of such recommendation clearly depended on the discretion of the authority concerned. The Chief Commissioner was also not vested with any authority to issue any injunction, mandatory or prohibitory, as held by the Apex Court as well as by some High Courts in the judgments discussed herein above. However, Section 76 of 2016 Act gives the Chief Commissioner sting and sharper teeth to ensure that recommendations made by it for taking corrective steps are implemented and necessary action thereon is taken by the authority concerned, albeit, such power available to the Chief Commissioner for implementation of its commendation is clearly circumscribed by the proviso appended to Section 76 of 2016 Act which permits the authority not to accept the recommendation made by the Chief Commissioner provided it discloses/conveys reasons for such non- acceptance to the Chief Commissioner.

35. Thus, the recommendation for taking corrective steps to be made by the Chief Commissioner under the new regime is in all likelihood capable of being acted upon, except in a situation where for certain valid reason the authority concerned may not accept the recommendation. However, in such a situation, the authority concerned is required to convey the reason for such non-acceptance not only to the Chief Commissioner but also to the aggrieved person concerned. Thus, there seems to be remarkable change so far as enforceability of the recommendation made by the Chief Commissioner under the new statutory regime is concerned. As already observed above, earlier, recommendations were not binding at all under the old regime, but by enacting Section 76 of the 2016 Act, the recommendations are to be acted upon and necessary remedial measures are to be taken by the authority concerned, save in a situation where the authority concerned has valid reasons for non-acceptance for a recommendation made by the Chief Commissioner. The noticeable departure from the old regime is that the new regime emphasizes on substantive rather than formal equality concerning PwDs.

FINDINGS

36. For what we have discussed and analyzed above, we are of the considered opinion that the recommendations made by the Chief Commissioner in relation to the exercise undertaken by it under Section 75(1)(a)(b) of the 2016 Act will bind the authority concerned which shall take necessary remedial measures and corrective steps, however, such recommendation may not be acted upon or will not bind the authority concerned only and only in a situation such an authority has valid reasons for not accepting a recommendation which are required to be conveyed to the Chief Commissioner as also to the person aggrieved. There cannot be an exhaustive list of valid reasons for non-acceptance of recommendation by the authority made to it by the Chief Commissioner, however, for illustration we may observe that in a situation where an employee with disabilities is transferred in administrative exigencies taking into account the need and operational necessity of the organization and the skills and capability of the employee concerned, such a situation may give

rise to a valid reason for the origination for not accepting the recommendation made to it by the Chief Commissioner, though, in such a situation reasons are to be conveyed to the Chief Commissioner as also to the person aggrieved.

37. As far as the issue relating to power to issue or pass interim order available with the Chief Commissioner is concerned, our finding recorded above in the light of what has been provided under Section 76 and the proviso appended to will govern such issue as well. In a situation where the Chief Commissioner is of the opinion that certain interim recommendation is to be made for valid reasons it shall make such a recommendation to the authority concerned which shall take appropriate remedial measures for implementing such interim order or interim recommendation, but if the authority is unable to implement such interim measure, it can do so by giving valid reasons for such non-acceptance of interim recommendation.

38. Our finding, thus, is that be it an interim order/recommendation or a final order or recommendation made by the Chief Commissioner, the authority concerned is under statutory obligation to take appropriate remedial measures/corrective steps with the exception that such recommendation may not be acceded to in a situation where the authority concerned has some valid reasons for non-acceptance of an order or recommendation made by the Chief Commissioner which will have to be conveyed both to the CCPD and the person aggrieved.

39. As regards the reference made by learned counsel for the appellant to the judgment in the case of Kiran Singh (*supra*), we may note that under consideration in the said case were the provisions contained in the Protection of Human Rights Act, 1993 and, accordingly, the said judgment does not have any application to the issue in the instant appeal.

40. Similarly, the judgment by the Division Bench of this Court in Bhavneet Singh (*supra*) is of no aid to the appellant for the reason that the said judgment does not discuss Section 75 and Section 76 of 2016 Act, especially the proviso appended to Section 76 of 2016 Act.

41. We may also observe that the observations made and directions issued by the Hon'ble Supreme Court in Rajive Raturi (*supra*) though is binding on all authorities, however, the same do not help the cause of the appellant canvassed in the instant appeal for the reason it does not have any relevance to the facts and circumstances of the present case.

42. As regards the reliance placed by learned counsel for the appellant on Savitri (*supra*), we may only observe that there cannot be any dispute to the legal principle that every Court must be deemed to possess all such powers as are necessary to make its orders effective and such principle is the basis of our finding that the CCPD is empowered to make interim recommendations as well, however, its implementation again would be governed by Section 76 of the 2016 Act, which mandates the authority concerned to take necessary action but simultaneously, allows the authority concerned not to accept the recommendation in a situation where it has valid reasons for such non-acceptance.

43. As far as the scope of the authority and power vested in the CCPD under Section 75 and 76 of the 2016 Act in relation to service-related disputes of an employee is concerned, we may again refer to Section 75(1)(a) and (b) of the 2016 Act. Section 75(1)(a) of the 2016 Act casts a duty on the CCPD to identify the provisions of any law or policy or programme or procedure which are inconsistent with the 2016 Act and thereupon to recommend necessary corrective steps. In our opinion, this power under Section 75(1)(a) is available to the Chief Commissioner to examine the provisions of any law or policy or programme or procedure in general and is confined to a particular employee. In case, any inconsistency is found with such law/ policy/programme/procedures with the provisions of the 2016 Act, the Chief Commissioner has to necessarily identify such inconsistency and accordingly make recommendation for taking corrective measures.

44. Section 75(1)(b) of the 2016 Act empowers and casts a duty on the Chief Commissioner to make an inquiry into deprivation of rights of PwDs and safeguards available to them in respect of matters for which the Central Government is the appropriate Government and thereupon take up such matters with the appropriate authority for corrective action. What we find on a perusal of Section 75(1)(b) of 2016 Act is that wherever deprivation of rights of PwDs is reported to the Chief Commissioner or it comes to his notice, an inquiry may be conducted and appropriate recommendations may be made for taking corrective measures to the authorities concerned. So far as service related issues are concerned, we may observe that service is primarily a contract between the employee and the employer, terms of which are governed by some statutory rules made under Article 309 of the Constitution of India or some times by the terms spelt out in the appointment orders and in absence of any statutory rules governing the relationship between the employee and the employer, such relationship is governed by certain administrative orders/circulars/office memorandums etc.

45. Therefore, generally and in normal circumstances, the service-related matters such as transfer, promotion, grant of pay scale or time bound pay scales, grant of accelerated promotion, determination of seniority, reservation in employment and disciplinary matters etc. are the preserve of the employer and, therefore, decisions in these respects of the employer are to be respected for permitting the employer to have requisite administrative and disciplinary control and supervision towards its employees.

46. Having observed as above, we may also note that in a situation where rights available to persons with disabilities under the 2016 Act or the Rules 2017 or under any other measure involving the service-related issues are found to have been infringed or violated, the provisions of the 2016 Act will have to be given effect to. For example, in a recruitment process, if provision reserving posts/vacancies in accordance of the provisions of the 2016 Act is not made, the same may amount to infringement of rights of persons with disabilities and accordingly, the interference in such a matter of the CCPD will be permissible, justified and well within the power of the CCPD. Even in the matter of transfer of an employee, if some measure has been put in place by the employer to ensure non-discrimination of employees with disability or certain preferential treatment has been provided for such employees with disability and infringement of such a measure is found, the action of the employer may be amenable to an action by the Chief Commissioner under Section 75(1)(b) of the 2016 Act.

47. In a situation where no such infringement is found and transfer is sought to be effected in the exigencies of administration, taking into account the need and requirement of the administration, such transfer may not attract infringement of any right otherwise available to an employee with disability and, therefore, in such a situation, the provisions of the 2016 Act will not be attracted.

48. Having recorded our finding on the issues culled out in an earlier paragraph of this judgment, what we now need to examine is as to whether the order dated 02.08.2024, passed by the CCPD is to be treated to be a mandatory direction to the respondent no. 1 or it is to be treated as an interim recommendation which needs to be considered by the respondent no.1 in the light of interpretation rendered by us to Section 76 of the 2016 Act, specially the proviso appended to it in the earlier part of the judgment.

49. We have already elaborated that the CCPD is vested not only to make final order of recommendation but also to make interim order/ recommendation having regard to the facts and circumstances of a particular case presented before it. In a situation where CCPD finds that it is necessary to issue an interim recommendation, it is empowered to do so and, accordingly, the order dated 02.08.2024 passed by the CCPD is to be viewed in the said light.

50. We, accordingly, hold that the order dated 02.08.2024, is to be treated as an interim recommendation under Section 75/76 of the 2016 Act which needs to be considered by the respondent no.1 and, in case, it is unable to accept said recommendation, it needs to convey the valid reasons therefore to the CCPD.

51. For the reasons aforesaid, we modify the order passed by the learned Single Judge which is under appeal herein and provide that the order dated 02.08.2024, passed by the CCPD shall be treated to be an interim recommendation pending conclusion of the proceedings instituted by the appellant by filing the complaint. We, thus, direct that treating the order dated 02.08.2024, passed by the CCPD as an interim recommendation; respondent no.1 shall take appropriate decision thereon in terms of the provisions contained in Section 76 of the 2016 Act. The order dated 02.09.2024, is modified to the said extent.

52. The appeal along with the pending applications is, thus, disposed of in the aforesaid terms.

53. However, there shall be no order as to costs.

(DEVENDRA KUMAR UPADHYAYA) CHIEF JUSTICE (TUSHAR RAO GEDELA) JUDGE APRIL 02, 2025 MJ