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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 7318/2025

SHAMBHU NATH RAI .....Petitioner
Through: Mr. Rahul Bajaj, Mr. Amritesh Mishra and Ms. Sarah, Advs.

Versus

UNION OF INDIA & ORS. .....Respondents
Through: Mr. Viplav Acharya, Sr. PC for UOI

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% 18.11.2025

C. HARI SHANKAR, J.

1. The petitioner is an Assistant Sub Inspector/General Duty posted in the 171st Battalion of the Border Security Force[1] at Silchar, Assam. His son, Satyendra Kumar, is in Delhi. Silchar is 2107 kms away from Delhi.

2. On the ground that his son was suffering from Muscular Dystrophy in his lower limbs and needed the petitioner's assistance

[1] "BSF", hereinafter

even for normal daily activities, the petitioner preferred a representation, praying that he be relocated to Delhi or posted at a place where facilities to treat his son were available. The petitioner suggested that he could be posted at Kolkata or Bangalore.

3. The petitioner had approached this Court by way of WP (C) 5125/2022 when he was posted at Delhi, challenging his transfer to Silchar. This Court, by order dated 12 September 2024, declined to interfere but extended the period for the petitioner to relocate from Delhi to Silchar till 31 January 2025. Liberty was, however, reserved with the petitioner to reapproach this Court should he come across any policy which could justify his continuance at Delhi.

4. Availing the liberty so granted, the petitioner filed CM Appl 4320/2025 and 4034/2025. In the said applications, the petitioner placed reliance on Office Memoranda[2] dated 7 September 2017 and 19 March 2018 issued by the Ministry of Home Affairs[3] which provided that a Government servant, who was a care giver of a disabled child or a disabled dependent, could be exempted from the routine exercise of transfer or rotational transfers, subject to administrative constraints.

5. This Court, by order dated 31 January 2025, disposed of the said applications. Having heard learned counsel for both sides, this Court declined to permit further retention of the petitioner at Delhi. However, as the petitioner had advanced a submission that medical

[2] "OMs" hereinafter
[3] "MHA", hereinafter

facilities to take care of his son were available at Kolkata and Bangalore, and that he would be satisfied if he was posted at one of the said two locations, this Court directed the respondents to consider posting of the petitioner at Kolkata or Bangalore subject to service exigencies, specifically extending a sympathetic consideration to the medical condition of the petitioner's son. The respondents were permitted to communicate the decision taken by them to the petitioner within eight weeks.

6. In compliance with the said directions, the respondents have issued order dated 4 April 2025 rejecting the petitioner's request for posting at Kolkata or Bangalore. The reasons for retention are contained in para 12 of the order, which reads thus :

> "12. Whereas, in compliance of directions of the Hon'ble High Court passed vide their order dated 31.01.2025, the case of the petitioner has been examined in detail in the light of available records, governing rule positions, medical opinion and other facts & circumstances of his case and consequently, the following position is explained:
>
> (i) The request of the petitioner for posting to Kolkata & Bangalore (Static locations) is beyond the purview of the provisions of the BSF (Tenure of Posting and Deputation) Rules, 2000[4], and one of the Qualitative Requirements (ORs) for posting/transfer to static locations prescribed that is "the stipulation of 08 years cooling off period in all static to static cases".
>
> (ii) The petitioner was posted at the STC BSF Hazaribagh wef 18.07.2014 to 24.06.2017 and further remained attached with DIG (HQ) FHQ wef 17.12.2018 to 22.01.2025 and, therefore, he is not eligible for posting to any static location for less cooling off period than 8 years as per policy circulated by Pers Die (Estt Sec) letter No. 6241-91 dated 10.04.2024.

[4] "the 2000 Rules" hereinafter

(iii) The MHA have circulated guidelines vide OM No. A.12011/126/2014-Pers.III dated 19.03.2018 for posting of personnel of CAPFs & ARs who are caregivers to disabled dependents which stipulates that "a Government servant who is also a care-giver of disabled child/dependents may be (a discretion) exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints" and the petitioner was twice given benefits thereof.

(iv) The case of the petitioner does not fall within the ambit of clause in para 3 (VI) (h) of MHA, Police-II Division OM dated 19.03.2018 because as mentioned in para-6 of Hon'ble High Court of Delhi Court order dated 31.01.2025, the son of the petitioner is a major, aged 30 years and is working for Mercedes Benz Research and Development India and earning a handsome salary around Rs 95,000/- per month. Moreover, separate rules for posting/transfer of BSF personnel have been notified in the shape of BSF (Tenure of Posting and Deputation) Rules, 2000 that are binding on the petitioner.

(v) The petitioner has already availed of more than 09 years at 2 static locations i.e, at STC BSF, Hazaribagh wef 18.07.2014 to 24.06.2017 & at DIG(HO) FHQ, Delhi wef 17.12.2018 to 22.01.2025. The petitioner has joined 171 Bn, Masimpur, Silchar only on 06.02.2025 and remarks of the DIG (Medical), Fir HQ MAC state that the Government Medical College, Silchar is well equipped and has the treatment facility for the aliment of the petitioner's son."

7. Aggrieved thereby, the petitioner has reapproached this Court by means of the present writ petition.

8. We have heard Mr. Rahul Bajaj, learned counsel for the petitioner and Mr. Viplav Acharya, learned SPC for the UOI, at length.

9. Written submissions have also been filed by learned Counsels.

Rival Contentions

10. Submissions of Mr. Rahul Bajaj

10.1 Mr. Rahul Bajaj, appearing for the petitioner, advances, for the consideration of the Court, the following contentions:

(i) The petitioner's son Satyendra Kumar is suffering from 50% permanent disability in both legs. Mr. Bajaj has drawn our attention in this context to Disability Certificate dated 15 July 2016, issued by the Medical Authorities, Department of Empowerment of Persons with Disabilities, Hazaribagh, Jharkhand, which reads thus:

"**Department of Empowerment of Persons with Disabilities Ministry of Social Justice and Empowerment, Government of India**

Disability Certificate

Issuing Medical Authority, Hazaribagh, Jharkhand

Date: 15.07.2016

Certificate No: JH1520019950003846

This is to certify that we have carefully examined Shri Satyendra Kumar son of Shri Shambhu Nath Rai Date of birth 08.03.1995 Age 26 Male, Registration No: 2015/00000/2109/0708258 resident of house no. Silwar kalan, maru camp Bsf, Hazaribagh -825301, sub district Hazaribag, District hazaribagh, state/UT Jharkhand whose photograph is affixed above and I am/we are satisfied that:

(A) He is a case of physical impairment

(B) The diagnosis in his case is Muscular

(C) He has 50% (in figure) Fifty percent (in words) permanent disability in relation to his BOTH 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).

The applicant has submitted the following documents as proof of residence

Nature of document: Aadhaar Card

Satyendra Kumar

Signature/Thumb impression of the person with Disability

Signatory of notified Medical Authority Members (S)

Issuing Medical Authority, Haaribagh, Jharkhand."

The disability certificate is accompanied by another certificate issued by the Civil Assistant Surgeon, Sadar Hospital, Hazaribagh, certifying that the petitioner's son suffers from permanent Muscular Dystrophy to the extent of 50%. Mr. Bajaj further draws our attention to a prescription dated 10 September 2021 issued by the Physical Medicine and Rehabilitation Department of the All India Institute of Medical Sciences, which certifies that the petitioner's son needs long treatment and cannot travel alone without an attendant. To the same effect is a certificate dated 27 August 2021 issued by the Cardiothoracic and Neurosciences Centre, AIIMS and BSF Hospital, with the BSF Hospital further certifying that the disease of the petitioner's son was progressive, for which treatment was available at super speciality hospitals. The BSF Hospital further recommended that the petitioner be posted at a place which had Super Speciality Hospitals in the vicinity. According to Mr. Bajaj, even for attending to normal daily

activities, the petitioner's son needs an attendant.

(ii) In WP (C) 5125/2022, the learned Counsel for the Union of India had contended, on 29 March 2022, that, as per the opinion of the Medical Officer, dated 18 October 2021, the petitioner could be posted to any place, i.e. Jalandhar, Delhi, Bangalore, Kolkata or Siliguri, where super speciality facilities were available.

(iii) The fact that the petitioner's son may have been employed with Mercedes-Benz for a monthly salary of ₹ 95,000/- was irrelevant, given the fact that he was suffering from 50% muscular dystrophy in both lower limbs and was dependent on others for daily activities. Besides, as the petitioner's son was not in a position to travel to office, he was working from home.

(iv) The reliance, by the respondents, on the 2000 Rules was misplaced in view of the provisions of the Rights of Persons with Disabilities Act, 2016 and the MHA OM dated 19 March 2018, which came later. No administrative constraints, which necessitated the petitioner's transfer, were forthcoming.

(v) The respondent's submission that the petitioner had already been extended the benefit of the OM dated 19 March 2018 twice was beside the point. The OM was based on the

statutory and fundamental rights of persons with disabilities[5], keeping in mind the fact that they could not effectively function without the support of their caregivers. Extending the benefit of the OM to the petitioner, or his son, was not, therefore, an act of charity. Besides, the OM did not specify any limit on the number of times when the benefit thereof would be extended to PwDs.

(vi) The petitioner's son was in fact undergoing genetic screening at the AIIMS, which had come to a halt owing to the petitioner's posting at Silchar.

10.2 In support of his submissions, Mr. Bajaj has placed reliance on

(i) para 37 of the judgment of the Division Bench of this Court in ***Ircon International Ltd v. Bhavneet Singh***[6],

(ii) order dated 5 May 2010, of the Division Bench of this Court in ***Syed Shahid Wahid v. Union of India***[7], which led to the issuance of the MHA OM dated 19 March 2018,

(iii) paras 3 and 8 of the judgment of the learned Single Judge of the High Court of Gauhati in ***Padma Kanta Borah v. State of Assam***[8],

(iv) para 17 of the judgment of a learned Single Judge of the High Court of Allahabad in ***Neeraj Chaturvedi v. Central Bank of India***[9] and

(v) the judgment of a learned Single Judge of the High Court of Allahabad in ***Ashwani Kumar Srivastava v. Central Bank of***

[5] "PwDs" hereinafter
[6] **2024 SCC OnLine Del 4952**
[7] **WP (C) 3051/2010**
[8] **2023 SCC OnLine Gau 5213**
[9] **2022 Lab IC 2613**

India[10].

11. Submissions of Mr. Viplav Acharya

11.1 Responding to Mr. Bajaj, Mr. Viplav Acharya, appearing for the Union of India, places reliance on para 3(vi)(e) of MHA OM dated 7 September 2017 which, under the head "Guidelines for deciding transfer/retention of Disabled Person/having disabled Dependents", provides that "the disabled personnel and personnel having disabled dependent should be considered for posting suitable locations having adequate rehabilitation facilities". All that was required, therefore, was that the place to which the petitioner was posted had adequate rehabilitation facilities, which were available at Silchar.

11.2 Insofar as MHA OM dated 19 March 2018, on which Mr. Bajaj places reliance, was concerned, Mr. Acharya submits that the OM merely provides that a government servant, who is also a caregiver of a disabled child or dependent "may be exempted" from the routine exercise of transfer/rotational transfer, subject to administrative constraints. The word "may", he submits, incorporates an element of discretion. In exercise of this beneficial dispensation, Mr. Acharya submits that, over a period of nine years, the petitioner had been extended the benefit of exemption from transfer twice. This cannot continue, he submits, forever.

11.3 Ergo, submits Mr. Acharya, no case for interference with the impugned decision of the respondent, rejecting the petitioner's request

[10] **(2025) 3 All LJ 629**

for transfer out of Silchar, is made out.

12. Submissions of Mr. Bajaj in rejoinder

12.1 In rejoinder, Mr. Bajaj submits that, in para 2 of the order in ***Syed Shahid Wahid***[11], this Court specifically disapproved the MHA OM dated 7 September 2017. In fact, MHA OM dated 19 March 2018 was an outcome of the order passed in ***Syed Shahid Wahid***.

12.2 Besides, submits Mr. Bajaj, Hazaribagh is not a static posting and, therefore, MHA OM dated 7 September 2017 was not applied while posting the petitioner to Hazaribagh.

Analysis

13. Re. the 2000 Rules and the plea of "static to static" posting

13.1 The main plank of the respondent's defence is predicated on the 2000 Rules. Para 3 of the written submissions filed by the respondent specifically avers thus:

> "3. That it is important to further highlight that as per the BSF (Tenure of Posting and Deputation) Rules, 2000, the Petitioner was mandatorily required to observe a cooling off period of 8 years for a static-to-static posting. However, keeping in mind the unfortunate hardships of the Petitioner, he was posted at 2 static locations without having been asked to observe the mandatory 8 year cooling off period."

Para 2 of the respondent's written submissions assert that the

[11] Order dated 12 January 2018

petitioner had already been posted at two static locations within a period of nine years; from 18 July 2014 to 24 June 2017 at Hazaribagh and from 17 December 2018 to 22 January 2025 at Delhi. It is asserted, therefore, that the petitioner cannot seek one more static location posting.

13.2 There are various reasons why we are unable to accept this submission as an answer to the petitioner's claim.

13.3 Firstly, the assertion, in the written submission as well as in the counter-affidavit filed in the present proceedings, that the 2000 Rules required a cooling off period of eight years between one static posting and another, is incorrect. Nothing of the kind is to be found in the 2000 Rules. All that is stated, in the said Rules, with respect to two consecutive static postings, is the following provision, contained in Rule 8(2):

> "(2) No person from one static formation shall be posted to another static formation immediately after completion of one tenure:
>
> Provided that in the cases of the members of the Force who hold a post which does not exist in our Battalion but only in a static Formation, such members of the Force shall be posted to another static formation."

Thus, there is no provision, in the 2000 Rules, which provides for a "cooling off period" of eight years between postings in two static locations/formations.

13.4 Secondly, there is no material placed on record, to indicate that the posting of the petitioner at Hazaribagh could be regarded as a

static posting. "Static formation" is defined in Rule 2(h) of the 2000 Rules as meaning "the institutions/establishment/unit which are static and declared as static". No document, which enlists the locations which have been declared as static, has been brought to our notice. Having chosen to rely on Rule 8 of the 2000 Rules, the onus was on the respondents to place, on record, the requisite declaration to the effect that the posting of the petitioner at Hazaribagh was a static posting. No such material is forthcoming. Mr. Bajaj, for his part, has denied the assertion that Hazaribagh was a static formation.

13.5 Thirdly, the provision for an eight year cooling off period between two postings in static locations is to be found only in para 2(h) of the "Revised QRs/Guidelines for Transfer/Posting and Grievance Redressal of NGO's", dated 10 April 2024, issued by the DG, BSF. These Guidelines are expressly made effective from the date of their issue, in the concluding paragraph thereof. They, therefore, were not in force when the petitioner was posted at Hazaribagh or transferred from Hazaribagh to Delhi. The assertion, of the respondents, that the petitioner was given an exemption from the requirement of undergoing the eight year cooling off period, between the postings at Hazaribagh and Delhi, even assuming both were to be treated as static postings is, therefore, not correct.

13.6 Fourthly, we are in agreement with Mr. Bajaj that, while dealing with persons who are disabled, or caregivers for dependent children or other dependents, the policy which would apply is that contained in the MHA OM dated 19 March 2018, and not the DG, BSF Circular dated 10 April 2024. Both are executive instructions.

However, as the MHA OM dated 19 March 2018 is specifically intended to cater to persons with disabilities, the issue of transfer and posting of such persons has to abide by the said OM, and not by the general Guidelines contained in the Circular dated 10 April 2024.

13.7 For all these reasons, we are not inclined to countenance the reliance, by Mr. Acharya, on the 2000 Rules read with the DG, BSF Circular dated 10 April 2024.

14. Re. MHA OMs dated 7 September 2017 and 19 March 2018 and the judgment in ***Ircon International Ltd***

14.1 We are entirely in agreement with Mr. Bajaj's contention that the controversy is substantially covered by MHA OM dated 19 March 2018. Mr. Bajaj has correctly pointed out that the said OM was issued in compliance with the order dated 6 December 2010 passed by the Division Bench of this Court in ***Syed Shahid Wahid***. By the said OM, para 3(VI)(h) of the earlier OM dated 7 September 2017, on which Mr. Acharya places reliance, was replaced to read thus:

> "Para 3 (VI)(h)
>
> The provisions as contained in DoP&T OM dtd. 06.06.2014 on "Posting of Govt. employee who have differently abled dependents", which provides that: -
>
> "a Government servant who is also a care giver of disabled child/ dependents may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints".
>
> As such each force may incorporate above in their guidelines and the provisions of tenure and other (field/peace area) rules. In the case of such persons for posting/ transfer may be relaxed by the competent authority on merits, so as to meet the

requirement of care givers of disabled dependents.

The word 'disabled' for above purpose will be the 'disease' defined as per Ministry of Personal and Training, Department of Personal and Grievance from time to time. 'Dependents' means, the term "family' defined in CCS (Pension) Rules. 1972."

As such, the respondent cannot continue to rely on MHA OM dated 7 September 2017.

14.2 Para 3(VI)(h) of MHA OM dated 7 September 2017, as replaced by MHA OM dated 19 March 2018, clearly exempts a government servant, who is a care giver of a disabled child or a disabled dependent, from routine transfer and rotational transfer, subject to administrative constrains.

14.3 We unhesitatingly reject Mr. Acharya's repeated submission that the petitioner has already been granted the benefit of exemption as contained in para 3(VI)(h) of the OM dated 7 September 2017 as amended by MHA OM dated 19 March 2018. Mr. Bajaj is perfectly correct in his submission *that the OM does not envisage a maximum number of occasions when the benefit of the said dispensation is to be extended. That benefit continues so long as the employee is dependent or is a care giver of a disabled child or disabled dependent person. There can be no question of denying the benefit of para 3(VI)(h) on the ground that benefit of the said clause has been extended a number of times earlier. A care giver of a disabled child or dependent is entitled, in perpetuity, so long as he continues to remain the care giver of such disabled child/dependent, to the benefit of the said clause*.

14.4 *The fallacy in the respondent's approach is, to our mind, one of perception. The respondent is regarding the dispensation, in para 3(VI)(h) of the OM dated 7 September 2017 (as amended by OM dated 19 March 2018) as a dispensation which benefits the employee in insulating him against transfer.* ***This perception is fundamentally misconceived.*** *The OM has been issued in the interests of the disabled child/dependent,* ***not in the interests of the caregiver****. The interests of the disabled child/dependent have, therefore, to be accorded primacy. So long as the child or dependent continues to suffer from disability, she, or he, would be entitled to the benefit of a caregiver in proximity. There is, therefore, no question of estimating the number of times that the benefit of the OM has been extended* ***to the caregiver****.*

14.5 This proposition, though it may appear extreme as stated, is not so extreme in application. The clause clearly permits lifting of the exemption in a case where the transfer is necessitated by administrative constraints. Thereby, the dispensation acquires an entirely wholesome character.

14.6 In the present case, no administrative constraint has been pointed out, by the respondents, as would justify invocation of the exception in built in para 3(VI)(h) of the OM dated 7 September 2017 as amended by OM dated 19 March 2018. We draw sustenance, in this context, from para 37 of the judgment of the Division Bench of this Court in ***Ircon***, which reads as under:

> "The burden to prove administrative exigency not discharged by IRCON I L:

> 37. Thus, *when a transfer order is passed concerning a differently-abled person, the burden to prove that it was triggered due to administrative exigencies or constraints would be on the employer.* In this particular case, the employer, i.e., IRCON IL, has not been able to discharge that burden. In our view, a vague averment that the five (5) persons [whose names are mentioned in paragraph fourteen (14) above] were assigned other jobs and hence could not be transferred to Bilaspur was insufficient to discharge the burden placed on IRCON IL. Besides the employees referred to in paragraph fourteen (14) above, the respondent has also taken the position that several other persons who have spent five (5) years or more in one location and therefore, could have been transferred instead of him- is an assertion answered by taking recourse to a bald rebuttal."
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> (Emphasis supplied)

We express our entire and respectful agreement with the enunciation of law in para 37 of ***Ircon***. *In a case where the caregiver of a disabled child or a disabled dependent is being transferred, on administrative constraints, to a location where it is not possible for the disabled child or the dependent to obtain optimum care, a heavy onus lies on the establishment to positively demonstrate the existence of such administrative constraint.*

14.7 *The constraint must also be of sufficient importance and significance as would justify compromising the interest of the disabled child or dependent. Ordinarily, in our view, the interest of the disabled child or dependent must be accorded primacy*. This is the very *raison detre* of the RPWD Act. In this context, we place reliance on the following passages from the judgments of the Supreme court in ***Rajive Raturi v. Union of India***[12], ***Vikash Kumar v. UPSC***[13] and ***In***

[12] **(2024) 16 SCC 654**
[13] **(2021) 5 SCC 370**

***Re*: *Recruitment of Visually Impaired in Judicial Services*[14]**, where the Supreme Court has emphasised the need for inclusion and integration of persons with disabilities into the societal fabric and to ensure that their interests are provided reasonable accommodation, so as to mitigate the effect of their disabilities:

From Rajive Raturi

"**B.** ***Understanding accessibility***

12. Accessibility refers to the design of products, services, environments, and systems to ensure that all individuals, including those with disabilities, can access, use, and benefit from them fully and independently. This encompasses physical access, such as entry to buildings and transport, as well as access to information, communication, and digital platforms. It is essential for promoting inclusion and enabling participation in all aspects of public life.

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27. The inclusion of accessibility within the fundamental rights framework ensures that PWDs are entitled to full participation in society under Articles 14, 19 and 21 of the Constitution. Article 14 upholds equal access to spaces, services, and information; Article 19 guarantees the freedom to move and express oneself; and Article 21 ensures the right to live with dignity. Together, these provisions guarantee not only formal equality but also substantive equality, which requires the State to take positive steps to ensure that individuals can enjoy their rights fully, irrespective of disabilities. This Court in a plethora of judgments has repeatedly recognised that the right to dignity and the right to a meaningful life under Article 21 necessitate conditions that enable PWDs to enjoy the same freedoms and choices as others. Thus, the right to accessibility is foundational, enabling PWDs to exercise and benefit from other rights enshrined in Part III of the Constitution.

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[14] **2025 SCC OnLine SC 481**

42. The RPWD Act and international frameworks such as the CRPD emphasise that accessibility should be built into systems and infrastructure from the outset. However, where this is not enough, reasonable accommodation comes into play to tailor solutions to individual needs. This dual approach ensures that all individuals, regardless of their impairments, have equal opportunities and access to participate fully in society. Both accessibility and reasonable accommodation must therefore be seen as interdependent and complementary, each reinforcing the other in the pursuit of full inclusion and equality.

From ***Vikas Kumar***

G. *The Rights of Persons with Disabilities Act, 2016 : A paradigm shift*

G.1. *A statutory manifestation of a constitutional commitment*

41. Part III of our Constitution does not explicitly include persons with disabilities within its protective fold. However, much like their able-bodied counterparts, the golden triangle of Articles 14, 19 and 21 applies with full force and vigour to the disabled. The 2016 RPwD Act seeks to operationalise and give concrete shape to the promise of full and equal citizenship held out by the Constitution to the disabled and to execute its ethos of inclusion and acceptance.

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"44. The principle of reasonable accommodation captures the positive obligation of the State and private parties to provide additional support to persons with disabilities to facilitate their full and effective participation in society. The concept of reasonable accommodation is developed in section (H) below. For the present, suffice it to say that, for a person with disability, the constitutionally guaranteed fundamental rights to equality, the six freedoms and the right to life under Article 21 will ring hollow if they are not given this additional support that helps make these rights real and meaningful for them. Reasonable accommodation is the instrumentality—are an obligation as a society—to enable the disabled to enjoy the constitutional guarantee of equality and non-discrimination. In this context, it would be apposite to remember R.M. Lodha, J's (as he then was) observation in ***Sunanda***

Bhandare Foundation v. Union of India[15], where he stated :

> "*9.* … In the matters of providing relief to those who are differently abled, the approach and attitude of the executive must be liberal and relief oriented and not obstructive or lethargic."

G.2. ***Scheme of the 2016 Act***

45. The 2016 RPwD Act was a landmark legislation which repealed the 1995 Act and brought Indian legislation on disability in line with the United Nations Convention on the Rights of Persons with Disabilities ("Uncrpd"). Under the old regime, disability was simply characterised as a medical condition devoid of any understanding of how disability is produced by social structures that cater to able-bodied persons and hamper and deny equal participation of persons with disabilities in the society. Section 2(*t*) of the 1995 Act defined a "person with disability" in the following terms:

> "2. (*t*) "person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority;"

46. The 2016 RPwD Act has a more inclusive definition of "persons with disability" evidencing a shift from a stigmatising medical model of disability under the 1995 Act to a social model of disability which recognises that it is the societal and physical constraints that are at the heart of exclusion of persons with disabilities from full and effective participation in society. Section 2(*s*) of the 2016 RPwD Act [which we have analysed in paras 35-37 above] provides:

> "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;"

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54. This Court in ***Union of India* v. *National Federation of the Blind***[16] has recognised that employment opportunities play an instrumental role in empowering persons with disabilities. P. Sathasivam, J. (as he then was) observed :

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[15] **(2014) 14 SCC 383; Disabled Rights Group v. Union of India, (2018) 2 SCC 397**

[16] **(2013) 10 SCC 772**

> "*50*. Employment is a key factor in the empowerment and inclusion of people with disabilities. It is an alarming reality that the disabled people are out of job not because their disability comes in the way of their functioning rather it is social and practical barriers that prevent them from joining the workforce. As a result, many disabled people live in poverty and in deplorable conditions. They are denied the right to make a useful contribution to their own lives and to the lives of their families and community."

It is imperative that not only the Government but also the private sector takes proactive steps for the implementation of the 2016 RPwD Act.

From ***In Re: Recruitment of Visually Impaired in Judicial Services***

"E. RIGHTS-BASED APPROACH

41. The spirit of the RPwD Act, 2016 would reveal that the principle of reasonable accommodation is a concept that not only relates to affording equal opportunity to the PwD but also it goes further as to ensuring the dignity of the individual by driving home the message that the assessment of a person's suitability, capacity and capability is not to be tested and measured by medical or clinical assessment of the same but must be assessed after providing reasonable accommodation and an enabling atmosphere. The judgment of this Court in ***Vikash Kumar (supra)*** assumes increased significance in this regard. This Court in this case has expounded in detail the principle of reasonable accommodation by invoking the social model of disability. In response to the judgment, the Department of Disability Affairs, Government of India has notified guidelines for availing of scribes by all persons with specified disabilities to appear in written examinations thereby widening the ambit of its earlier guidelines issued in 2018 confining this privilege only to persons with benchmark disabilities. Very importantly, while overruling the earlier decision in ***Surendra Mohan***[17] **(supra),** this Court has held that any decision which is innocent to the principle of reasonable accommodation would amount to disability-based discrimination and is also in deep tension with the ideal of inclusive equality. After the judgment which has focused on a rights-based model and rejection of the medicalisation of the disability in order to assess the suitability and capability of PwD, the "suspicion ridden

[17] **Surendra Mohan v. State of Tamil Nadu, (2015) 4 Mad LJ 513**

medical expertise driven model"[23], is directly opposed to the principle as laid down by this court and also the spirit of the RPwD Act, 2016.

42. In the present case also, the opinion of the medical expert is driven only by clinical assessment and suspicion. On the basis of the same, the impugned rule, *viz.*, clause 6A of the Madhya Pradesh Judicial Service Examination (Recruitment and Conditions of Service) Rules, 1994 specifically excluding visually impaired candidates from participation for selection as judicial officers, came to be substituted by way of amendment, which is against the guarantee of substantive equality embodied in the super-statute, i.e., the RPwD Act, 2016, and the principle of reasonable accommodation as set out therein, pursuant to India's international obligation. The rights-based model of disability has now become part of the national and normative structure of anti-discrimination regime of this country. The impugned rule, which is based on the medical report of a doctor, in the light of the foregoing analysis, cannot have any place in the disability jurisprudence that is ever evolving in a country like ours. Such conclusions based merely on a clinical assessment of disability, innocent of the principle of reasonable accommodation, cannot be said to be a fair and proper assessment of the capability of judicial officers with disabilities while participating in the selection to the post of judicial officers. It is relevant to point out here that once a person has been permitted to the degree of law course, all other opportunities, whether in the form of practice as well as appointments, assignments whether public or private, would automatically make them eligible to participate for selection to the same. The principle of legitimate expectation also stands attracted to this case as part of the aspect of non-arbitrariness while furthering the equality doctrine. Here it also relevant to mention that UNCRPD Committee in its General Comment No. 6 on Article 5, equality and non-discrimination, has developed the idea of inclusive/transformative equality. The relevant portion of the committee's observation reads as follows:

> ……. *"Inclusive equality corresponds to a new model of disability, the human rights model of disability, which leaves a charity, welfare, and medical approaches behind and is based on the assumption that disability is not primarily a medical issue. Rather disability is a social construct and impairment must not be taken as legitimate ground for the denial or restriction of human rights".*

India is a signatory to this convention and hence, under an obligation to fulfil this object of inclusive equality. In view thereof, visually impaired candidates cannot be said to be 'not suitable' for judicial service and Rule 6A of the Madhya Pradesh

Judicial Service Examination (Recruitment and Conditions of Service) Rules, 1994 falls foul of the Constitution.

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VI. CONCLUSION

67. The overall analysis would demonstrate that a rights-based approach necessitates that PwDs must not face any discrimination in their pursuit of judicial service opportunities, and instead, there must be affirmative action on behalf of the State to provide an inclusive framework. Now, it is high time that we view the right against disability-based discrimination, as recognized in the RPwD Act, 2016, of the same stature as a fundamental right, thereby ensuring that no candidate is denied consideration solely on account of their disability. Further, as extensively discussed, the principle of reasonable accommodation, as enshrined in international conventions, established jurisprudence, and the RPwD Act, 2016, mandate that accommodations be provided to PwDs as a prerequisite to assessing their eligibility. In the light of the above, any indirect discrimination that results in the exclusion of PwDs, whether through rigid cut-offs or procedural barriers, must be interfered with in order to uphold substantive equality. The commitment to ensuring equal opportunity necessitates a structured and inclusive approach, where merit is evaluated with due regard to the reasonable accommodations required, thereby fostering judicial appointments that truly reflects the principles of fairness and justice."

14.8 The word "disabled" is, with time, happily retaining only statutory significance. Complete and unwavering implementation of the provisions of the PwD Act, and all Rules and executive instructions issued towards its furtherance is, however, of the essence, if the chasm between "disabled" and "differently abled" is to be fully and finally bridged.

15. On facts

15.1 When one views the facts in the backdrop of the above legal

position, the sequitur is inescapable.

15.2 The hospital certificates and Disability Certificate which Mr. Bajaj has placed on record certify not only that the petitioner's son suffers from muscular dystrophy in both lower limbs to the extent of 50%, but that the disability is *progressive*. They further certify that the petitioner's son is in need of an attendant, and has to be proximate to Super Speciality treatment facilities.

15.3 We are surprised at the respondent's repeated emphasis on the fact that the petitioner's son is employed at a monthly salary of ₹ 95000/- per month. We fail, entirely, to understand how this fact, which otherwise should earn the petitioner's son a pat on the back, is being used as a ground to justify denial, to him, of the benefits available under the PwD Act and the instructions issued in that regard. That the petitioner's son has been able to overcome his difficulties and secure employment with a reputed company is a matter for which he deserves to be commended, and can in no case be used as a reason to deny statutory benefits guaranteed to him as a PwD. Mr. Bajaj has pointed out, further, that the petitioner's son, owing to his condition, is unable to travel to office, and is working from home.

Conclusion

16. Resultantly, the grounds on which the respondents have, in the impugned communication dated 4 April 2025, rejected the petitioner's request for being posted at Delhi or, in the alternative, at Kolkata or Bangalore, cannot sustain. We are of the view that, in setting out the

said reasons, the respondents have not taken into account the primacy which is required to be accorded to the interest of persons with disabilities, in the present societal and statutory paradigm. There can be no compromising on their interests. Of course, should administrative constraints render it impossible to post the petitioner at a place where super speciality hospitals and other necessary facilities, to ensure the well being of his son, are available, such constraints may have to take precedence. These must, however, we reiterate, be constraints so overwhelming as would outweigh the interests of the petitioner's son, or his due entitlements under the PwD Act.

17. For the aforesaid reasons, we allow this writ petition in the following terms:

(i) The decision of the respondent as communicated to the petitioner by order dated 4/6 April 2025 is quashed and set aside.

(ii) The respondents are directed to forthwith relocate the petitioner to Delhi, if possible. In case it is not possible to locate the petitioner at Delhi, for administrative constraints as understood by us in the judgment hereinabove, a reasoned order citing such constraints would be issued. Even in that event the petitioner would be posted at one of the five places cited in para 2 of the order dated 22 June 2022 passed by this Court, preferably at Kolkata and Bangalore.

(iii) Necessary orders in this regard would be issued within a period of three weeks from the date of uploading of this judgment

on the website of this Court.

18. In order to ensure compliance, let a copy of this judgment be emailed to learned Counsel for the parties as soon as it is uploaded.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

NOVEMBER 18, 2025*/AT/aky/yg*