Item 15(C-V)

OA No.4634/2024

Central Administrative Tribunal
Principal Bench, New Delhi

O.A. No.4634/2024
MA No.2827/2026

Order reserved on : 06.10.2026
Order pronounced on: 04.11.2026

Hon'ble Mr. Rajveer Singh Verma, Member (J)

Patil Pranjal Lahensingh, IAS, Group 'A',
Aged About 36 Years,
D/o Sh. L.B. Patil,
R/o 16/11, Rajpur Road,
Civil Lines, New Delhi-110054.

...Applicant

(By Advocate : Ms. Priyanka Bhardwaj with Shri M.K. Bhardwaj)

Versus

1. Union of India,
through its Secretary,
Ministry of Personnel, Public Grievances & Pensions,
Department of Personnel & Training,
North Block, New Delhi-110001

2. The Secretary,
Ministry of Home Affairs,
Govt. of India, North Block,
New Delhi-110001

3. The Addl. Secretary (U.T.)
Ministry of Home Affairs,
Govt. of India, North Block,
New Delhi-110001

RACHNA KAPOOR Digitally signed by RACHNA KAPOOR

4. Govt. of NCT of Delhi
through its Chief Secretary,
New Secretariat, I.P. Estate,
New Delhi.

...Respondents

(By Advocate : Shri Gyanendra Singh)

(ORDER)

The applicant is an IAS officer of the 2017 batch who suffers from 100% visual loss due to absolute stage secondary glaucoma, anterior staphyloma, and recurrent corneal erosions in both eyes, having had no perception of light since childhood. Initially allocated to the Kerala cadre, her request for an inter-cadre transfer was accepted on 21.05.2018 under the Physically Handicapped Policy dated 14.02.2014, allowing her to join the AGMUT cadre in Delhi in early 2020 to access essential medical and social support. On 12.09.2024, the Ministry of Home Affairs abruptly transferred her from Delhi to Arunachal Pradesh, a hard station, which was followed by a relieving order on 17.10.2024. The applicant submitted representations highlighting that she requires continuous specialized medical care under an ophthalmologist at Sitaram Bhartia Institute and ICARE Eye Hospital, Noida, alongside regular visits to AIIMS, and that her sole caregiver grandmother had unfortunately passed away on 10.09.2024. Although she approached the Tribunal in OA No. 4127/2024 in an earlier round of litigation, where the Tribunal directed the respondents on 22.10.2024 to pass a

RACHNA KAPOOR Digitally signed by RACHNA KAPOOR

reasoned speaking order on her representation, the respondents mechanically rejected it on 06.11.2024.

2. The learned counsel for the applicant contended that her transfer violates Section 20 of the Rights of Persons with Disabilities Act, 2016, DoP&T Office Memorandum dated 31.03.2014 which exempts persons with disabilities from rotational transfers, and the fundamental right to equality under Article 14. In this context he relied upon the DOP&T OM dated 31.03.2024 and the judgment of Hon'ble High Court in the case of ***R.S. Chaudhary Vs. State of M.P.*** as well as OM dated 08.10.2018.

3. Learned counsel for the applicant submitted that the respondents have completely ignored the fact that the applicant would not be able to get proper medical facilities as required by her in view of the opinion of the medical experts and that the applicant was transferred to Delhi keeping in view her peculiar medical condition as well as requirement of regular support without any language barrier and the she will be facing same hardship in a hard station like Arunachal Pradesh. It is further contended that the order dated 06.11.2024

RACHNA KAPOOR Digitally signed by RACHNA KAPOOR

was served upon the applicant through whatsapp and that too after repeated requests.

4. Learned counsel for the applicant relied heavily on the following judgments in support of his contentions to establish that treating unequals as equals violates the Constitution and that the executive approach toward the differently abled must be proactive, liberal, and relief-oriented :

(i) Decision of the Hon'ble High Court of Delhi in WP(C) No.7927/2020 titled ***Anju Mehra Vs. Canara Bank & Ors;***

(ii) Decision of the Hon'ble High Court of Delhi in LPA No.133/2024 and C.M. No.9793/2024 titled ***Ircon International Ltd. Vs. Bhavneet Singh;***

(iii) Decision of the Hon'ble Supreme Court in the I.A.No.10/2015 in WP(C) No.116/1998 titled ***Justice Sunanda Bhandare Foundation Vs. Union of India and Another.***

5. The respondents, on the other hand, maintained that the transfer of the applicant from Delhi to Arunachal Pradesh via orders dated 12.09.2024 and 17.10.2024 is entirely legal, valid, and in public

RACHNA KAPOOR Digitally signed by RACHNA KAPOOR

interest. Learned counsel for the respondents contended that at the time of processing her inter-cadre transfer from Kerala to AGMUT in 2018, both DoP&T on 23.03.2018 and senior MHA officials during an interaction on 15.05.2018 explicitly informed the applicant that the AGMUT cadre comprises diverse State and Union Territory segments across the country, requiring officers to serve in any part of the cadre rather than any single segment indefinitely. The respondents stated that the applicant knowingly acquiesced to these conditions and reiterated AGMUT as her first preference. Furthermore, under the Transfer/Posting Guidelines for AGMUT officers of 2016, senior-scale IAS officers are required to complete a minimum tenure in hard areas, and direct-recruit officers promoted to the Senior Time Scale on 01.01.2021 were invariably due for movement from regular category A segments to hard category B segments. Since the applicant spent nearly four years exclusively in Delhi with zero tenure in category B segments, her transfer was necessitated by administrative requirements and a deficit of senior scale officers in Arunachal Pradesh. The respondents argue that DoP&T Office Memorandum dated

RACHNA KAPOOR Digitally signed by RACHNA KAPOOR

31.03.2014 protects persons with disabilities only "subject to administrative constraints," which does not bar the movement of officers within a joint cadre on administrative grounds. Complying with the Tribunal's direction of 22.10.2024, the MHA thoroughly reviewed her representations and passed a detailed speaking order on 06.11.2024 before rejecting her request and directing her to report to Arunachal Pradesh.

6. Furthermore, the transfer order of the applicant was issued on the basis of Transfer/Posting Guidelines, 2016 issued by the respondent Ministry. Para 7 of the said Guidelines stipulates that Senior Scale IAS officers shall complete a minimum tenure of five years (in 2 tenures) in Category 'B' segments of the cadre. Since joining the AGMUT cadre on 13.01.2020, the applicant has been posted only in Delhi. Her total tenure in Category 'B' segments (other than Delhi) of the cadre was NIL. Para 17 of the same Guidelines, 2016 allows the MHA to transfer or post any AIS officer of the Joint AGMUT cadre to any of the constituent segment at any time on administrative grounds or public interest. It is also not the case of the applicant that her representations were not considered. Her first representation was considered and rejected

RACHNA KAPOOR Digitally signed by RACHNA KAPOOR

and the second representation preferred by her was considered and rejected pursuant to filing of the OA No.4127/2024.

7. In her rejoinder, the applicant refuted the counter affidavit filed by the respondents, asserting that their reliance on routine transfer guidelines cannot override statutory protections and constitutional mandates. She pointed out that the respondents themselves admitted in their pleadings that she originally sought the AGMUT cadre to secure a posting in Delhi as a metropolitan city equipped with necessary medical infrastructure and accessibility for visually impaired individuals, thereby invalidating their claim that she willingly consented to being posted to remote hard stations. The applicant emphasized that mere reference to executive transfer policies cannot create an estoppel that strips a 100% visually impaired officer of her statutory rights under the Rights of Persons with Disabilities Act, 2016. She reiterated that the respondents failed to establish any genuine service exigency or administrative constraint that justifies sending a completely blind officer to Arunachal Pradesh while disregarding specialized medical advice and the absence of a family support system.

RACHNA KAPOOR Digitally signed by RACHNA KAPOOR

Terminating her continuous presence in Delhi directly threatens her ongoing medical management and violates the benevolent objectives of disability legislation. Consequently, she maintained that the rejection order dated 06.11.2024 is mechanical, arbitrary, and violative of Articles 14, 16, and 21 of the Constitution, warranting the complete setting aside of the transfer and relieving orders.

ANALYSIS

8. We have heard learned counsel for the parties at length and perused the pleadings, the impugned orders dated 12.09.2024, 17.10.2024 and 06.11.2024, the medical record and the judgments cited at the Bar.

9. The following questions arise for consideration:

(i) Whether, while transferring an officer with a benchmark disability, the cadre controlling authority is bound by Section 20 of the Rights of Persons with Disabilities Act, 2016 (hereinafter "the 2016 Act") and the instructions of the Department of Personnel and Training on posting and transfer of persons with disabilities, or whether the Transfer/Posting Guidelines for IAS/IPS officers of the Joint AGMUT Cadre, 2016

RACHNA KAPOOR Digitally signed by RACHNA KAPOOR

(hereinafter "the Guidelines, 2016") operate independently of them;

(ii) Whether the transfer of the applicant is a routine or rotational transfer within the meaning of those instructions;

(iii) Whether the respondents have established administrative constraints justifying the departure from those instructions, and on whom the burden lies;

(iv) Whether the order dated 06.11.2024 reflects a genuine and individualised consideration of the applicant's case, as required by the duty of reasonable accommodation; and

(v) Whether the applicant is precluded, by her acceptance of the AGMUT cadre in 2018, from claiming the protection she now seeks.

The general law on transfer

10. The law on judicial review of transfer orders is well settled. Transfer is an incident of service; an employee holding a transferable post has no vested right to remain at a particular station; and courts and tribunals do not interfere with a transfer order unless it is vitiated by mala fides, is made by an incompetent

RACHNA KAPOOR Digitally signed by RACHNA KAPOOR

authority, or is in violation of a statutory provision or of an instruction having statutory force. These principles have been laid down, among others, in **Shilpi Bose v. State of Bihar, 1991 Supp** (2) SCC 659, **Union of India v. S.L. Abbas**, (1993) 4 SCC 357, and **S.C. Saxena v. Union of India**, (2006) 9 SCC 583, and have been reiterated by the Hon'ble High Court of Delhi in **Shalu Pruthi v. Kendriya Vidyalaya Sangathan**, W.P.(C) 3022/2026, decided on 25.03.2026 (paragraph 16). We respectfully follow them.

11. Learned counsel for the applicant also relied on **R.S. Chaudhary v. State of M.P.,** ILR [2007] MP 1329, a decision of a Division Bench of the High Court of Madhya Pradesh, it holds that where a transfer is alleged to be contrary to the transfer policy, the employee's remedy in the first instance is a representation to the competent authority. The applicant has availed that remedy, and her representation was decided pursuant to the directions of this Tribunal in O.A. No. 4127/2024. The decision therefore does not stand in the way of the present application, but neither does it advance the applicant's case on merits.

RACHNA KAPOOR Digitally signed by RACHNA KAPOOR

The statutory overlay in the case of persons with disabilities

12. The general principles noticed above do not, however, exhaust the inquiry where the employee is a person with disability. Parliament enacted the 2016 Act to give effect to the United Nations Convention on the Rights of Persons with Disabilities. Section 20 of the 2016 Act, so far as relevant, reads:

> *"20. Non-discrimination in employment.-*
>
> *(1) No Government establishment shall discriminate against any person with disability in any matter relating to employment: ...*
>
> *(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.*
>
> *xxx xxx xxx*
>
> *(5) The appropriate Government may frame policies for posting and transfer of employees with disabilities."*

Section 3 of the 2016 Act guarantees equality and non-discrimination; Section 2(y) defines reasonable accommodation; and Rule 8(3)(c) of the Rights of Persons with Disabilities Rules, 2017 requires the equal opportunity policy of every establishment to provide for preference in transfer and posting. The

RACHNA KAPOOR Digitally signed by RACHNA KAPOOR

relevant sections are reproduced for sake of convenience:

> *3. (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.*
>
> *2(y) "reasonable accommodation" means necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden in a 4 particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others;*

13. In exercise of the policy-making function now recognised by Section 20(5), the Department of Personnel and Training issued Office Memorandum No. 36035/3/2013-Estt.(Res) dated 31.03.2014 laying down guidelines for persons with disabilities already in Government employment. Part 'H' thereof reads:

RACHNA KAPOOR Digitally signed by RACHNA KAPOOR

> *"H. Preference in transfer/posting. As far as possible, the persons with disabilities may be exempted from the rotational transfer policy/transfer and be allowed to continue in the same job, where they would have achieved the desired performance. Further, preference in place of posting at the time of transfer/promotion may be given to the persons with disability subject to the*

> *administrative constraints. The practice of considering choice of place of posting in case of persons with disabilities may be continued. To the extent feasible, they may be retained in the same job, where their services could be optimally utilised."*

The same instruction has been reiterated, in identical terms, in O.M. No. 36035/44/2023-Estt(Res-II) dated 02.02.2024. The reference in paragraph 2 above to an O.M. dated "31.03.2024" is to be read as a reference to the O.M. 5 dated 31.03.2014, as reiterated on 02.02.2024. The O.M. dated 08.10.2018, also relied upon by the applicant, concerns Government servants who are caregivers of dependants with disability; it does not in terms apply to the applicant, who is herself the person with disability, though it reflects the same policy.

14. Two features of Part 'H' deserve notice. First, it has two distinct limbs: the first exempts persons with disabilities from rotational transfer "as far as possible" and favours their retention in the same job; the second gives them preference as to the place of posting when a transfer or promotion does take place, subject to administrative constraints. The respondents, in paragraph 5 of their reply as recorded above, read the qualification "subject to administrative constraints" as governing the whole instruction. That is not what the

RACHNA KAPOOR Digitally signed by RACHNA KAPOOR

instruction says, though we shall assume in their favour that the exemption under the first limb also yields to genuine administrative compulsion. Secondly, Part H is not a concession granted as a matter of grace. It is the means by which the Government discharges, in the sphere of posting and transfer, its statutory obligation under Section 20(2) to provide reasonable accommodation.

The decisions of the Hon'ble High Court and the Hon'ble Supreme Court

15. The interplay between the general law on transfer and the 2016 Act was examined by a Division Bench of the Hon'ble High Court of Delhi in **Ircon International Ltd. v. Bhavneet Singh**, LPA 133/2024, decided on 18.07.2024 (2024:DHC:5269-DB). The Division Bench accepted that the scope of interference in transfer matters is narrow (paragraph 3), but held that those principles apply to persons with disabilities subject to the caveats contained in the 2016 Act, the Rules and the Office Memoranda (paragraphs 3.1 and 3.2). It identified the factors an employer must keep in view, including that the employee should ordinarily be exempted from rotational transfer and should be

RACHNA KAPOOR Digitally signed by RACHNA KAPOOR

posted where the required medical and infrastructural facilities are readily available (paragraph 4). Most importantly, it held that when a transfer order concerning a person with disability is passed, the employer bears the burden to prove that it was triggered by administrative exigencies or constraints, and that a vague averment does not discharge that burden (paragraph 37):

> *"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."*

The Division Bench further held that the Office Memoranda dated 31.03.2014 and 02.02.2024 bind even a Central Public Sector Enterprise (paragraph 40), and that any contractual stipulation as to transfer stands subordinate to the 2016 Act and the Rules framed under it (paragraphs 43 to 44.1). The learned Single Judge's order setting aside the transfer of the

RACHNA KAPOOR Digitally signed by RACHNA KAPOOR

employee from Delhi to Bilaspur was affirmed with costs.

16. The same principle has since been applied by another Division Bench of the Hon'ble High Court in **Defence Research and Development Organisation v. Dr. Deepti Bhardwaj**, W.P.(C) 12454/2026, decided on 03.09.2026, which declined to interfere with an order of this Tribunal staying the transfer of an officer who was the caregiver of a child with benchmark disability. The High Court held that the onus to establish organisational constraints lies on the employer; that where the transfer order is silent as to such constraints and states only that it is made in public interest, the deficiency cannot be supplied by averments in an affidavit filed in the litigation, following **Commissioner of Police, Bombay v. Gordhandas Bhanji**, 1951 SCC 1088 and **Mohinder Singh Gill v. Chief Election Commissioner,** (1978) 1 SCC 405 (paragraph 14); and that the Office Memoranda, being a step in aid of reasonable accommodation under Section 2(y), must be interpreted expansively and given full effect, in the light of **Vikash Kumar v. Union Public Service Commission**, (2021) 5 SCC 370, **Rajive Raturi v.**

RACHNA KAPOOR Digitally signed by RACHNA KAPOOR

Union of India, (2024) 16 SCC 654 and In Re: **Recruitment of Visually Impaired in Judicial Services**, 2025 SCC OnLine SC 481. Hon'ble High Court in **Dr. Deepti Bhardwaj**, held thus,

> *"17. We have to be mindful, in a case such as this, that we are dealing with the applicability of the RPWD Act. The Supreme Court has repeatedly emphasized in* ***Vikash Kumar v. Union Public Service Commission*** *(2021) 5 SCC 370 that the principle of reasonable accommodation which, permeates the RPWD Act and has exhorted on courts to ensure that, while they apply the principles and the provisions of the RPWD Act, the goal of reasonable accommodation is always borne in mind. The immunity from transfer available to parents of a dependent child suffering from benchmark disability, as provided in the aforenoted DOPT OMs is clearly a step-in aid of reasonable accommodation as envisaged by Section 2(y) of the RPWD Act. It has, therefore, to be interpreted expansively and given full scope and effect. Any restrictive interpretation by us would be doing violence not only to the provisions of the RPWD Act but also to the philosophy underling the judgments of the Supreme Court in* ***Vikash Kumar****, as well as* ***Rajiv Raturi v. Union of India*** *(2024) 16 SCC 654 and* ***Recruitment of Visually Impaired in Judicial Services*** *Re: 2025 SCC OnLine SC 481."*

17. The constitutional basis of these principles was explained by the Hon'ble Supreme Court in **Net Ram Yadav v. State of Rajasthan,** (2022) 15 SCC 81. Their Lordships observed that one of the principal disadvantages of a person with disability is the inability to move freely and easily; that the object of instructions permitting such persons to be posted at places of their choice is to enable them to be posted where assistance, whether of family or of institutions, is readily available; and that a benefit so conferred

RACHNA KAPOOR Digitally signed by RACHNA KAPOOR

cannot be rendered otiose by the manner of its application (paragraph 31). Their Lordships also held that instructions for the benefit of persons with disabilities must receive a purposive interpretation in harmony with the Convention (paragraph 29), and concluded that the treatment of unequals as equals, ignoring their special needs, violates Article 14 of the Constitution (paragraph 33).

18. In **Justice Sunanda Bhandare Foundation v. Union of India**, I.A. No. 10 of 2015 in W.P.(C) No. 116 of 1998, decided on 25.04.2017 ([2017] 3 SCR 723), the Hon'ble Supreme Court, while monitoring implementation of disability legislation, reiterated its earlier observation in **Justice Sunanda Bhandare Foundation v. Union of India**, (2014) 14 SCC 383 that in matters of providing relief to the differently abled, the approach and attitude of the executive must be liberal and relief oriented and not obstructive or lethargic (paragraph 4), and emphasised that under the 2016 Act the responsibilities of the State have grown (paragraph 24). This sets the standard against which the respondents' handling of the applicant's representation must be judged.

RACHNA KAPOOR Digitally signed by RACHNA KAPOOR

19. Learned counsel for the applicant also cited **Anju Mehra v. Canara Bank** (2020:DHC:3183). That decision has been noticed in Ircon (paragraph 32.5) as holding that the general law on transfer has been overtaken by the 2016 Act in matters concerning persons with disabilities. Since the principle is in any event established by the decisions discussed above, we do not find it necessary to rest our conclusions on it.

Question (i): The Guidelines, 2016 and the statutory obligation

20. The Guidelines, 2016 are administrative instructions issued by the Ministry of Home Affairs as the cadre controlling authority for postings within the Joint AGMUT cadre. They serve a legitimate purpose, namely to ensure that no segment of the cadre is starved of officers and that service in hard areas is shared. But they are executive instructions; they do not and cannot override a statute. The obligation in Section 20(2) of the 2016 Act binds every Government establishment, including the respondent Ministry, and the instructions of the Department of Personnel and Training under Part H are the Government's own policy for discharging that obligation in matters of posting. If,

RACHNA KAPOOR Digitally signed by RACHNA KAPOOR

as held in **Ircon**, those instructions bind a public sector enterprise, they bind a Ministry of the Government of India a fortiori. Paragraphs 7 and 17 of the Guidelines, 2016 must therefore be read and applied subject to Section 20 of the 2016 Act and Part H of the O.M. dated 31.03.2014. Where an officer with a benchmark disability is concerned, the power under paragraph 17 to post an officer to any segment at any time is not an unguided power; it must be exercised consistently with the duty of reasonable accommodation.

Question (i) is answered accordingly.

Question (ii): Nature of the transfer

21. On the respondents' own showing, the applicant was moved because the Guidelines, 2016 require senior scale officers to complete a minimum tenure in Category B segments; because direct recruit officers promoted to the Senior Time Scale on 01.01.2021 were "invariably due" for movement from Category A to Category B segments; and because her Category B tenure was nil. A movement made because an officer has completed a tenure in one category and is due, along with her batch, for a tenure in another category

RACHNA KAPOOR Digitally signed by RACHNA KAPOOR

is the very definition of a routine or rotational transfer. The applicant's transfer is not a transfer on promotion, nor a transfer on any ground personal to her. It is precisely the class of transfer from which Part H says persons with disabilities should, as far as possible, be exempted. The respondents cannot, in the same breath, justify the transfer by the rotational tenure requirement and contend that the protection against rotational transfer does not apply.

Question (ii) is answered in favour of the applicant.

Question (iii): Administrative constraints and the burden of proof

22. The respondents have pleaded two matters as constituting administrative constraints: that the applicant had no tenure in Category B segments, and that there was a deficit of senior scale officers in Arunachal Pradesh.

23. The first is not an administrative constraint at all. It is the very rule from which the applicant claims exemption. To treat the requirement of the rotational policy as the constraint that defeats the exemption from that policy would render Part H meaningless,

RACHNA KAPOOR Digitally signed by RACHNA KAPOOR

which is the outcome the Hon'ble Supreme Court cautioned against in **Net Ram Yadav** (paragraph 31).

24. As to the second, the burden lay on the respondents **(Ircon**, paragraph 37; **Deepti Bhardwaj,** paragraph 14). Nothing has been placed before us to show the sanctioned and working strength of senior scale officers in the Arunachal Pradesh segment, the number of vacancies, the number of senior scale officers in Category A segments with nil or deficient Category B tenure who were available for posting, or why the deficit could be met only by moving the one officer in the batch who is totally blind. Nor is there any averment that no post was available for the applicant in Delhi or in any other Category A segment. A bare assertion of a deficit, unsupported by particulars, is the kind of vague averment that Ircon held insufficient.

Question (iii) is answered against the respondents.

Question (iv): The order dated 06.11.2024 and reasonable accommodation

RACHNA KAPOOR Digitally signed by RACHNA KAPOOR

25. This Tribunal, in O.A. No. 4127/2024, directed the respondents to decide the applicant's representation by a reasoned and speaking order. A speaking order in a

case of this nature is not satisfied by restating the transfer policy. Reasonable accommodation is, by its nature, individual; what is required is an assessment of what this officer needs in order to discharge her duties with dignity and equally with others, and whether that need can be met consistently with the requirements of the cadre (**Vikash Kumar v. Union Public Service Commission**, (2021) 5 SCC 370; **Ravinder Kumar Dhariwal v. Union of India,** (2023) 2 SCC 209).

26. The material before the respondents was specific and weighty. The applicant has had no perception of light since childhood. She is under continuous specialised care at the Sitaram Bhartia Institute and ICARE Eye Hospital, Noida, and visits AIIMS regularly. Her sole caregiver, her grandmother, died on 10.09.2024, two days before the transfer order was issued. Her inter-cadre transfer from Kerala to AGMUT was itself accepted in 2018 under a policy for physically handicapped officers, in recognition of her need for medical and social support, and the respondents admit in their pleadings that she sought the AGMUT cadre for a posting in Delhi on that account.

RACHNA KAPOOR Digitally signed by RACHNA KAPOOR

27. The respondents have not placed any material to show that specialised ophthalmic care of the kind the applicant requires, or any support system substituting for that which she has in Delhi, is available at her place of posting in Arunachal Pradesh. Applying to a totally blind officer, without individual assessment, the same tenure rule that applies to able-bodied officers is the treatment of unequals as equals which the Hon'ble Supreme Court held to be violative of Article 14 in **Net Ram Yadav** (paragraph 33). The order dated 06.11.2024 is therefore unsustainable.

Question (iv) is answered in favour of the applicant.

Question (v): Acquiescence and estoppel

28. The respondents contend that the applicant was told in 2018 that the AGMUT cadre is a multi-segment cadre and that she nonetheless chose it. We are unable to accept that this precludes her. First, a statutory right cannot be waived by acceptance of a general transfer liability; any such term is subordinate to the 2016 Act (Ircon, paragraphs 43 to 44.1). Secondly, what the applicant accepted was membership of the cadre, which carries liability to serve in any segment; it was not, and could not be, an agreement that the cadre

RACHNA KAPOOR Digitally signed by RACHNA KAPOOR

controlling authority would disregard Section 20 and Part H when exercising that power in her case. Thirdly, the respondents themselves accept that the inter-cadre transfer was granted under a policy for physically handicapped officers and that the applicant sought AGMUT in order to be in Delhi for medical reasons. The plea of estoppel fails.

The decisions relied upon by the respondents

29. Reliance was placed on behalf of the respondents on the settled principles noticed in paragraph 10 above. We have applied them. In **Shalu Pruthi (supra)**, on which the respondents may draw support, the Hon'ble High Court accepted the obligation of reasonable accommodation but held that its applicability depends on the factual foundation laid, and the petitioner there had not established a benchmark disability or the threshold under the applicable policy (paragraphs 23 and 24). The present case is the converse: the applicant's 100% visual disability is certified and is not disputed. That decision is clearly distinguishable.

RACHNA KAPOOR Digitally signed by RACHNA KAPOOR

Protection of the applicant's career

30. We are conscious that completion of tenure in hard areas may be relevant under the Guidelines, 2016 or otherwise for central deputation, empanelment and promotion. Section 20(3) of the 2016 Act provides that no promotion shall be denied to a person merely on the ground of disability. An officer who is not posted to a Category B segment because of her disability cannot be prejudiced in her career for not having completed such tenure. Appropriate directions are therefore necessary.

CONCLUSION

31. In the result, the Original Application is allowed in the following terms:

(a) The transfer order dated 12.09.2024, insofar as it relates to the applicant, the relieving order dated 17.10.2024 and the order dated 06.11.2024 rejecting the applicant's representation are quashed and set aside.

(b) The respondents shall continue the applicant in, or as the case may be repost her to, the NCT of Delhi segment of the Joint AGMUT cadre, within four weeks of receipt of a certified copy of this order. The intervening period, if any, shall be regularised in

RACHNA KAPOOR Digitally signed by RACHNA KAPOOR

accordance with the rules, treating the applicant as not at fault.

(c) Should any administrative necessity hereafter arise to post the applicant outside Delhi, the respondents shall not do so except by a reasoned order, passed after hearing her, which records the specific administrative constraint, considers her medical condition and support requirements on current medical evidence, and examines whether she can be accommodated in Delhi or in another Category A segment where comparable specialised ophthalmic care and support are available.

(d) The applicant's non-completion of tenure in Category B segments, on account of her disability, shall not be held against her for the purposes of promotion, empanelment, central deputation or any other service benefit.

All the pending MAs, if any, shall stand disposed of. There shall be no order as to costs.

RACHNA KAPOOR Digitally signed by RACHNA KAPOOR

(Rajveer Singh Verma)
Member (J)

'rk/py'