

**IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD**

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**WRIT PETITION NO.24411 of 2022**

Between:

Rondla Sampath

**...Petitioner**

**AND**

1. The Union of India, rep. By its Secretary, Ministry of Home Affairs, North Block, New Delhi and three others

**...Respondents**

**ORDER PRONOUNCED ON: 13.04.2023**

**SUBMITTED FOR APPROVAL:**

**THE HON'BLE SRI JUSTICE K.SARATH**

1. Whether Reporters of Local : Yes/No  
newspapers may be allowed to see  
the Judgment ?
2. Whether the copies of judgment : Yes/No  
may be marked to Law  
Reports/Journals
3. Whether Their Lordship/Ladyship : Yes/No  
wish to see the fair copy of  
judgment

**JUSTICE K.SARATH**

**THE HON'BLE SRI JUSTICE K.SARATH****+WRIT PETITION NO.24411 of 2022**

%Dated 13.04.2023

# Rondla Sampath

**...Petitioner**

**AND**

\$ 1. The Union of India, rep. By its Secretary, Ministry of Home Affairs, North Block, New Delhi and three others

**...Respondents**

! Counsel for Petitioner : Sri A.G.Satyanarana Rao

^ Counsel for Respondents: Sri Gadi Praveen Kumar, Deputy Solicitor General of India

< GIST :

> HEAD NOTE :

**? Case referred**

- 1.2022 SCC Online SC 1022
2. 2023 (2) SCC 209

**THE HON'BLE SRI JUSTICE K.SARATH****WRIT PETITION No.24411 of 2022****ORDER:**

1. Heard Sri A.G.Satyanarayana Rao, Learned Counsel appearing for the petitioner and Sri Gadi Praveen Kumar, Learned Deputy Solicitor General of India, appearing for respondents.

2. The learned Counsel appearing for the petitioner submits that the petitioner was appointed as CISF Constable in the year 1996 and the petitioner has been suffering from Bipolar Affective Disorder with Psychosis and taking treatment at Government Hospital for Mental Care, Erragadda, Hyderabad and the Medical Board issued proceedings on 05.02.2021 stating that considering the present mental status examination and also considering the course and nature of the illness, the Board came to conclusion to

allow the petitioner in service under Low Medical Category-SE (T-24) duty without firearms and the accordingly the petitioner has been discharging his duties at Cherlapalli, Hyderabad. While it being so, the respondent No.2 issued Service Order No.211/2022 dated 28.03.2022 transferring the certain Constables, including the petitioner from South Zone to East Zone, wherein it was specified that if anybody aggrieved by the Inter-Sector Transfers, must submit their representations on or before 14.04.2022. Pursuant to the service order No.211/2022, the respondent No.3 issued Eastern Sector Service Order No.28/2022 on 01.04.2022 transferring the petitioner to BCCL: Dhabnad. In view of the treatment being taken by him the petitioner submitted his representation on 08.04.2022 requesting to cancel the transfer order as it would be difficult for him to take treatment every fortnight and also as the Dhanbad is

not native place of the petitioner, he would be deprived of family support to him which is essential for proper cure of the petitioner. In spite of representation filed by the petitioner on 08.04.2022 for cancellation of the transfer order was pending for consideration, the respondent No.3 issued proceedings on 30.04.2022 to posted to Dhanbad and relieved him on 30.04.2022.

3. The learned Counsel for the petitioner submits that the Mental Health Care Act, 2017, which has come into force with effect from 07.04.2017, specifies the rights of persons with mental illness. As per Section 18 (1) every person shall have a right to access mental healthcare and treatment from mental health services run or founded by the appropriate Government. As per Sub-Section 5 (b) of Section 18 the appropriate Governments shall provide treatment in a manner which supports persons with mental

illness to live in the community and with their families. Further Sub-Section 5 (d) of Section 18 specifies that the appropriate Governments roll ensure that no person with mental illness shall be required to travel long distances to access mental health service and such services shall be available close to the place where a person with mental illness reside and these provisions are mandatory and requested to allow the writ petition.

4. The Learned Counsel for the petitioner relied on the following judgments:

1. *Net Ram Yadav Vs. The State of Rajasthan and others*<sup>1</sup>
2. *Ravinder Kumar Dhariwal and another Vs. Union of India*<sup>2</sup>

5. The learned Deputy Solicitor General of India, appearing for the respondents, basing on the counter submits that, the transfer and posting of the petitioner

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<sup>1</sup> 2022 SCC Online SC 1022  
<sup>2</sup> 2023 (2) SCC 209

has been issued strictly abiding by transfer policies under CISF HQrs. New Delhi Circular No.22/2017 dated 25.09.2017 and as per the turn of the petitioner obviously by taking care of his mental illness and humanitarian aspects.

6. The learned Counsel for the respondents further submits that no representation of the petitioner on posting issues is pending for disposal at any level. The petitioner has been penalized on fifteen occasions in the form of two major penalties and thirteen minor penalties for various types of misconducts and the petitioner cannot claim relief against the respondents in the present case and the grounds raised by the petitioner are devoid of any merit and tainted with malafide intention and requested to dismiss the petition.

7. After hearing both sides and on perusing the record this Court is of the considered view that the petitioner is working as CISF Constable and suffering from Bipolar Affective Disorder with Psychosis and taking treatment. The Medical Board came to conclusion that the petitioner is under Low Medical Category – S3 (T24), duty without fire arms vide proceedings dated 05.02.2021. While the petitioner is working at Cherlapalli, Hyderabad the present impugned orders were issued by the respondent No.2 in Service Order No.211/2022 dated 28.03.2022 transferring the petitioner and others from South Zone to East Zone. Consequent to the said order the respondent No.3 issued Eastern Sector Service Order No.28/2022 dated 01.04.2022 transferring the petitioner to BCCL, Dhanbad. The petitioner made representation to the authorities for cancellation of his transfer as it would be difficult for him to take



treatment every fortnight and also as the Dhanbad is not native place of the petitioner and he would be deprived of family support to him which is essential for proper cure of the petitioner from mental health. Pending consideration of the representation of the petitioner dated 08.04.2022, the consequential orders issued relieving the petitioner on 30.04.2022.

8. The case of the petitioner is that the Mental Health Care Act, 2017 specifies rights of the persons with mental illness and as per the said Act the appropriate Government shall provide treatment in a manner which supports persons with mental illness to live in the community and with their families and also to ensure that no person with mental illness shall be required to travel long distances to access mental health services and as such services shall be available

close to place where a person with mental illness resides.

9. Sub-Section 5 (b) and (d) of Section 18 of Mental Health Care Act reads as follows:

(5) The appropriate Government shall,—

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(b) provide treatment in a manner, which supports persons with mental illness to live in the community and with their families;

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(d) ensure that no person with mental illness (including children and older persons) shall be required to travel long distances to access mental health services and such services shall be available close to a place where a person with mental illness resides;

10. The learned Deputy Solicitor General of India vehemently argued that the petitioner was transferred and posted strictly abiding the transfer policies under CSIF Circular No.22/2017 dated 25.09.2017 and as

per the turn of the petitioner by taking into care of mental illness of the petitioner was transferred. The petitioner had been penalized on fifteen occasions in the form of two major penalties and rest thirteen minor penalties for various types of misconducts and the ground raised by the petitioner cannot be taken into account for consideration of transfer orders.

11. In ***Ravinder Kumar Djhariwal Vs. Union of India (supra 1)*** the Hon'ble Supreme Court of India analyzed and given clear finding on the employees working with mental illness and held that mental disability impairs the performance of the persons to comply with workplace standards in comparison to their able-bodied counterparts. Such persons suffer a disproportionate disadvantage due to the impairment and are more likely to be subjected to disciplinary proceedings. Thus, the initiation of disciplinary

proceedings against persons with mental disabilities is a facet of indirect discrimination. The relevant portion of the said judgment is as follows:

*89. On the basis of our discussion of the above-mentioned jurisdictions, the following conclusions emerge:*

*(i) Mental health disorders are recognised as a disability as long as they fulfil the defining criteria;*

*(ii) The duty of providing reasonable accommodation to persons with disabilities is sacrosanct. All possible alternatives must be considered before ordering dismissal from service. However, there are accepted defences to this principle. The well-recognised exception to this rule is that the duty to accommodate must not cause undue hardship or impose a disproportionate burden on the employer – the interpretation of these concepts may vary in each jurisdiction.*

*Xxx xxx*

*(iii) Mental health disorders pose a unique challenge in disability rights adjudication. Very often, persons are not aware of or are in denial of their mental disability. Even if they hold the awareness, to avoid stigma and discrimination, they tend to not disclose their mental illness before an incident of purported misconduct. Thus, they may fall foul of the requirement to request a reasonable accommodation.*

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*(iv) An issue that remains contentious is the examination of misconduct charges against persons with mental health disorders. There are two strands of argument. One argument is that mental disability often manifests as*

*atypical behaviour that may fall within the ambit of misconduct. If such conduct is causally connected to the disability, then dismissal on grounds of misconduct is discrimination based on disability.*

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12. The Hon'ble Supreme Court in the said judgments, concluded that:

*“the mental disability impairs the performance of the persons to comply with workplace standards in comparison to their able-bodied counterparts. Such persons suffer a disproportionate disadvantage due to the impairment and are more likely to be subjected to disciplinary proceedings. Thus, the initiation of disciplinary proceedings against persons with mental disabilities is a facet of indirect discrimination”.*

13. In **Net Ram Yadav Vs. State of Rajasthan (Supra 2)** , the Hon'ble Supreme Court at para No.24 held that:

*“It is true that the Appellant was appointed in 1993, long before the Circular dated 20th July 2000 for appointment/posting of persons with disability at or near*

*the place of their choice was issued. However, having regard to the object of issuance of the Circular, which is to enable handicapped employees to opt for posting at a convenient place, may be near the place where the employee ordinarily resides with the members of his family, or at or near a place where the handicapped employee may get assistance, inter alia, of family members, relatives, friends, or may be institutional support, the benefit of the circular has to be extended even to those candidates appointed before issuance of the Circular, subject of course to availability of posts and other relevant factors. Exclusion of the benefit of the Circular to handicapped employees already in employment at the time of its issuance, would violate the fundament”*

14. The record reveals that the Medical Board in Proceedings dated 05.02.2021 clearly stated that the petitioner is under Low Medical Category – S3 (T24) duty without fire arms and he is married person having two children and his wife left him because of his behavioural problems. History of any mental illness in his family is not known and he lives in a joint family along with his parents and his family.

15. As per the Judgments of the Hon'ble Supreme Court (supra) and in view of the Medical Board proceedings, the respondents have to reconsider the case of the petitioner and to post him in and around of the CISF, Hyderabad Unit as he is native of Karimnagar District of State of Telangana.

16. Accordingly, this writ petition is disposed of, by setting aside the impugned transfer order in Service Order No.211/2022 through Proc.No.E-38014/38<sup>th</sup> IST-2022/Estt-II/2022-1207 dated 28.03.2022 issued by the respondent No.2 in so far as the petitioner is concerned and consequential Proceedings dated 01.04.2022 issued by the respondent No.3 including the Movement Order issued by the respondent No.4 dated 30.04.2022 and the respondents are directed to reconsider the case of the petitioner to post in and

around of CISF, Hyderabad Unit as he is native of Karimnagar District of Telangana State.

17. Miscellaneous petitions, if any, pending in this Writ petition shall stand closed. There shall be no order as to costs.

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**JUSTICE K.SARATH,**

Date: .04.2023

**Note:**  
**LR copy to be marked**  
**b/o**  
**trr**