

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 301/2019

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Prasanta Kumar Das, aged about 55 years, S/o Late Gopobandhu Das, Plot No. 215/2165, Padmabati Vihar, PO-Sailashree Vihar, Bhubaneswar-751021, Dist.-Khurda, Odisha, presently working as Officer Surveyor, Odisha Geo Special Data Centre, Survey of India, Bhubaneswar-751013, Dist.-Khurda, Odisha.

.....Applicant

VERSUS

1. Union of India represented through the Secretary to Govt. of India, Ministry/Department of Science and Technology, Technology Bhawan, New Mehrauli Road, New Delhi-110016.
2. The Surveyor General of India, Survey of India, Hathibarkala Estate, Dehra Dun-248001, Uttarakhand.
3. The Director, OGDC, Survey of India, 2nd Floor, Survey Bhawan, Bhubaneswar-751013, Dist.-Khurda, Odisha.

.....Respondents.

For the applicant : Mr.K.C.Kanungo, counsel

For the respondents: Mr.P.R.J.Dash, counsel

Heard & reserved on : 7.1.2020

Order on : 11.2.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

This OA has been filed with the prayer for the following reliefs:-

“Your Lordship may graciously be pleased to quash Annexure-A/3 (Sl.No.47) to the extent the transfer of the Applicant to West Bengal & Sikkim GDC, Kolkata is concerned for the ends of justice.

AND

Be further pleased to quash Annexure A/9 for the ends of justice.

AND

Be further pleased to direct the Respondent No.2 to consider for retention of the Applicant at his present place of posting at Bhubaneswar office (Respondent No.3) for the ends of justice.

AND

Be further pleased to issue any other/further order(s) or direction (s) as deemed fit and proper in the circumstances of the case.

AND

The cost of the Application may kindly be allowed.

AND

For such kind act, the Applicant shall as in duty bound ever pray.”

2. The applicant, who initially joined as Topographical Trainee on 16.1.1991 and he was promoted as Officers Surveyor and was transferred to the office of the respondent No. 3 at Bhubaneswar on 7.4.2011. He is aggrieved by the impugned order dated 6.3.2019 (Annexure-A/3) transferring him to Kolkata mainly on the grounds that the impugned order violated the transfer policy, 2015 of the respondents (Annexure-A/2) and the DOPT's OM dated 30.9.2009 (Annexure-A/2A of the OA). He has also cited the illness of his wife as another reason for his continuance at Bhubaneswar. He had filed a representation dated 11.3.2019 (Annexure-A/6) before the respondent No. 2 and the same was rejected vide order dated 29.4.2019 (Annexure-

A/7). Thereafter, the applicant submitted another representation dated 8.5.2019 (Annexure-A/8) which was also rejected by a speaking order dated 26.6.2019 (Annexure-A/9).

3. The applicant has stated in the OA that the order at Annexure-A/7 did not consider the problems faced by the applicant. It is further stated that the applicant was picked up for transfer whereas there were many others continuing for more than 15-20 years at Bhubaneswar. It is also averred that transfer of some other employees has been cancelled as per the orders at Annexure-A/10 series. It is also averred by the applicant that although he had submitted option for posting on transfer, he has the right to be posted at the same headquarters as his wife in view of the DOPT's OM dated 30.9.2009 (Annexure-A/2A).

4. Counter and short reply filed by the respondents stated that the applicant was relieved prior to issue of the order dated 14.5.2019 of this Tribunal when the order to maintain status quo of the applicant's posting was passed. It is also stated that the applicant in his application dated 30.4.2019 (Annexure-R/4 of the short reply filed by the respondents) had applied for grant of transfer TA advance to join at his place of posting at Kolkata and accordingly, an advance of Rs. 86000/- was sanctioned and released to the applicant and after receipt of the TA advance, the applicant has submitted a letter dated 8.5.2019 for cancellation of transfer order. It is also stated that the applicant has remained at Bhubaneswar for about 23 years out of about 28 years of total service. It is averred in the Counter that the respondents have not violated any statutory rules while passing the order of transfer of the applicant, which is also in accordance with the judgment in the case of Union of India vs. S.L. Abbas in which it was held by Hon'ble Apex Court that unless malafide is proved, the transfer order cannot be challenged. It is also stated by the applicant's counsel that the judgment cited by the respondents in Counter is distinguishable.

5. Heard learned counsel for the applicant who reiterated the points made in the OA. It was argued that the order dated 26.6.2019 (Annexure-A/9 of the OA) has not considered the ground in the applicant's representation that the applicant and his wife are to be posted at the same headquarters as per the DOPT guidelines. It was also submitted by learned counsel for the applicant that in similar cases, the respondents have cancelled the transfer orders as averred in the OA. Regarding TA advance, it was stated that the applicant has already written to the authorities to refund the said advance.

6. Learned counsel for the respondents was also heard. He submitted that the applicant has stayed at Bhubaneswar for about 23 years out of 28 years of his total service and he did not disclose the fact that he had already received the TA advance as applied by him. It was therefore argued that the applicant has not approached the Tribunal with clean hand. Learned counsel also filed a written note of submissions enclosing the following judgments:-

- i) Seemax Construction (P) Ltd. –vs- State Bank of India & Ors. [I.A. 8096/91 in s.No. 1984/91 of Delhi High Court]
- ii) S.P.Chengalvaraya Naidu (Dead) by L.R.s –vs- Jagannath (Dead) by L.R.s & Ors. [AIR 1994 SC 853]

7. The undisputed fact is that the applicant has was posted at Bhubaneswar for about 23 years of his service. On his option, he was posted to Kolkata on transfer vide the impugned transfer order dated 6.3.2019 (Annexure-A/3). As stated in the Counter, the applicant applied for the transfer TA advance and an amount of Rs. 86000/- was sanctioned and disbursed to him.

Then the applicant had a change of mind and he represented for cancellation of his transfer to Kolkata and filed this OA without disclosing the fact that he had applied for transfer TA advance to proceed to Kolkata. Although his wife's posting was at Bhubaneswar, he had applied for advance to proceed to Kolkata on transfer.

8. In the case of Union of India and S.L. Abbas, reported in 1993 AIR 2444, the respondent-employee had challenged his transfer on the ground that his wife was serving at the same place and there were others who were serving at the same station for a longer period. Ground of self illness was also advanced by the employee concerned. It was held by Hon'ble Apex Court as under:-

"Shri Goswami, learned counsel for the respondent relies upon the decision of this Court in Bank of India v. Jagjit Singh Mehta [1992] 1 S.C.C.306 rendered by a Bench of which one of us (J.S. VermaJ.) was a member. On a perusal of the judgment, we do not think it supports the respondent in any manner. It is observed therein:

"..... No doubt the guidelines requires the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees."

(emphasis added) The said observations in fact tend to negative the respondent's contentions instead of supporting them. The judgment also does not support the Respondents' contention that if such an order is questioned in a Court or the Tribunal, the authority is obliged to justify the transfer by adducing the reasons therefor. It does not also say that the Court or the Tribunal can quash the order of transfer, if any of the administrative instructions/guidelines are not followed, much less can it be characterized as malafide for that reason. To reiterate, the order of transfer can be questioned in a court or Tribunal only where it is passed malafide or where it is made in violation of the statutory provisions."

9. In the case of Vinod Kumar Dwivedi vs. Union of India through Secretary, M/O Communication & Information Technology & others (OA No. 37/2013 before Jabalpur Bench of the Tribunal), the issue of transfer on the ground of the DOPT OM dated 30.9.2009 has been considered and it was held by the Tribunal as under:-

"Thus, it is evident from these provisions that the cadre controlling authority is expected to post the spouses to the same station. However, in these instructions, an exception has been made in regard to appointment under the Central staffing scheme which is directly under the DOPT. Further in para-5 of this OM it is provided that, "the Controlling authority should strive to post an employee at the station of spouse and in case of inability to do so, specific reasons in his case, may be communicated to the employee." Thus, these provisions do not provide any right to the employee for posting at a particular station on spouse ground. The respondents have explained the reasons for not accepting the request of the applicant for cancellation of his transfer, in their order dated 12.12.12 (Annexure A-2), specifically stating that, due to acute shortage of officers for maintenance of its services, across the country, especially in the North-eastern region, the applicants request cannot be granted."

10. In this case, the wife of the applicant is an employee of Government of India (Ministry of Health & Family Welfare) who is posted at Bhubaneswar. In such a situation, the paragraph 4(iv) of the DOPT OM dated 30.9.2009 (Annexure-A/2A) states as under:-

"Where the spouse belongs to one Central Service and the other spouse belongs to another Central Service:-

The spouse with the longer service at a station may apply to his/her appropriate cadre controlling authority and the said authority may post the said officer to the station or if there is no post in that station to the nearest station where the post exists. In case that authority, after consideration of the request, is not in a position to accede to the request, on the basis of non-availability of vacant, post, the spouse with lesser service may apply to the appropriate cadre authority accordingly, and that authority will consider such requests for posting the said officer to the station or if there is no post in that station to the nearest station where the post exists."

Paragraph 5 of the DOPT OM dated 30.9.2009 states that if the applicant could not be adjusted at the same place as his wife then the reason for the same be communicated. In this case, it is stated in the order dated 26.6.2019 (Annexure-A/9) that the applicant in his letter dated 12.11.2018 has chosen nearby places for posting at Kolkata, Visakhapatnam and Ranchi, Accordingly he has been posted at Kolkata and the applicant had drawn TA advance for the transfer to Kolkata. It is also communicated that the applicant was posted at Bhubaneswar most of his service period.

11. In the circumstances as discussed above, we are of the considered view that the reasons for posting of the applicant at Kolkata as per the impugned transfer order dated 6.3.2019 (Annexure A/3) have been communicated by the respondents as required by the DOPT OM dated 30.9.2009 and the applicant's posting at Kolkata cannot be considered to be a violation of the DOPT OM dated 30.9.2009 (Annexure-A/2A). Hence, there is no adequate ground for this Tribunal to allow the reliefs prayed for in this OA. However, the applicant, after joining at the new place of posting, the applicant will be at liberty to submit a fresh representation to the competent authority mentioning his difficulties for due consideration by the authority concerned.

12. The OA stands disposed of as above with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)