CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 040/00 245/2018

Date of Order: This, the 2nd day of August 2018

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. N. NEIHSIAL, ADMINISTRATIVE MEMBER

Sri Udesh Chandra Nath
Son of Late Shyama Charan Nath
Deputy Field Officer (GD)
ID No. 14122-X, Special Bureau
Government of India, Bank Colony
Kokrajhar, Post Office – Kokrajhar
District – Kokrajhar, Pin – 783370.

…Applicant

By Advocates: Mr. Adil Ahmed, Ms. R.R. Rajkumari
& Ms. D. Goswami

-Versus-

1. The Union of India, represented by the Secretary
To the Cabinet Secretariat (Special Wing)
Government of India, Room No. 1001, B-1 Wing
10th Floor, Pt. Deendayal Antoyodaya Bhawan
CGO Complex, Lodhi Road, New Delhi, Pin – 110003.

2. The Additional Commissioner (NEZ)
Special Bureau, Government of India
Lum Kongor Spring Side, Post Office – Lower Nongthymmai
Shillong, Pin – 793014.

3. The Deputy Commissioner
Special Bureau, Government of India
Dr. Zakir Hussain Path, Byelane 9

House No. 1014, Suraj Path, Pub Sorumotaria
Dispur, Post office – Hengrabari
Guwahati – 781036, Assam.

…**Respondents**

By Advocate: Mr. R. Hazarika, Addl. CGSC

O R D E R (ORAL)

MANJULA DAS, JUDICIAL MEMBER:

the applicant herein approached before this Tribunal under Section 19 of the Administrative Tribunal Act, 1985 with the following reliefs:

"8.(1) To direct the Respondents to set aside and quashed the impugned Transfer/Posting bearing office order No. 185/2017/SHG under endorsement No. 13/02/2016-SHG (PERS) – 4887 dated 09.06.2017.

8. (2) To direct the Respondents to set aside and quashed Memorandum No. 3/1/2006/KJR/(ESTT) – 126 dated 20.07.2017.

8. (3) To direct the Respondents to continue the Applicant at his present place of posting at Kokrajhar or to post him at Guwahati.

8. (4) To pass any other appropriate relief (s) as may be deem fit and proper by this Hon'ble Tribunal.

8. (5) To pay the cost of the application."

2. Learned counsel for the applicant submitted that against his transfer from Kokrajhar to Mancachar vide order dated 08.05.2017 the applicant approached this Tribunal in OA.123/2017 which was disposed of on 16.05.2017 directing the respondents to consider the representation of the applicant within two months keeping in view of the medical condition of his daughter and till such time his transfer order was stayed. In view of the above order, the respondents passed an order dated 01.06.2017 retaining him at Kokrajhar. However, without passing any speaking order keeping in view the medical condition of the applicant's second daughter as well as the elder daughter is studying in 10th standard and also in total disregard to the circulars No.5/4/2013-Pers.9 dated 22.07.2013 issued by the Cabinet Secretariat and 2/1/2004-Welfare-83 dated 09.01.2004, the applicant has again been transferred from Kokrajhar to Dibrugarh vide office order no.185/2017/SHG dated 09.06.2017.

3. Mr. Ahmed referred the Memorandum dated 09.01.2004 issued by the Government of India, Cabinet Secretariat. Relevant portion of the said Memorandum is being reproduced below:-

> "In case where officials are notice going frequently on leave on medical ground. Full assistance should be extended to such employees with a view to ensuring that they get proper and adequate medical attention. This is one of the most important welfare measures which all controlling officers are expected to take. Hqrs., may be kept informed of such cases."

4. Mr. Ahmed referred the Clause 5 of the Memorandum dated 22.07.2013 issued by the Government of India, Cabinet Secretariat where it is provided as follows:

> "5. Requests, if any, for retention at the present place of posting on medical grounds should be duly supported by certificates issued by Government Hospitals/specialists as stipulated in the Departmental transfer policy."

5. Mr. Ahmed fairly submitted that presently the applicant is aged about 58 years and about to retirement and almost two years left for his retirement from service. As such, his case may be considered in view of the ratio laid down by the **Hon'ble Gauhati High Court in the case of Union of India Vs. Dr. U.K. Mishra WA No. (SH) 17/12** and **Narayan Choudhury vs. State of Tripura & ors. of the Hon'ble High Court of Tripura** reported in **(2000) 1 GLR 519** as well as **Director of School Education, Madras and Ors. Vs. O. Karuppa Thevan and Another** reported in **(1994) Supp (2) SCC 666.**

6. On the other hand, Mr. R. Hazarika, learned Addl. CGSC appearing on behalf of the respondents submitted that the applicant was posted at Guwahati w.e.f. 21.07.2003 to 08.01.2013 for more than 09 years so that he could attend to the medical requirements of his daughter and himself. Thereafter, the applicant was poted to Kokrajhar since 07.02.2013 (till his transfer to Dibrugarh) taking into consideration proximity of the station to his family establishment in Guwahati so as to provide continuity in the medical requirements needed by the applicant and his family.

7. Mr. Hazarika further submitted that on earlier round in filing O.A. No. 040/00123/2017, the applicant had deliberately omitted the fact by pleading that in case he could be placed at Guwahati and Kokrajhar, he may be posted to a place which is directly connected by rail to Guwahati. According to Mr. Hazarika, no government servant or employee of a public undertaking has any legal right to be posted foreover any any one particular place of place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an

incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Since the applicant cannot be retained in Kokrajhar or Guwahati, he was posted to Dibrugarh which is connected by rail and also has good medical facilities.

8. Mr. Hazarika submitted that the applicant had received the relieving order dated 20.07.2017 with protest as he was on medical leave as advised by the doctor. However, the attendance record and the statements of the staffs of FIP, Kokrajhar including the in-charge clearly indicated that the applicant had attended office on 20.07.2017. There is also no record of the applicant that he had applied for medical leave on the same day i.e. 20.07.2017. It is therefore, evident that the applicant had deliberately mis-represented the fact again before this Tribunal. On each & every occasions, the applicant approached this Tribunal whenever a transfer order is issued against him.

9. Heard the learned counsel, perused the pleading and material placed before us. We have noted that vide impugned

order dated 09.06.2017 (so far the applicant is concerned), applicant was sought to be transferred from FIP, Kokrajhar (under Guwahati sector) to SB, Dibrugharh.

10. Before going to all aspect, we rather feel the aspect i.e. age factor. Presently applicant is aged about 58 years and about to retirement and almost two years left for his retirement from service. The exigencies of service for transferring the applicant at the age where even Govt. of India policy does not permit normally. Always exception is there.

11. It is the policy of the Govt. of India that in case of an officer due to superannuation within two years, posting to station of choice shall be given due wieghtage. There is an objective based on consideration of welfare behind such provision in the transfer policy as it would a person about to retire after a long and devoted service to make arrangements for settling down thereafter with his family, acquire a house if not already done and to make necessary arrangement for his superannuated life. **In Union of India Vs. Dr. U.K. Mishra WA No. (SH) 17/12, the Hon'ble Gauhati High Court** has held that –

> "Fairness requires that if a policy has been laid down, the same may be deviated from only if there is any reason to do so. If no reason is forthcoming, the express of power of transfer in violation of a laid down policy may be held to be arbitrary."

In Narayan Choudhury vs. State of Tripura & ors. (2000) 1 GLR 519, the Hon'ble High Court of Tripura has held that –

> "The petitioner is retiring towards the end of 2000 and he has to serve hardly one and half years, no practical purpose will be served by asking the writ petitioner to proceed to his place of posting at Gomit just for a period of 5/6 months."

In **O. Karuppa Thevan (supra),** the Hon'ble Apex Court held that –

"Transfer of an employee during mid-academic term is not proper unless exigencies of service are urgent for making such transfer."

12. By taking into consideration the entire conspectus of the case and the ratio laid down above as well as policy of the Govt. of India, we are of the view that as the applicant having only about two years of service for retirement on superannuation, there is no exigency of service by the respondents, as has been made out, no practical purpose will serve for transferring the applicant from Kokrajhar to SB, Dibrugarh. Accordingly, we set aside the transfer order dated 09.06.2017 (so far the applicant is

concerned) as well as Memorandum dated 20.07.2017 and direct the respondents to retain the applicant in FIP, Kokrajhar (under Guwahati sector) till retirement.

13. With the above observation and direction, O.A. stands allowed. No order as to costs.

(N. NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

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