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**BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

O. A. No.350/ 633 of 2020

Jagadis Das, son of Narendra Nath Das, aged about 47 years, working as Pharmacist at Static cum Mobile Medical Unit, Kaliachak, District : Malda, residing at Baliadanga, Kaliachak, District Malda, Pin-732201.

... Applicant

-Vs-

1. Union of India through the Secretary to the Govt. of India, Ministry of Labour & Employment, Shram Shakti Bhawan, Rafi Marg, New Delhi-110001.
2. The Director General (Labour Welfare), 26, Jaisalmer House, Man Singh Road, New Delhi-110011.
3. The Welfare & Cess Commissioner, Labour Welfare Organization, 5th Floor, 2nd MSO Building, Nizam Palace, 234/4, AJC Bose Road, Kolkata-700020.
4. The Deputy Welfare Commissioner (C), Ministry of Labour & Employment, office of the Welfare & Cess

Commissioner, Labour Welfare
Organization, 5th Floor, 2nd MSO
Building, Nizam Palace, 234/4, AJC Bose
Road, Kolkata-700020.

... Respondents

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O.A.350/633/2020

Date of order : 16.09.2020

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

JAGADIS DAS

VS.

UNION OF INDIA & OTHERS
(M/O Labour)



For the applicant : Mr. S.K. Datta, counsel
Mr. S. Roy, counsel

For the Respondents : Mr. S. Paul, counsel

ORDER

Bidisha Banerjee, Judicial Member

The applicant has sought for the following reliefs:-

- "a) An order holding that the non-consideration of the case of the applicant for his transfer to Kolkata or around Kolkata is bad in law and arbitrary;
- b) An order directing the respondents to consider the case of the applicant sympathetically and in view of the facts and circumstances of the case, as well as OM dated 8th October, 2018

(Annexure A-4) for his posting in or around Kolkata within a period as to this Hon'ble Tribunal may seem fit and proper;

c) An order directing the respondents to produce/cause production of all relevant records;

d) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

He has also sought for an interim order restraining the respondents from filling up the vacancies in the posts of Pharmacist at Kankurgachi and Naihati pending final decision in this matter.



2. At hearing ld. counsel for the applicant would submit that his client would be satisfied if his representations for his posting at Kolkata or around Kolkata on medical grounds as a care giver to his dependent son who is suffering from chronic Beta Thalassemia and to his aged father who is suffering from Cancer, is considered in terms of the O.M. dated 8th October, 2018 which exemplifies that a Government employee who is a care-giver of dependent son/parents suffering from Thalassemia etc. may be exempted from routine exercise of transfer/rotational transfer.

3. The O.M. dated 8th October, 2018 is reproduced below for ready reference:-

F. No. 42011/3/2014-Estt.(Res)
 Government of India
 Ministry of Personnel, Public Grievances & Pensions
 Department of Personnel and Training

North Block, New Delhi
 dated the 08th October, 2018

OFFICE MEMORANDUM

Subject: Exemption from the routine exercise of transfer/rotational transfer.

Considering that transfer of a Government employee who serves as the main care giver of persons with disability would have a bearing on the systematic rehabilitation of persons with disabilities, the Government issued OM of even number dated June 6, 2014 to exempt such employee from routine exercise of transfer/rotational transfer, subject to administrative constraints.

2. The scope of disability initially had covered (i) blindness or low vision (ii) hearing impairment (iii) locomotor disability or cerebral Palsy (v) leprosy cured (v) mental retardation (vi) mental illness and (vii) multiple disabilities, which subsequently, vide OM of even number dated November 17, 2014 and January 5, 2016, was further extended to include 'Autism', 'Thalassemia' and 'Haemophilia'.

3. With the enactment of the Rights of Persons with Disabilities Act, 2016 on April 17, 2017, the following instructions are issued in supersession of the above-mentioned OM of even number dated June 6, 2014, November 17, 2014 and January 5, 2016 with regard to the eligibility for seeking exemption from routine exercise of transfer/rotational transfer.

(i) A Government employee who is a care-giver of dependent daughter/son/parents/spouse/brother/sister with Specified Disability, as certified by the certifying authority as a Person with Benchmark Disability as defined under Section 2(r) of the Rights of Persons with Disabilities Act, 2016 may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints.

(ii) The term "Specified Disability" as defined in the Schedule to the Rights of Persons with Disabilities Act, 2016, covers (i) Locomotor disability including leprosy cured person, cerebral palsy, dwarfism, muscular dystrophy and Acid attack victims (ii) Blindness (iii) Low-vision (iv) Deaf (v) Hard of hearing (vi) Speech and language disabilities (vii) Intellectual disability including specific learning disabilities and autism spectrum disorder (viii) Mental illness (ix) Disability caused due to: (a) Neurological conditions such as Multiple sclerosis and Parkinson's disease (b) Blood disorder- Haemophilia, Thalassemia and Sickle cell disease and (x) Multiple disabilities (more than one of the above specified disabilities) including deaf blindness and any other category of disabilities as may be notified by the Central Government.



(iii) The term 'Specified Disability' as defined herein is applicable as grounds only for the purpose of seeking exemption from routine transfer/ rotational transfer by a Government employee, who is a care-giver of dependent daughter/son/parents/spouse/brother/sister as stated in Para 3(i) above.

4. All the Ministries/Departments are requested to bring these instructions to the notice of all concerned under their control.

G. Srinivasan
(G. Srinivasan),
Director (Res)
Tel.: 2309 3074

4. Accordingly without entering into the merits of the matter we dispose of this O.A. with consent of both sides, with a direction upon the Respondent No.3 i.e. The Welfare and Cess Commissioner, Labour Welfare Organisation, Kolkata or any other competent authority to look into the grievance of the applicant in the light of the provisions as contained in O.M. dated 08.10.2018 and pass appropriate orders as per law within 4 weeks. Till such time the applicant may not be compelled to join his place of transfer.

5. No costs.



(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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