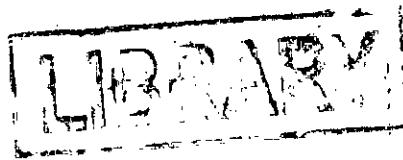


CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/00644/2020

Date of order: 10.9.2020

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sri Manoj Kumar Naskar son of late
Bholanath Naskar,
Aged about 51 years,
Working as Sr./Auditor posted at
PC of (Fys), Kolkata, residing at Ukilpara(North)
Ward No.03, Baruipur,
Kolkata-700144.

.....Applicant

-Versus-

1. Union of India
Service through the Secretary,
Ministry of Defence (Finance)
North Block,
New Delhi-110011.
2. Principal Controller of Accounts (Factories)
"Ayudh Bhawan",
10A, S.K. Road,
Kolkata-700001.
3. Controller General of Defence Accounts,
Ulan Batar Road, Palam,
Delhi Cantonment,
Pin – 110010.

.....Respondents

For the Applicant : Mr. M.K. Bandyopadhyay, Counsel

For the Respondents : Mr. P.N. Sharma, Counsel

ORDER (Oral)Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached this Tribunal under Section 19 of the
Administrative Tribunals Act, 1985 praying for the following relief:-

"a) An order quashing and/or setting aside the impugned transfer order of the applicant from PC of A (Fys), Kolkata to Medak dated 18.04.2019 and order dated 30.07.2020.

- b) An order directing the respondents concerned to consider the representation dated 14.02.2020 and 18.08.2020.
- c) Any other order or further order/orders as to this Hon'ble Tribunal may sum fit and proper."

2. Heard both Ld. Counsel. The matter is taken up for disposal at the admission stage.

3. Ld. Counsel for the applicant would submit that the applicant, who had initially joined the respondent authorities in 1994 as a Clerk, was subsequently promoted as an Auditor, and thereafter as a Sr. Auditor.

That, on 18.4.2019, a transfer list of Sr. Auditor/Auditor/Clerk was issued whereby the applicant was transferred from Kolkata to Medak. On 5.11.2019, the applicant indicated his choice of postings at Tejpur, Guwahati & Shillong, particularly, on the ground that his spouse was serving at S.E. Railway at Kolkata and, there were dependent children in his family.

The applicant would further argue that, as per Para 8(2) of the transfer policy dated 24.8.1994, the applicant, being entitled to exemption from transfer/deferment, preferred representations on 14.2.2020 which was rejected by respondents' order dated 30.7.2020 and the applicant appealed against the said rejection order by a further representation dated 18.8.2020, praying for cancellation of the orders dated 18.4.2019 and 30.7.2020 respectively. As the respondent authorities failed to respond positively to his representations, being aggrieved; the applicant has approached this Tribunal praying for the above mentioned relief.

The applicant would rely on the transfer policy dated 28.3.2014 at Annexure A-4 to the O.A., and, particularly, Clause 3.1 thereof, which refer to transfer from Hard Stations:-

[Signature]

"3.1 A tenure will be fixed for hard/tenure stations. An individual who has completed his/her prescribed tenure at a hard/tenure station will be asked to give three stations of choice, in order of preference. He/she will be accommodated at his/her first choice station as far as possible as per administrative feasibility. This shall, however, not be applicable to the staff belonging to the same region and their repatriation to choice stations shall be considered as per turn. An individual will be asked to serve for maximum two terms at hard/tenure stations in the entire service period."

Further reliance is placed on para 4 of the said policy which refers to "Manning of vacancies at hard/tenure stations":-

"4. **Manning of vacancies at hard/tenure stations:**

Selection of Staff for manning vacancies at hard/tenure stations will be made from amongst the following:-

- (i) Volunteers for that station.
- (ii) Station seniors who have never served at hard/tenure stations on inter-se seniority basis determined on the basis of length of service at present station (s) beyond the minimum tenure prescribed.
- (iii) Individuals who have completed their tenure at other stations, and have served earlier at a hard/tenure station for the prescribed period. The criterion for selection will be same as laid down above, except that the person, who had served earliest at a hard/tenure station, will be moved first.

However, transfer to five centrally controlled hard stations of J&K region will be carried out as per policy for the region so specified by the CGDA's office from time to time."

Ld. Counsel for the applicant would also bring to our notice that although the respondents had directed that the applicant was to be released only on 31.8.2020 and the Tribunal had recorded the said fact in its daily orders dated 28.8.2020, the respondents have most unfairly postponed his release to 26.8.2020, a contemptuous act being guilty of violation of the Tribunal's daily order.

4. Ld. Counsel for the respondents would vociferously argue that the applicant is not entitled to the benefits of choice posting as already intimated vide respondents' communication dated 30.7.2020 (Annexure A-4 to the O.A.), which states as follows:-

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Office of Principal Controller of Accounts (Fys)
10-A, S.K. Bose Road, Kolkata - 700 001

No. 2405/AN-II/TC/Appl/Staff/Vol-XXIII Dated: 30.7.2020

To

O/o the CGDA
(AN-X Section)
Ulan Batar Road, Palam,
Delhi Cantt - 110 010

Subject : Transfer Establishment DAD : Shri Manoj Kumar Naskar,
SA/8336687

Please find enclosed an application dated 14.2.2020 in respect of Shri Manoj Kumar Naskar, SA/8336687 requesting for change of station of transfer from Medak to any Hard Station having tenure of 2 years.

Shri Manoj Kumar Naskar, SA/8336687 was ordered for transfer to AO OF Medak from MO, PCA (Fys) Kolkata vide HQrs Office Letter No. AN/IX/10050/10-2018/TR-183 to 913 (Srl. No. 849) dated 18.4.2019. Subsequently, he had been granted deferment upto 31st March, 2020 vide HQrs Office Letter No. P/10/10062/6/2019 dated 30.8.2019 on education grounds of his daughter who is presently studying in Class-XII.

Now, in his application dated 14.2.2020 he has mentioned the following grounds for consideration of the Competent Authority:

(i) His son is studying B.Sc (Hons.) on 2nd year and his wife is currently serving in South Eastern Railway at Kolkata. Due to shifting duty, his wife gets less time to look after his children. He has also enclosed the relevant documents for the same.

As such, he is requesting for transfer to any hard station like Dumduma/Guwahati/Shillong/Tezpur/Gopalpur/Bolangir/Varangaon having tenure of 2 years in order to enable him to take continuous care of his children after return to his home station.

In this connection, it is pertinent to mention that his earlier application dated 05.11.2019 for change of place of posting from AO, OF Medak to any hard station having tenure of 02 years was not considered by this office as the individual was already on deferment upto 31/03/2020.

In view of the above, request for change of station of transfer in respect of the above mentioned individual along with the connected documents is forwarded herewith for consideration please.

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This issue with the approval of PCA (Fys).

Enclo: As stated above

(PRAVEEN RANJAN)
Jt. Controller of Accounts (Fys)

Copy to:

The Officer in Charge
T-Section M.O. Local

As per decision of the Competent Authority, the application of the individual has been forwarded to HQs Office. However, the individual may please be relieved on 31.8.2020 under intimation to all concerned provided nothing adverse against him has come to your notice.

(SUBHANKAR CHATTERJEE)
Sr. Accounts Officer (AN)"

Ld. Counsel for the respondents would also place reliance on the guidelines of Annual Voluntary List, 2018, particularly, para 2.2. of the same, namely, that

"The volunteers who are willing to get posted to the stations of their choices must apply through the current list i.e. the Annual Volunteer List for the year, 2018."

so as to reiterate that the last date for submission of such option has expired on 30.6.2018, and, that the applicant had never opted for inclusion in the Annual Volunteer List in 2018 or thereafter, and, accordingly, is debarred from extending his choice for inclusion in the Volunteer List as per the transfer policy of 28.3.2014.

5. Although the guidelines for Annual Volunteer List, 2018 which has been furnished before us during hearing indicates that the last date of the consolidated report to be 30.6.2018, the guidelines of AVL, 2019 have not been so furnished. It is also undisputed fact that the applicant had never applied in the appropriate format following the appropriate procedure

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for inclusion in the AVL and had only indicated his choice of posting in North East/Orissa after receipt of his transfer order to Medak.

Ld. Counsel for the respondents would also highlight that the individual is on deferment upto 31.3.2020.

6. Admittedly, the applicant has failed to apply following the appropriate procedure in inclusion in the AVL. At the same time, his period of deferment upto 31.3.2020 is over, and, hence, we would, in the interest of justice, grant the applicant liberty to appropriately apply for inclusion in AVL as per procedure contained in the relevant guidelines and would further direct the respondent authorities to decide on the same in accordance with law and within a period of 12 weeks from the date of receipt of such application/report.

In the event such application is made after abiding by the proper procedure, the respondents may not take coercive action against the applicant till disposal of his application/report by the competent authority, subject to availability of vacancies in the stations of his choice.

7. With these directions, the O.A. is disposed of. There will be no orders on costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP