

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

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MA 350/318/2020
(Arising out of O.A.350/509/2020)

Date of Order: 26/11/2020



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

Union of India & Ors.
(Controller of Quality Assurance)

..... Petitioners/ Respondents in O.A.

-Versus-

Sri Debabrata Sinha

..... Opposite Party/Applicant in O.A.

For the Petitioner(s) : Mr. S.Paul, Counsel

For the Respondent(s) : Mr. P.C.Das, Counsel

ORDER

Bidisha Banerjee, Member (J):

This Misc. Application has been preferred seeking vacation of interim order dated 22.07.2020 wherein and whereunder this Tribunal having noted that the official having 3 years or less service for superannuation were entitled to exemption from rotational transfer in terms of para 10(a) of the Transfer Policy dated 10.02.2017, had ordered the following:

"2. Ld. counsel for the applicant would submit that the applicant has crossed 57 years of age and is entitled to get exemption from rotational transfer in terms of the policy dated 10th February, 2017 (at page 73 of the O.A) in reference to para 10(a), which reads as under:

"Para 10(a): Officials having 03 years or less service for superannuation, will be exempted from rotational transfer."

3. *In view of the fact that the applicant shall be released on or before 31.07.2020 and extreme urgency in the matter, issue notice to the respondents to engage a counsel with suitable instructions on the next date.*

4. *Respondents to file reply to disclose why the applicant has been transferred in violation of the transfer policy which exemplifies that officials having less than 03 years will be exempted from rotational transfer.*

5. *Since the applicant has been debarred from preferring representation due to insertion of the clause in the said transfer order and is as such prejudiced, ad interim order of stay of the transfer order dated 10.07.2020 qua the applicant for a period of 14 days, is issued.*"

2. The respondents have been very prompt with their reply. In their reply they have disclosed that the applicant had misled this Tribunal on 22.07.2020 with his submission that the applicant has crossed 57 years of age and, therefore, is entitled to exemption in terms of Transfer Policy and has obtained an *ex parte* stay inasmuch as the applicant is yet to attain 57 years of age. In terms of policy he is entitled to exemption only when he crosses 57 years and has less than 3 years of service left.

3. Ld. Counsel for the applicant would invite our attention to page 56 of the O.A. wherefrom it appears that the applicant Debabrata Sinha, AE(QA) was recommended for retention for one year due to exigency of service by the Lt Col Dy. Controller, one B.J.Naidu. Ld. Counsel would vociferously plead that in view of such recommendation he was entitled to retention for atleast one more year, the recommendation being made in the month of March, 2020.

4. On the other hand, Ld. Counsel for the respondents would vehemently opposed the prayer on the ground that the applicant has not approached this



Tribunal with clean hands and having misled his Tribunal to obtain an interim order he does not deserve any further extension of the interim order.

5. At this juncture, Ld. Counsel for the applicant would invite our attention to a decision of the Principal Bench in O.A. 2791/2017 dated 17.12.2018 as contained in Annexure-A/10 of the O.A. that the applicants in the said O.A., who had more than 3 years of service left, were granted a respite by the Bench having noted that as on the date of hearing of the order they were covered for exemption from rotational transfer policy and they were very close to the prescribed period when the transfer orders were issued.

6. We would discern that the order passed by the Principal Bench does not lay down the law that in all the cases where the applicants are close to 3 years of superannuation would be entitled to exemption in terms of rotational transfer policy, which explicitly prescribes less than 3 years of service left to superannuate, to be entitled for exemption. Hence, we are of the considered opinion that the applicant does not legally deserve an exemption in terms of the transfer policy.

7. However, we cannot totally brush aside the view taken by a Co-ordinate Bench. Hence, we direct that the respondents may consider his claim in terms of the Principal Bench order and pass an appropriate order within four weeks from the date of receipt of a copy of this order, whereafter the interim order shall stand vacated. We accordingly disposed of the M.A.

8. Place the O.A. for final disposal on 21.12.2020.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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