

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA



No. O. A. 350/00102/2021

Date of order: 4.6.2021

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

Swarup Nandi, Son of Late Shambhu Nath
Nandi, Aged about 42 years, Working for the
post of Assistant Accounts Officer (in short
AAO) in Gun & Shell Factory, Kolkata and
Residing at 110/6, Talpukur Road, New
Barrackpore, P.O. & P.S. New Barrackpore,
Kolkata - 700 131.

..... Applicant

- V E R S U S -

1. Union of India, Service through the Secretary
to the Government of India, Ministry of Defence,
South Block, New Delhi - 110 011.

2. Controller General of Defence Accounts,
Ulan Batar Marg, Palam, Delhi Cantonment,
Pin - 110 010.

3. Senior Deputy Controller General of
Defence Accounts (Admn.), Ulan Batar Marg,
Palam, Delhi Cantonment, Pin - 110 010.

4. Principal Controller of Accounts (Factories),
Ayudh Bhavan, 10A, Sahid Khudiram Bose Road,
Kolkata - 700 001.

5. Assistant Controller of Finance & Accounts
(Factories), Gun & Shell Factory, Cossipore,
Kolkata - 700 002.

6. Senior Accounts Officer (Fys.),
Govt. of India, Ministry of Defence (Fin),
Gun & Shell Factory, Cossipore, Kolkata - 700
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.... Respondents

For the Applicant : Mr. S.K. Dutta, Counsel
Mr. B. Chatterjee, Counsel

For the Respondents : Mr. D. Chakraborty, Counsel

ORDER

Per Ms. Bidisha Banerjee, Judicial Member:

This Original Application is a sequel to an earlier O.A. numbered 1214/2020 which was disposed of with the following order:

"3. The facts, in brief, as submitted by Ld. Counsel for the applicant is that the applicant is working as Assistant Accounts Officer at AOGSF, Cossipore, Kolkata, and had preferred a representation on 25.2.2020 (Annexure A-1 to the O.A.) citing three choice stations at Kolkata, Panagarh and Barrackpore respectively.

That, the authorities, however, issued an order on 23.10.2020 in which the applicant was posted on promotion as PAO (Ors) ARTY, Nasik, Maharashtra.

The applicant thereafter preferred a representation on 10.11.2020 (Annexure A-3 to the O.A.) primarily stating that his wife is a Central Government employee in Kolkata, that his family comprises infant children as well as an elderly parent and would also cite difficulties he would encounter during the COVID 19 situation. The said application, however, remains pending, and Ld. Counsel would urge that the respondents be directed to consider the same, particularly, in the light of DOP&T O.M. dated 30.9.2009 para (iv), annexed at Annexure A-4 to the O.A.

4. As none appears on behalf of the respondents to confirm whether such representation has been decided upon, in the interest of justice, we would hereby direct the addressee respondent authority or any competent respondent authority to decide on the representation of the applicant dated 10.11.2020 (Annexure A-3 to the O.A.) within a period of 8 weeks from the date of receipt of a copy of this order.

The said authority shall decide in accordance with law, and, particularly, in the light of DOP&T O.M. dated 30.9.2009 as well as transfer policy guidelines of the respondents and convey such decision in the form of a reasoned and speaking order.

Ld. Counsel for the applicant would submit that the applicant is yet to be relieved from his parent place of posting.

Accordingly, the respondent authorities shall not take coercive steps to dislocate the applicant from his present place of posting till disposal of his representation.

5. With these directions, the O.A. is disposed of. No costs."

2. The respondents issued a speaking order dated 07.01.2021 (A-6) as under:-

"7. Whereas, the request of Shri Swarup Nandi, AAo/8335422 regarding his retention at Kolkata station or areas surrounding to Kolkata viz. Barrackpore, Panagarg or Balasore on his promotion to AO's grade has already been considered by the Defence Accounts Placement Board twice i.e. at the time of officer's promotion to AO's grade and after receipt of applicant's representation dated 10.11.2020. As no vacancy exist at the choice stations preferred by the applicant and also considering the facts that these stations are often preferred as choice station by the SAOs/AO serving at Hard/Tenure stations when they repatriate after completion of Hard/Choice Station tenure and taking account officer's long stay at Kolkata, as the officer has served for more than ten years at Kolkata station in two tenures (10.12.2004 to 31.12.2020) and 09.06.2016 to till date), the request of the applicant couldn't acceded to.

3. Assailing the order, the applicant in this O.A. has sought for the following relief:

- "(a) An order do issue directing upon the respondents to modify the Posting Order dated 23.10.2020 issued by the respondent authority being 23.10.2020 issued by the respondent authority being No. AN/II/2151/DPC/AAO to AO/DPC 2020/VII by favouring posting to the applicant in Kolkata/Near Kolkata.
- (b) An order quashing and/or setting aside the Speaking Order dated 7.1.2021 and the Release Order dated 12.01.2021.
- (c) An order directing the respondents to produce/cause production of all relevant records.
- (d) Any other or further order or orders or direction as to Your Lordships may deem fit and proper."

4. The matter was heard on several occasions when the respondents' Counsel was directed to obtain instructions about availability of the vacancies at Panagarh, Barrackpore etc. One such daily order stands thus:

"Heard Id. Counsel for both sides.

2. At hearing, Id. Counsel for the applicant would place an order dated 24.5.16, whereby the applicant was transferred from PCDA (P) Allahabad to Kolkata and posted at AO GSF Cossipore and one Paresh Chandra Shil from LAO (Army) Shillong to Kolkata.

Ld. Counsel for the applicant would also draw by attention to the list of AAOs promoted to the grade of AO against the vacancy year 2020, to show that while the said Paresh Chandra Shil has been retained at Kolkata on his promotion, the applicant who has prayed for posting at Panagrah or Balasore

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in the event there is no vacancy in Kolkata, has not been considered and has been sent to Nasik, which is far away from his present place of posting.

Respondents have ignored his representation where he has sought for consideration in view of the fact that his wife is a central government employee who has to single handedly look after the welfare of the infant, who is 8 months' old, and a minor son 3 years and 6 months, and her aged ailing mother in law."

3. It appears that the rejection of prayer is non availability of vacancies as inferred from page 6 sub para (a) of the reply, where the respondents have stated as follows:

"(a) Vacancies in a particular station in AAO's grade and that in Accounts Officer's grade are two different issues. When an AAO gets promoted to AO's grade, his retention or posting to his choice station depends on the vacancies available at that particular station."

4. Ld. Counsel for the applicant would allege that there are vacancies at Kolkata and in Panagarh and would draw attention to an RTI reply dated 29.01.2021, as contained at Annexure SA-1 to the supplementary affidavit, that, in Kolkata, there are 3 additional vacancies which are manned by officers by way of giving them additional charges, while in Panagarh, there 01 vacancy. Ld. Counsel also draw my attention to a communication dated 20.01.2021, at Annexure SA-2, which shows that in Barrackpore Air Force, there is vacancy of AO.

5. Accordingly, respondents are directed to take instructions as to why the applicant cannot be posted for the time being at his choice of place of posting since it appears that there are vacancies available for his consideration and his prayer has been rejected only on the ground that no vacancies are available or exists at the choice of station preferred by him.

Respondents while giving instructions to their counsel should also bear in mind that DOPT OM dated 30.09.2009 mandates posting of husband and wife at the same station in case both are central government employees and if the vacancies are available at the places where the other spouse is posted and that the wife, who is posted in CAT, Kolkata Bench cannot be transferred to Nasik.

6. Applicant is granted 2 weeks to file rejoinder.

7. List the matter on 31.03.2021 at 1:45 p.m. interim order, if any, to continue till the next date.

As prayed for, plain copy of this order be handed over to both sides."

5. After several opportunities, the respondents have disclosed as under:-

"To
The Shri Dipnarayan Chakraborty, CGSC,
High Court Calcutta
(Email ID: dipnarayanchakraborty@gmail.com)

Subject : OA No. 102 of 2021 filed by Swarup Nandi vs. UOI & Ors before the Hon'ble CAT, Kolkata Bench.

Reference : Your letter dated 19.04.2021 received through e-mail.

With reference to your above cited communication it is submitted that the views of the Department has already been incorporated in Para 4(a) & (b) of the parawise comments submitted before the Hon'ble CAT Calcutta Bench wherein it was informed that 3-4 vacancies available at Kolkata and surrounding stations (which includes Panagarh also) is vacant as SAO/AO posted at Hard station in North East are due for repatriation.

In view of above, it is requested to bring the aforesaid position before the Hon'ble Tribunal accordingly on the next date on hearing fixed on 27.04.2021.

Your kind cooperation in this regard is highly solicited.

Jt. Controller of Accounts(Fys)"

6. We have considered the rival contentions and noted the following discernible facts:-

I. The applicant has rendered service at the following places:

- (i) As Clerk at CDA, Guwahati from 12.3.2001.
- (ii) As Section Officer at IFA (EC) Fort William from 10.12.2004, after clearing SAS Part II Exam.
- (iii) At PCDA (P) Allahabad from 11.1.2011.
- (iv) As AAO at AO GSF Cossipore on 9.5.2016.
- (v) He is on transfer to PAO (ORs), Nasik under PCDA (SC), Pune on his promotion to AO grade vide posting order dated 23.10.2020.

II. The page 3 of the supplementary affidavit of applicant states that some employees of the same department namely, (1) Goutam Kumar Hui, (2) Abhijit Kundu, (3) Paresh Chandra Shil and (4) Sanat Majhi, (5) Uttam Das and (6) Sajal Kumar Mondal are staying in Kolkata for more than 15 years, while the applicant has already worked for 9 years outside Kolkata. The discriminatory attitude on the part of the respondents is palpable.

III. He had prayed on 10.11.2020 as under:-

"4. Further Sir, my wife is also a Central Government employee, posted in the office of the Central Administrative Tribunal, Nizam Palace, Kolkata. Therefore, my posting to Nasik, Maharashtra, put her in great difficulty, along with two infants and my home in Kolkata.

5. Moreover Sir, presently I had been diagnosed COVID 19 Positive, (copy of report and prescription attached), and I am unable to move out of my home in Kolkata.

6. That Sir, in view to the present situation under COVID 19 and also as my wife is a Central Govt. Employee, posted in Kolkata, I may please be kept at any office located in Kolkata or surrounding area like Barrackpore, Panagarh, Balasore on my promotion."

Therefore, he was ready to move even to Balasore, but his prayer went in vain.

IV. DOPT O.M. dated 30.9.2009 (Annexure A-4) on Posting of husband and wife at the same station reads as under:-

"In view of the utmost importance attached to the enhancement of women's status in all walks of life and to enable them to lead a normal family life as also to ensure the education and welfare of the children, guidelines were issued by DOPT in OM No. 28034/7/86- Estt(A) dated 3.4.86 and No. 28034/2/97-Estt (A) dated 12.6.97 for posting of husband and wife who are in Government service, at the same station. Department had on 23.8.2004 issued instructions to all Mins/Depts. to follow the above guidelines in letter and spirit.

In the context of the need to make concerted efforts to increase representation of women in Central Government jobs, these guidelines have been reviewed to see whether the instructions could be made mandatory.

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On the basis of the 6th CPC Report, Govt. servants have already been allowed the facility of Child Care Leave which is admissible till the children attain 18 years of age. On similar lines, provisions of OM dated 12.6.97 have been amended.

The consolidated guidelines will now be as follows:

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(iv) 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 posts exists. In case the 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

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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."

Therefore, the applicant has a right to seek retention/adjustment at nearest station on spouse ground.


V. In the instant matter, the wife of the applicant cannot seek her transfer to Nasik.


7. In the aforesaid backdrop, the respondents are directed to allow the applicant to be posted at any of the available vacancies of AO at Panagarh/Barrackpore.

8. Orders be issued within one month from the date of receipt of a copy of this order.

9. Interim Relief to continue till then.

10. O.A. is accordingly disposed of. No costs.


(Dr. Nandita Chatterjee)
Administrative Member


(Bidisha Banerjee)
Judicial Member

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