

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

LIBRARY

O.A. No.350/01336/2019.

Date of order : This the 8 Day of March, 2021.

Hon'ble Mrs. Bidisha Banerjee, Judicial Member

Hon'ble -Dr.(Ms) Nandita Chatterjee, Administrative Member



Goutam Kumar Munian,
Son of Sri Ajit Kr. Munian,
Aged about 45 years,
Working as Sr. Geologist at Geological
Survey of India, Eastern Region,
Bhu-Bijnan Bhawan, Salt Lake,
Residing at A/1 404, Kendriya Bihar,
Pahse-II, Durganagr,
Kolkata - 700059.

..... Applicant.

-Versus-

1. Union of India,
Service through the secretary,
Government of India,
Ministry of Mines,
Shastri Bhawan,
Dr. Rajendra Prasad Road,
New Delhi - 110 001.
2. The Director General,
Geological Survey of India,
27, J.L. Nehru Road,
West Bengal, Kolkata - 700016.
3. The Additional Director
General and HoD,
Geological Survey of India,
Eastern Region,
Bhu-Bijnan Bhawan,
DK-6, Sector-II, Salt Lake,
Kolkata - 700091.
4. The Dy. Director General (HRD),
Geological Survey of India,
Central Headquarters,
27, J.L. Nehru Road,
West Bengal, Kolkata - 700016.

..... Respondents.

Advocate for the applicant : Mr A.Chakraborty

Advocate for the respondents : Mr R.Halder

ORDER

Ms Bidisha Banerjee, Member(J)

The applicant in this O.A has sought for the following reliefs :



"8.(a) Memorandum No. 13/3-Suptd. Geol/DPC-2019/2018/Pers-I dated 22.07.2019 issued by the Respondent No. 2 to the extent of the posting of the applicant at SU: Madhya Pradesh, CR, Jabalpur is not tenable in the eye of law and as such the same may be quashed.

(b) Order No. 456/111/HRD/Legal/2019/20 dated 16.09.2019 issued by respondent No. 4 is not tenable in the eye of law and as such the same may be quashed.

(c) An order do issue directing the respondents to allow the applicant to continue on promotion to the post of Superintending Geologists at his present place of posting or at the places against which options were submitted.

(d) Certify and transmit the entire records and papers pertaining to the applicant's case so that after the causes shown thereof conscionable justice may be done unto the applicant by way of grant of reliefs as prayed for in (i) and (ii), above.

iv) Costs."

2. The brief facts leading to file this application is as under :

The applicant, initially, joined the service of the respondents on 09.07.1997 as Sr. Technical Assistant (G) at Eastern Region was posted at different office in the Eastern Region up to 12.06.2008. He was transferred and posted at SU, Arunachal Pradesh at Itanagar in the same capacity up to 12.08.2012. He was further posted at CHG at Kolkata on 13.08.2012 in the same capacity. He was promoted as Sr. Geologist with effect from 22.10.2013 at Kolkata and further at the Paleontology division at Saltlake with effect from 17.07.2017. Thereafter he was posted at Map and Cartography division of Eastern region. He never objected to his



frequent transfers. The respondents issued a Circular dated 18.09.2017 inviting options from all Group A and B Officers for submission of 3 preferences of postings on transfer. In response to such Circular dated 18.09.2017, the applicant, being a Group-A officer, preferred one representation as well as e-mail communication dated 13.10.2017 requesting for retention at Kolkata and in case of impossibility of the same for posting at Gangtok, Guwahati or Shillong. He was shocked and surprised to learn that although most of the promotes were retained as per their given options or posted as per their choice of posting, he was transferred on promotion to SU: Madhya Pradesh, CR, Jabalpur. Immediately, he preferred a representation dated 25.07.2019 before the respondent No. 2 through proper channel in which he pointed out a) his frequent postings, b) illness of aged parents, c) his neurological and psychiatric problems resulting into continual medical treatment at Government Hospital with a request for retention at Kolkata or consideration of his case as per the options submitted by him.

3. The applicant had alleged that probably such transfer may not have been approved by the Placement Committee and/or his dossier had not been placed before the competent authority to bypass the matter. The applicant has pleaded that he cannot neglect his parents, his father being 93 years old and mother 78 years old. That his effective support is required and they are fully dependant on the applicant. They cannot move even without the help of the applicant. That although the transfer policy provides for compassionate postings owing to personal circumstances of officers and families issues, the same has not been taken care of with respect to the applicant. Aggrieved by the said action he preferred Original Application No. 350/1129 of 2019, which was disposed

of by this Tribunal 20.08.2019 quashing the rejection and remanding the matter back to the respondent No. 2 to issue a reasoned and speaking order conveying the applicant the reason for which he cannot be accommodated at his preferred locations keeping in view the family problems highlighted by him in the representation. Direction was also passed for issuance of appropriate orders within a stipulated period with a further direction not to take any coercive steps in the meantime.



4. In the Speaking Order dated 16.09.2019 issued not by a Competent authority, it was admitted that case of one incumbent had been considered who stayed for 23 years. Applicant would allege contumacious conduct on the part of the respondents in clear violation of the Order dated 20.08.2019 of this Tribunal to the effect that when the matter was remanded back to respondent No. 2 i.e. the Director General, the Dy. Director General could not have issued order on behalf of the Director General. Further applicant would allege that the Respondents misdirected themselves in rejecting the case of the applicant without considering the fact that a few his colleagues who have been serving at Kolkata Offices in similar capacity, have not been affected. That the incumbent named Jayanta Pramanik, appearing at Serial No. 83 of the impugned order of posting, had already served the respondents for a considerable period of time with only one stay for small period at Agartala, had not been disturbed by the respondents rather had been extended with the benefit of promotion at the same station. Similarly, the incumbents named Rama Roy (Rudra) and Dr. Pradip kr. Mukherjee at Serial Nos. 66 and 77 respectively of the impugned order of posting, had already served the respondents for a considerable period of time with only one stay for small period at Guwahati and Shillong. They have not

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been disturbed by the respondents. That although the respondents stated about the availability of sufficient officers of at the said stations and thereby projected non-availability of posts, applicant would allege that various projects are being undertaken by the GSI in each of its units at those stations, for which, the effective service of the Superintending Geologist is needed. That Somanth Sharma, who has been discharging his service at Guwahati Unit i.e. one of the place for which option was submitted by the applicant, has retired within from the month of October, 2019 and there has been no impediment in posting the applicant at such station. One Amiya Kumar Bhuniyan, who worked as Director under respondents, retired from service with effect from 31.08.2019. Similarly, another incumbent named Supriyo Kumar Saha of Kolkata office had already been promoted as Director JAG level, on the occurrence of which some posts have fallen vacant at Kolkata against which the applicant can be considered.

5. Per contra, the respondents would contend that the applicant is posted at Kolkata for nearly 22 years in his entire service career and a little more than 2 years 2 month at NER, Itanagar and that posting to different GSI offices of Kolkata or re-deployment in different divisions within an office or inter-office re-deployment within the city of Kolkata are not to be considered as transfer as per "Transfer and Placement Policy for Group A & B (Gazetted) officers of GSI, 2016". Further that the respondents have considered the applicant's case with sympathy and utmost sincerity but accommodating a JAG level officer as per his/her choice is quite difficult after he served in the same city for 22 years within his last 24 years of service career. That the present promotional transfer of the applicant is neither illegal nor unconstitutional and has been done in the right spirit of

administrative exigencies following the Rules and norms of the order of transfer passed by the competent authority considering all aspects of the department.

The respondents have submitted that "once the applicant not joined and forego the promotional post by non joining within 20th August, 2019, his right to get such post already extinguished in the month of August-September, 2019 and the next candidate in the serial no. already filled up such post."



They have cited the decision in support which are as under:

- (i) In **State of U.P. Vs. Gobardhan Lal, (2004) 11 SCC 402**, the Hon'ble Supreme Court reinforced the above legal proposition in the following words:

"It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service."

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A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the necessities of the administrative needs and requirements of the situation concerned."

- (ii) In **Shilpi Bose (Mrs) v. State of Bihar, 1991 Supp (2) SCC 659**, the Hon'ble Supreme Court held as follows:

"In our opinion, the Courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer order are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one

place to the other. The Transfer orders issued by the competent authority do not violate any of his legal rights..."

6. Ld. counsel would invite our attention to Office Order dated 16.09.1990, relevant portion of which is extracted as under :

"The Geological Survey of India, being the premier national geo-scientific survey organization of the country has to undertake projects / investigations across the length and breadth of the country as per policy directives of Govt. of India. As a result, depending on human resources requirement vis-a-vis projects / investigations in hand, officers/supervisory officers are required to be transferred from one place to another, i.e. from one project / programme / investigation to another project / programme / investigation depending on the functional and operational requirements of the organization in the overall interest of the nation.

The experience of Shri Munian and his services as a Supervisory officer, is required at SU: Madhya Pradesh, Jabalpur for Supervision of one or more projects for better output."

So far as his retention at Kolkata is considered, he has a long cumulative stay of 19 years and 09 months in Kolkata. In fact, in his entire service career, Shri Goutam Kumar Munian has stayed only little more than 2 years outside Kolkata i.e. during his NER posting at Itanagar. Such type of long stay at a particular station by any of the Gr. A or B (Gazetted) officer is against the extant **"Transfer and placement policy for Group-A & B (Gazetted) officers of GSI, 2016"**, violation of which may attract litigations from other officers and not in the larger interest of the department.

The relevant paras of the above policy are quoted below:

- "4.4 The tenure of an officer shall be minimum for a period of 4 years, to a maximum of 5 years at a single location.
- 4.5 On promotion to JAG level transfer to other Region is mandatory.
- 4.7 On transfer at JTS/STS level, after completing the prescribed tenure at a single station the officer can opt for his Home Region. But in this case also on promotion to JAG, transfer to other Region other than Home Region is mandatory.
- 4.8 No officer will be allowed to work at single station for more than **two spells** (Maximum tenure).
- 4.11 A single station means any position in any of the offices of GSI at the particular station. Tenures at Delhi and Faridabad shall be clubbed."

Hence, the above paras of the transfer policy clearly indicate that, the maximum stay of an officer at a particular station should not exceed 10 years.

So far as Shri Munian's preference for transfer to any one of the places like Bhubaneswar, Ranchi, Gangtok, Guwahati, Agartala and





Shillong is concerned, GSI offices located at these places have sufficient no. of Supervisory officers to supervise the approved Items/Project of F.S. 2019-20. The offices at Gangtok, Guwahati, Agartala and Shillong are included under North-Eastern Region (NER), officers posted to these offices have to complete the minimum prescribed tenure. Hence, on promotion to the post of Suptdg. Geologists, most of such officers were retained at their present places of posting to fulfil the requirement. Very few, who have completed their NER tenure, have been transferred out of NER based on the DoPT guideline. This is the reason, not a single officer from the list of officers in Memorandum No. 13/3-Suptd. Geol/DPC-2019/2018/Pers-I, dated 22.07.2019, originally posted at other stations have been posted to Bhubaneswar or NER offices as listed above. So far as Ranchi Office is concerned, one more officer from GSI, Kolkata with a cumulative stay of about 23 years was already given posting before Shri Munian submitted his representation."

7. Heard Ld. counsels for both sides and perused the records.
8. In view of the fact that the applicant has accumulated stay of 19 years 9 months in Kolkata during his entire service career of 34 years, we do not find any merit in the O.A. In the event, the applicant seeks a respite from transfer on promotion he will forego his promotion and request the authorities to retain him at Kolkata to look after his aged ailing parents. Ordered accordingly.

The O.A stands disposed of accordingly. No costs.

(DR NANDITA CHATTERJEE)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)