

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 351/00884/2019

Date of order: 22.2.2021

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

Sri Dulal Roy,
Son of Late N.C. Roy,
Aged about 58 years,
Residing at 346/1, Adarsha Pally,
J.R.R. Road,
Near Sadhana Villa,
Barrackpore,
Kolkata – 700 122,
District – North 24- Parganas,
And working as Junior Engineer,
(Electrical & Mechanical) in the office of
ISSD, APWD, Kolkata,
Nizam Palace,
Pin – 700 020.

.... Applicant

- V E R S U S -

1. Union of India,
Service through the Secretary,
Ministry of Urban Development & Employment,
Nirman Bhawan,
New Delhi – 110 001.
2. The Andaman & Nicobar Administration,
Through the Chief Secretary,
A&N Administration,
Secretariat,
Port Blair,
Pin – 744 101.
3. The Chief Engineer,
APWD,
A&N Administration,
Port Blair,

Pin - 744 101.

4. The Joint Secretary,
PWD,
A&N Administration,
Secretariat,
Port Blair,
Pin - 744 101.
5. The Assistant Engineer,
ISSD, APWD, Kolkata,
CGO Complex,
Nizam Palace,
Kolkata - 700 020.
6. The Engineering Officer to
Chief Engineer,
APWD,
A&N Administration,
Port Blair,
Pin - 744 101.

... Respondents

For the Applicant : Mr. P.C. Das, Counsel
Ms. T. Maity, Counsel

For the Respondents : Mr. R. Halder, Counsel

O R D E R (Oral)

Dr. Nandita Chatterjee, Administrative Member:-

Aggrieved with his order of transfer from Kolkata to Port Blair, the applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, praying for the following relief:-

"(a) To quash and/or set aside the impugned Transfer Order being No. 632 dated 26th June, 2019 being Annexure A-4 of this Original Application by which your applicant has been transferred from ISSD, APWD, Kollkata to Chief Engineer's Office at Port Blair issued by the Chief Engineer, APWD, Port Blair which is utter violation of the Transfer Policy appearing at Annexure A-7 of this Original Application.

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(b) To pass an appropriate Order directing upon the respondent authorities to retain your applicant in the office of ISSD, APWD, Kolkata only for 2 years.

(c) To declare that the impugned transfer order dated 26th June, 2019 is wholly violates the Transfer policy being Annexure A-7 of this Original Application.

(d) Costs;

(e) Any other appropriate relief or reliefs as your Lordships may deem fit and proper."

2. Heard both Ld. Counsel, examined pleadings and documents on record.

3. The applicant would challenge his transfer in the post of Jr. Engineer from the Office of ISSD, APWD, Kolkata controlled by the Andaman & Nicobar Administration, Kolkata to the Sub-Division, APWD, Katchal, on the following grounds:-

(i) That, the applicant has been functioning as overall In-charge on behalf of ISSD, Kolkata as well as the Andaman Bhawan at Salt Lake City Kolkata.

(ii) The applicant had joined the Kolkata office on 11.10.2018 but before one year had lapsed, he was transferred out vide orders dated 26.6.2019 (Annexure A-4 to the O.A.) which is in total violation of the Transfer Policy dated 30.7.2003 (Annexure A-7 to the O.A.) that mandates a minimum tenure of 3 years in Kolkata.

(iii) That, the applicant would be retiring in July, 2021, and, that, the transfer order, so impugned, had been issued just two years prior to his superannuation violating all norms of the transfer policy.

(iv) The applicant is also medically vulnerable as he suffered a cerebral attack and, therefore, is in need of frequent medical check up.

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(v) That, the applicant had represented praying for retention as early as on 1.7.2019, but that such representation has been ignored while issuing the transfer order, so impugned.

4. The respondents, per contra, would argue as follows:-

(i) That, the transfer order has been issued based on a policy decision of the A&N Administration for review and reassessment of the requirement of staff deployed at Chennai / Kolkata / Visakhapatnam by various departments, and, that all other employees including the lady employees have already joined their respective places of posting.

(ii) That, earlier, Kolkata Port was the main Port which handled most of the traffic movement to the Andaman Islands. Further, large vessels such as M.V. Harshabardhan and M.V. Akbar were also originating from Kolkata Port.

That, on account of subsequent developments affecting the navigational depth of Kolkata Port (being a river based Port) as well as the distance of Kolkata of (1260 km from Portblair) being more than that of Chennai (1190 km from Port Blair) and Visakhapatnam (1160 km from Port Blair), the latter two being sea ports as well as natural ports, dependency on the Kolkata Port has been significantly reduced, consequent to which entire staff relating to shipping has been withdrawn from Kolkata.

and, (iii) That, as the maintenance of only one solitary guest house, namely, Andaman Bhawan, has been outsourced, services of a JE level officer is not required therein.

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(iv) Hence, any expenses incurred towards salary and accommodation of APWD Staff in Kolkata is totally infructuous. The applicant was therefore moved to Port Blair to suitably utilize his services in justification of expenditure incurred on him.

(v) Further, when the transfer order was issued on 26.6.2019, the applicant had more than two years service left to retire as per records.

The respondents would place their records regarding reassessment of staff to be deployed, *inter alia*, in Kolkata at Annexure R-1 to the reply and also the minutes of the Meeting of the Hard Case Committee wherein the applicant's representation for retention was considered by such committee which, however did not agree to his prayers.

5. We are, hence, of the considered view that the transfer of the applicant was indeed necessitated by an objective reassessment of staff requirements at Kolkata based on reduced traffic movement with respect to the Kolkata Port, that, such orders were indeed issued in public interest and to best utilize his services in an active capacity as well as to avoid further infructuous expenditure.

By virtue of the ruling in ***B. Varadha Rao v. State of Karnataka, 1986 (3) SLR 60 (SC)***, it is a settled proposition that a government servant is liable to be transferred to a similar post in the same cadre and no government servant can claim to remain in a particular place or post, unless his appointment itself is to a specified non-transferable post.

In ***Jogendra Mohanty v. State of Orissa, 1979 (1) SLR 892***, the Hon'ble Court observed that norms of transfer contained in administrative instructions do not create any enforceable rights in the

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employee for violation of which he could insist for annulment of his transfer orders.

Accordingly, the applicant's challenge to transfer on grounds of violation of transfer norms, fails to succeed.

6. Both Ld. Counsel, however, would agree that the applicant will superannuate on 31.7.2021 and that he was allowed to be retained in Kolkata by virtue of an interim order granted by this Tribunal on 5.7.2019. Hence, the balance tenure of the applicant's service is only for a period of five months.

As admittedly, the applicant is undergoing medical treatment on ground of cerebral attack, and that he is due to superannuate within a very short period, the respondent authorities may consider retention of the applicant till 31.7.2021 and to allow him to superannuate from his posting at APWD, Kolkata. Once he vacates the post on superannuation, the post itself may be reallocated to APWD, Port Blair.

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

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