

13

O.A. No. 248/2005

Order dated: 21-08-2006: The Applicant Shri Rabindra Samal, Regional Provident Fund Commissioner-II, office of the Employees' Provident Fund Organization (Regional Office), Bhubaneswar has come up in this second round of Original Application filed under section 19 of the Administrative Tribunals Act, 1985 challenging his order of transfer dated 17-05-2003 (Annexure-A/3) and the order of rejection of his representation dated 02-06-2005 (Annexure-A/6). His main grievance against the order of transfer is that in terms of the revised transfer policy guidelines of Group A officers in EPF issued by the Employees Provident Fund Organization, Ministry of Labour, Government of India dated 04-03-2004 (Annexure-A/2) tenure of an officer of the grade of RPFC is prescribed for a period of four years; whereas before completion of the said period of four years he has been transferred from his present place of posting. His further stand is that such untimely

AFR

P

transfer would cause serious prejudice to the health condition of his old blind mother who is 74 years, the education of his eldest daughter who is scheduled to appear the ICSE final year examination during March, 2006 and the treatment of his second daughter who is suffering from vitiligo and his continuance in LL.B degree course which he is prosecuting in Rajdhani Law College.

2. Respondent-Department by filing counter have stated that no doubt four years tenure has been provided for a Group A officer in a particular station, but there is no restriction that one cannot be transferred before completion of the tenure in the exigencies of administration/public interest. They have submitted that transfer guidelines also duly authorize the competent authority to carry out transfers in administrative interest in deviation of transfer policy/guidelines. It has been submitted that there were certain complaints against the Applicant which necessitated his transfer from Bhubaneswar even before completion of the normal

tenure. It has also been submitted that the Applicant is holding an All India transfer liability. The competent authority rejected the representation of the Applicant as the said transfer was in public interest. Personal difficulties cannot over ride the administrative exigencies. By stating so, they have opposed the prayer of the Applicant.

3. Heard Mr. Aswini Kumar Mishra, Learned Senior Counsel appearing for the Applicant and Mr. S.S. Mohanty, Learned counsel appearing for the Respondent-Department and perused the materials placed on record. Mr. Mishra, Learned Senior Counsel emphatically highlighted the personal difficulties which would be faced by the Applicant, in case the Applicant is removed from his present place of posting. It has been submitted by him that since the Respondents have deviated from their promises made through the transfer guidelines, the order of transfer needs to be quashed. On the other hand by taking support of various decisions of the Hon'ble Apex Court, Learned Counsel appearing for the

Respondents have submitted that personal difficulties are matters to be decided by the authorities and not by this Tribunal. He has submitted that even if there has been deviation from the principles set forth in the transfer guidelines, this cannot be a ground for quashing the order of transfer.

4. I find that none of the submissions made by Learned Counsel appearing for the Applicant meets the principles decided by the Hon'ble Supreme Court enabling this Tribunal to interfere in the present order of transfer (Ref:- **MRS.SHILPI BOSE AND OTHERS vrs. STATE OF BIHAR AND OTHERS**-AIR 1991 SC 532; **UNION OF INDIA vrs. N.P.THOMAS**-AIR 1993 SC 1605; **UNION OF INDIA vrs. S.L.ABAS** -AIR 1993 SC 2444; **STATE OF MADHYA PRADESH vrs. SHRI ARJUN SINGH** - AIR 1993 SC 1239 ;**ABANI KANTA RAY vrs. STATE OF ORISSA** - 1995 (Suppl.) 4 SCC 169; **UNION OF INDIA AND OTHERS vrs. V.JANARDAN DEBANATH AND ANOTHER** - (2004)4 SCC 245; National Hydroelectric

-5-

Power Corp. Ltd. Vs. Shri Bhagwan (2001) 8 SCC

574; **UNION OF INDIA vrs. H.N.KIRTANIA-** (1989

(3) SCC 445); **STATE OF ORISSA vrs.**

KISHORE CHANDRA SAMAL- 1992 (2) Scale page-

251; **H.STATE OF MADHYA PRADESH vrs.**

S.S.KOURAV- AIR 1995 SC 1056;STATE OF UP &

OTHERS vrs. GOBARDHAN LAL AND D.B.SINGH

vrs. D.K.SHUKLA AND OTHERS -2005 SCC

(L&S)55; **STATE OF U.P. & ORS. Vrs. SIVA RAM**

& ANR.-2005(I) AISLJ 54; DR. N.S.SRIKANTA

vrs. SECRETARY, DEPARTMENT OF HEALTH

AND FAMILY WELFARE SERVICES -2005(1)ATJ

Therefore, I refrain from interfering with the order of transfer as well as the order of rejection of the representation of the Applicant. In view of the above, the stay order dated 06-06-2005 which is operative till today stands vacated.

5. The Applicant entreats that in view of the personal difficulties, the Respondents may be directed to

(2)

reconsider his representation which would be submitted afresh.

6. Considering the submissions it is made clear that it is open to the Applicant to file representation before the Respondent(s) highlighting his personal difficulties and it is for the Respondents to decide his case examining his plea of personal difficulties and administrative necessity for which no order is necessary to be passed.

7. In the result, with the aforesaid observations, this OA is disposed of. No costs.

13/3/19
(B.B.MISHRA)
MEMBER (ADMN.)

A.F.R