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ORIGINAL APPLICATION NO. 789 OF 2005

ORDER DATED: 06.10.05

Heard Mr. H.K.Kar, Ld. Counsel for the applicant. A copy of this O.A. has been served on Mr. S.B.Jena, Ld. Additional Standing Counsel.

2. The applicant has come in this O.A. being aggrieved by the order of transfer issued by Respondent No.2 vide his order No. 521 dated 22.9.05 transferring him from his present place of posting in the office of AAO GE Gopalpur-on-Sea to PAO (ORs) SRC Ramgarh with immediate effect. The grievance of the applicant is that his sudden posting from Gopalpur-on-Sea to Ramgarh has put his family in utter disarray because his daughter 'Kumari Kalyani Moharana' is afflicted with Cerebral Palsy and she is under-going constant care and attention from specialized institutions, like, Chetana Institute for the Mentally Handicapped. Referring to the policy instructions issued by Government of India, Department of Personnel and Training vide their letter dated 15.2.91 and letter dated 5.1.93, he has submitted that he is entitled to posting to a place having facilities with ^{Care} ~~health~~ and education of his medically retarded child. We, however, find that the applicant after receipt of his posting order dated 22.9.05 Annexure-A/4 has not filed any representation before the concerned authority explaining his problems and seeking the protection available to an employee who has a mentally retarded/physically handicapped child for seeking a posting at the place of his choice where facilities are available to take best care of a mentally retarded child. During oral submission, it also

appeared that the order of posting which has been issued in the middle of the year and without notice has also perplexed the applicant and, therefore, he has approached to the Tribunal for relief.

3. Having regard to the facts of the case that the applicant has a mentally retarded child for whose medical care and education, he needs special consideration as provided under Government of India policy decisions, communicated vide letter dated 15.2.91 and letter dated 5.1.93, we decide to ignore the technical objections that may be raised regarding his approaching the Tribunal without exhausting departmental remedies.

4. Having regard to the problems affecting ^{the} applicant and the condition of his daughter, we have no doubt that the Respondents should have taken due care of his problem and should have transferred him, if at all that was unavoidable in the midst of academic session, to a place where facilities are available for taking care of a mentally retarded child like the one the applicant has. We also find that the applicant by his representation dated 18.8.05 brought the matter to the notice of Respondent No.2 that he has a daughter who is medically retarded and for her sake he required posting to a place where the child can get facilities of proper medical care and education.

5. We are ~~dismayed~~ that in spite of the problems affecting the applicant being ~~available~~ ^{made known} to the Respondent No.2 and the declared policy of the Government being to post such employees at a place of their choice, the instant posting order of the applicant at Annexure-4 was done in a

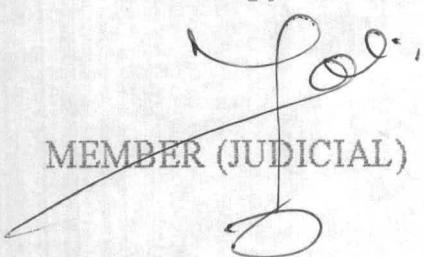
mechanical manner without due application of the mind so far as the case of the applicant is concerned.

6. In the aforesaid circumstances, we stay the order of transfer (Annexure-4) dated 22.9.05 so far as the applicant is concerned and direct the applicant to submit a representation before the Respondent No.2 giving his station/stations of choice for posting where he can have necessary facilities to take care of his child.

7. The applicant is directed to submit the representation within 30 days from the date of receipt of this order and upon receipt of his representation, the Respondent No.2 should dispose of the same with a speaking order within a period of 45 days thereafter. Until then the impugned posting order is stayed so far as the applicant is concerned.

8. With the above direction, this O.A. is disposed of at the admission stage. No costs.

9. A copy of this order be given to the parties for necessary action


MEMBER (JUDICIAL)


VICE-CHAIRMAN