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O.A. No.513/08

ORDER DATED 22nd JUNE, 2009

Coram:

Hon'ble Mr. Justice K. Thankappan, Member (J)

Hon'ble Mr. C.R. Mohapatra, Member (A)

Challenging Annexure-A/3 transfer order the applicant has filed this O.A. on the ground that he has not completed the tenure period as per the guidelines issued and followed by the Department for transfer and posting. Ventilating his grievance, the applicant has already filed Annexure-A/4 representation before Respondent No.2, the Director General/Joint Secretary, Govt. of India, Ministry of Labour, New Delhi. When the O.A. came up for admission on 30.12.2008, on hearing the Ld. Counsel on either side, this Tribunal passed the following order:-

"The operation of the order at Annexure-A/3 is stayed for a period of 30 days during which time the Respondents shall dispose of the pending representation at Annexure-A/4."

However, that order has not been implemented so far. Now, resisting the claim of the applicant the Respondents have filed a reply statement in which it is stated that Annexure-A/3 transfer is effected on administrative reasons and if so, the O.A. may be dismissed.

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2. We have heard Ms. Chitra Padhi, Ld. Counsel for the applicant and Mr. S. Barik, Ld. A.S.C. for the Respondents and perused the records made available to this Tribunal. Ms. Padhi, Ld. Counsel for the applicant invites our attention to the transfer guidelines Annexure-A/2 and submits that the recent transfer is not in accordance with the guidelines as the applicant has not completed 05 years tenure period at the present station. The Ld. Counsel further submits that apart from that the applicant is a member of Scheduled Caste. As per the guidelines of the Govt. of India, persons belonging to Scheduled Caste and Scheduled Tribe shall be given posting on transfer to the place nearer to the station or their native place. Further Ms. Padhi submits that Respondent No.6 has not served at the hard station of Agartala for the tenure period whereas the applicant after serving in Agartala for three tenures continuously was transferred to the present station. If so, the transfer now made, according to the Ld. Counsel for the applicant is irregular and is not in accordance with the guidelines.

3. Mr. S. Barik, Ld. A.S.C. for the Respondents, at the same time, submits that both the applicant and Respondent No.6 being the Psychologists working in the Department are liable to be transferred or to be posted either to Agartala or to Bhubaneswar. Both are being transferred in accordance with

the guidelines and Respondent No.6 has already completed one term in Agartala . So applying the principles laid down in the guidelines, the transfer of the applicant and Respondent No.6 has been ordered. ~~vice versa~~. If so, the transfer is on administrative contingency or on administrative reasons.

4. We have considered the claim of the applicant as well as the contentions raised on behalf of the Respondents. Admittedly, the 02 Psychologists i.e., the applicant and the Respondent No.6 are available to work either at Bhubaneswar or at Agartala and they do not want to go out of the present station also. If so, it is only possible for the Respondents to either transfer the applicant or the Respondent No.6, or to allow the applicant at Bhubaneswar and Respondent No.6 at Agartala. However, considering the fact that the transfer order vide Annexure-A/3 is not in accordance with the guidelines, as the applicant has not completed his tenure period at Bhubaneswar, we are of the view that the applicant has made out a case for being considered by the authorities. If so, the O.A. can be disposed of by directing Respondent No.2 to consider and dispose of the applicant's representation (Annexure-A/4) within a reasonable time, at any rate within 60 days of the receipt of the copy of this order, keeping in view the observations contained in this order. It is also made clear that till a decision is made on Annexure-A/4, Annexure- A/3 transfer order shall be stayed. Ordered accordingly.



5. With the above observations and direction, the
O.A. is disposed of. No costs.


(C.R. MOHAPATRA)
ADMN. MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER

Kalpeswar/C.M

