

3

O.A. No. 114 of 2009

Order dated: 26.03.2009

CORAM:

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

Aggrieved by the transfer order dated 12.02.2009 (Annexure-A/11), the applicant, presently working as Upper Division Clerk, in the office of the 2nd Respondent, filed this Original Application. Annexure-A/11 would show that this order is on the basis of or rather an outcome of earlier order made by this Tribunal in O.A.No. 236/08 when a similar transfer order had been passed by the authorities. The applicant had filed that O.A. with certain grounds urged therein and as per the order dated 14.01.2009 this Tribunal has considered the entire case of the applicant and the grounds urged therein and relying on certain judgments of the Apex court found that the materials placed therein would not warrant interference in the matter. However, considering the problem of the applicant faced with regard to the educational career of his children and the children of his brother, this Tribunal directed the Respondents therein, namely Respondent No.2 and 3, to retain the applicant at ARC, Charbatia till the end of this academic session. Admittedly, the above order has now

B

4 -2-
become infructuous as the academic session of that year is already over. In the present O.A., the applicant has narrated similar grounds and also added 2 and 3 more grounds such as the violation of Annexure-A/4 guidelines and also the comparative liability of other employees working in the present station as they have already completed 10 years of service in the present station.

2. This Tribunal heard Mr. G.Rath, Ld. Counsel appearing for the applicant and Mr. U.B.Mohapatra, Ld. Sr. Standing Counsel for the Respondents and have perused all the documents relating to the matter.

3. Apart from the grounds already considered by this Tribunal in order dated 27.01.2009 that the children of his deceased brother are also facing their examination and they are reading in different schools in Cuttack, the additional grounds now taken in the O.A. is that Annexure-A/4 guidelines have not been complied with while ordering the present transfer. This Tribunal has considered Annexure-A/4 and also the principles considered by this Tribunal while passing the order in O.A. 236/08 and found that there is no violation of Annexure-A/4 guidelines. With regards to the comparative liability for transferring other employees who

3

are working in the present station is not a ground to interfere in the matter as Annexure-A/4 provides that tenure period for an employee to work in a station is three years. Even though, the applicant has two spells of outside service, it is not a ground to see that the authorities have violated any of the guidelines and, even comparing the other officers who are working, having experience more than that of the applicant at the present station that discretion is left to the authorities and if that discretion is exercised without violation of principles laid down in Annexure-A/4 guidelines and principles laid down in the catena of cases regarding transfer of Govt. employees, this Tribunal is not proposed to consider the merits of the present O.A. at all. The applicant now contended that as the matter has already been considered by this Tribunal with regard to educational career of the children of the applicant and his brother, for this academic year also he be allowed to continue. In the present situation, this Tribunal does not see any reasonable ground to accept this case. Transfer is an incident of service, hence this Tribunal rejects that contention. It is only proper for this Tribunal to direct the Respondents to consider Annexure-A/12 representation and take a view on the

6
-4-

grounds urged therein, if possible, in favour of the applicant, with regard to the averments made therein and this shall be done within a reasonable time within 15 days from today. Till such decision is taken on annexure-A/12, transfer order under Annexure-A/11 shall be kept in abeyance. It is also made clear that the representation has to be considered by the authorities only with regard to the comparative liability of other officers working in the station. ^{It} is line with order in O.A. 236108. ²

4. With the above observation, this O.A. stands disposed of.

L. Kappan
MEMBER (J)

RK