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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 669 of 2010

Cuttack, this the 1st November, 2010

Biswanath Mahapatra Applicant
Versus
Union of India & Ors. Respondents

C O R A M

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER(ADMN.)

O R D E R

On being mentioned by Mr.K.C.Kanungo, Learned Counsel for the Applicant in presence of Mr.U.B.Mohapatra, Learned Senior Standing Counsel for the Union of India, appearing on notice, having received copy of the OA in advance, for the Respondents, this matter is taken up today. Heard both of them at length and perused the materials placed on record.

2. It is the case of the applicant in nut shell that he is working as Officer Surveyor under the Respondent No.2 after being transferred from Kolkata on 01-04-2004 on his own request on health ground. According to him he is suffering from various ailments. Due to chronic diabetes he has lost the retina of left eye causing loss of sight and blurred vision. He has lost 40% hearing of left ear and 20% of right year. The diabetes have added further ailment such as 'Trigger Finger' of ring finger of left palm causing paralysis and restrictions of movement of finger. He is also suffering from "Vasovagal Attack" i.e. he gets fainted during his extraction of blood from vein for sugar/cholesterol test. The

present ailment is also causing loss of weight day by day requiring constant attendance of the family members to provide specified food and liquid. Further case of the applicant is that his wife is an employee stationed at Bhubaneswar and his old ailing mother is fully dependent on him. He is left with three years and some months to retire. In the circumstances, it is stated by the applicant that the Respondents vide order at Annexure-A/1 dated 01.10.2010 has transferred and posted him to J&K, GC, Jammu. No sooner such order of transfer was passed, he had taken up the matter with his authority by way of availing the opportunity of appeal seeking cancellation of his order of transfer and further praying that in the event it is not possible to cancel his order of transfer then to consider his grievance for his posting against the existing vacancies lying either at Guwahati or Kolkata in which place he can at least take his treatment with the help of his near relatives working there. Such representation/appeal of the applicant having been rejected he has approached this Tribunal in the present Original Application filed under section 19 of the A.T. Act, 1985 seeking to quash his order of transfer under Annexure-A/1 and the order of rejection of his representation under Annexure-A/5 and to hold that the order of transfer of the applicant is violative of transfer guideline at Annexure-A/2 and A/3 for the ends of justice.

Learned Counsel appearing for the Applicant hammered the points

taken in his pleading in support of the prayer and has stated that as the transfer of the applicant opposed the very policy guidelines issued by the Respondents under Annexure-A/2 and Annexure-A/3 (providing that the husband and wife should be posted at one place, the present order of transfer of the applicant needs to be annulled) and alternatively it was suggested by Mr.Kanungo, Learned Counsel for the Applicant that in case this Tribunal is not inclined to interfere in the matter at least direction be issued to the Respondents to consider the transfer and posting of the applicant against one of the vacancies lying either at Guwhati or Kolkata where the applicant can have his treatment (in absence of his family members being not possible to be shifted), with the help of his friends and near relatives residing there. It was further submitted by Mr. Kanungo, Learned Counsel for the Applicant that till a decision, on reconsideration of the modification of the posting of applicant either to Guwahati or Kolkata by the order of this Tribunal, the Respondents should be directed to allow the applicant to continue at Bhubaneswar as he has not yet been relieved pursuant to the order of his transfer and is likely to be relieved today (AN). On the contrary, this was vehemently opposed by Mr. Mohapatra, Learned Senior Standing Counsel appearing on notice for the Respondents. According to him this being a chain transfer made in public interest, this Tribunal should not interfere in it.

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Further it was pointed out by Mr. Mohapatra, Learned SSC that the applicant has also prayed for his posting in either Guwahati or Kolkatta other than J&K. But the competent authority rejected the said grievance of the Applicant which pre supposes that the hand of the applicant is very much necessary at J&K.

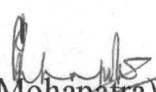
3. Considered the arguments advanced by Learned Counsel for both sides. This being matter of transfer discretion is always left to the competent authority to decide and I do not intend to interfere in it especially when not only the applicant but several others have also faced such transfer. But it is noticed that the applicant insists cancellation of his order of transfer on the ground of his illness and as his wife is working at Bhubaneswar it is not practicable for him to take her to his place of posting. Alternatively he seeks modification of his transfer either to Guwahati or Kolkata for the reason that he can avail the opportunity of his treatment at the time of need with the help of his near relatives residing there. But it is seen that the Respondents while considering and rejecting his representation omitted to consider this aspect of the matter which needs reconsideration.

4. In the aforesaid circumstances, I do not intend to interfere in the order of transfer at Annexure-A/1. But for the discussions made above, I quash the order of rejection of representation under Annexure-A/5 to the extent for giving

(Signature)

consideration to the request of the applicant for his posting at one of the alternative places mentioned in his representation if there is no impediment for the same. The reconsideration to the extent stated above should be given by the Respondents within a period of fifteen days hence and communicate the result thereof in a reasoned order to the applicant. Till such time status quo of the applicant as on the date shall be maintained.

5. In the result, this OA stands disposed of at this admission stage. Send copies of this order along with OA to the Respondent No.1 at the cost of the applicant who shall deposit the postal requisite required for this purpose in course of the day. Free copies of this order be given to Learned Counsel for both sides.


(C.R.Mohapatra)
Member (Admn.)