

3
O.A. No. 275/09

ORDER DATED 18th NOVEMBER, 2009

Coram:

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

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

Heard Mr. D.P. Dhalsamant, Ld. Counsel for the applicant and Mr. S.B. Jena, Ld. Addl. Standing Counsel for the Union of India.

2. Aggrieved by the transfer order dated 01/07.07.09 (Annexure-A/4) the applicant has filed the present Original Application with the following prayer:-

- “(i) To quash the order of transfer under Annexure-A/4 dated 01/07.07.09 so far as the applicant is concerned.
- (ii) To pass any other order/orders as deemed fit and proper.”

3. The Respondents-Department have filed their counter opposing the prayer of the applicant to which the applicant has also filed a rejoinder. The applicant has made the following submission in support of his claim. Firstly, it has been submitted that the applicant is at the fag end of his service career having left with three years and few days till the date of his retirement on superannuation as on today. Secondly, the applicant is suffering from so mainly ailments, viz., diabetic and hypertension and is under treatment. Thirdly, his wife having undergone an operation is under prolonged treatment of breast fibrosis at Bhubaneswar. Fourthly, as per the instructions and guidelines issued by the Department in the

matter of transfer and posting, (Annexure-A/3), "persons over the age of 45 years shall not be ordinarily posted to a station of high altitude, which term for the purpose will mean a station located at an altitude of 2250 meters or more above mean sea level." The same guidelines also postulate the conditions "Members of staff, who are within three years of reaching the age of superannuation, will, if posted at their home town, not be shifted therefrom, if it becomes necessary to post them elsewhere, efforts will be made to shift them to or near their home towns to the extent possible."

4. To the above contentions, the Respondents have filed petition for vacation of interim stay and the counter reply in support of their action. We have perused the objections rather the counter reply. The main thrust of the counter is that the applicant is left with more than three years of service to retire on superannuation and that Shillong is not a high altitude station as it is located 1520 meters above the sea level, as per Annexure-R/1. With regard to the other contentions, i.e., ailments from which the applicant is suffering and also the posting of staff to or nearby home town, the Respondents have not whispered anything. In the above background, we have to consider the case of the applicant in hand.

5. It is the settled principle of Law enunciated by the Hon'ble Supreme Court from time to time that ordinarily the Court/Tribunal should not interfere with the order of transfer unless the same arises out of bias or mala fide, and/or has there been any violation of statutory mandatory rules in

effecting such transfer. Though the transfer is an incidence of service having regard to the facts and circumstances now before us, prima facie, we are of the opinion that in view of peculiarity involved in effecting such transfer, it is a fit case where the Tribunal should take an exception.

6. Admittedly, the applicant is left with three years and some days till the date of his retirement on Superannuation. Clause-XXI of the transfer guidelines at Annexure-A/3, issued by the Directorate General, All India Radio, as stated above, is reproduced as under for the sake of clarity:

“...(XXI) Members of staff, who are within three years of reaching the age of superannuation, will, if posted at their home town, not be shifted therefrom, if it becomes necessary to post them elsewhere, efforts will be made to shift them to or near their home towns to the extent possible.”

7. Having regard to the above instruction, which, in our considered view, is mandatory in nature, should not have been given a go bye, while effecting the present transfer. On the eve of three years and within three years of attaining the age of superannuation should not be calculated mathematically, as in the case of the applicant so as to discard him within the scope and ambit of the above quoted instructions. Regarding the ailments of the applicant and prolonged treatment of his wife, the applicant has produced so many supported documents, such as, Annexures A/6 & 7 to the rejoinder. The Respondents have not whispered anything about the application of Rule XXI of the transfer guidelines to the case of the applicant as well as


prolonged illness of himself and his wife. Therefore, it was in the wisdom and sagacity of Respondents to have kept in view all those aspects before effecting transfer.

8. With regard to other points raised, admittedly, Shillong is stationed at an altitude of more than 4990 fit (1520 meters) although it is the case of the applicant that Shillong is stationed at high altitude of above 2250 meters above the sea level where the persons more than 45 years of age should not be transferred. Annexure-R/1 produced by the Respondents is only a geographically location of ^{Meghalaya} ~~Assam~~ or Shillong, which by itself is not enough to prove whether Shillong is stationed at a high altitude or not. It is a general enunciation that Shillong is stationed at high altitude. If so, a person having any kind of respiratory ailments including Asthama should not be posted there as per the guidelines.

9. When this Original Application came for admission we had considered some of these aspects submitted by the applicant and issued an interim order staying the operation of transfer order and in the mean time the applicant ^{is} ~~has~~ left with three years of service till the date of his retirement on superannuation. If so, that guidelines can safely be applied to his case.

10. Having regard to what has been discussed above, we are of the view that the present transfer order cannot be sustained in the eye of law, particularly when the Respondents have not, while effecting transfer, given due regard to Rule-XXI of the transfer guidelines as well as the

ailments of the applicant and his wife, which prevent applicant's posting at Shillong. In consideration of all these circumstances, the impugned order at Annexure-A/4 is quashed. Since the applicant has already represented the matter for his retention either at Bhubaneswar or any nearby station in Orissa, till a decision in that behalf is taken, he be allowed to continue at Bhubaneswar. The O.A. is allowed to the extent indicated above. No costs.


(C.R. MOHAPATRA)
ADMN. MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER