

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH.

No. O.A. 985 of 1996.

Present : Hon'ble Dr. B.C.Sarma, Member (A)

SWAPAN MR. GAYEN

VS.

UNION OF INDIA & ORS.

For applicant : Mr. B.Mukherjee, Counsel.

For respondents : Mr. M.S.Banerjee, Counsel.

Heard on : 9.10.96 :: Ordered on : 9.10.96.

O R D E R

The dispute raised in this application is about the impugned order of transfer issued on the applicant on 21.3.96 whereby the applicant was transferred on promotion from Malda to Siliguri.

2. The background of the case is as follows : The applicant is an Upper Division Clerk functioning under the respondents and he contends that in 1982 he was transferred to Gangtok and in 1988 to Barasat and he was again transferred to Balurghat in 1990. It is the specific contention of the applicant that, as per the office memorandum dated 13.12.91 issued by the Deputy Director of Admn. (Training), the Director General of Works, CPWD has decided that the officers posted to IBB Zone will be given a posting of their choice after completion of tenure of two years subject to exigency of administration. The applicant contends that after the completion of two years of service in the IBB Zone, as per the said O.M., he was entitled to get a transfer to a station of his choice and accordingly, keeping in view of his family constraints he had indicated that he would like to go to Malda. It is his further contention that although the transfer order was issued by the appropriate authorities, in this case, from transferring him from Malda to Balurghat, he was not released by the Executive Engineer, Balurghat in administrative interest.

He, therefore, continued to stay in Balurghat. The applicant from time to time went on representing with the prayer that that said transfer order should be enforced and he should be shifted to Malda. The applicant is particularly aggrieved by the fact that although there was a vacancy in Malda, he was not accommodated after the period of retention of two years from the date of the transfer order was over. The applicant further avers that meanwhile he was earned promotion as Head Clerk and he was posted to Siliguri by the impugned order. Against the impugned order, he has also submitted a representation, but that was not considered favourably by the respondents. The applicant feels aggrieved by the fact that although there was a vacancy of Head Clerk in Malda and at least four officers have been posted there already, his case was not considered by the respondents. The applicant also submits that there has been still a vacancy exists in Malda as on the date of hearing. Being aggrieved thereby, the instant application has been filed with the prayer that the impugned order of transfer be quashed and set aside and the respondents be directed to transfer him to Malda as Head Clerk on promotion.

3. The case has been opposed by the respondents by filing a detailed reply. The stand taken by the respondents has been that there has been certain suppression of material facts made by the applicant in this application. First of all, although it is true that the applicant had <sup>been</sup> posted in Gangtok and Barasat, but that posting order was made according to his own choice. Secondly, after the transfer order was issued transferring him from Balurghat to Malda, the applicant himself had submitted a representation to the authorities concerned with the request that he may be kept in Balurghat since he was not in a position to go on transfer to Malda considering the exigency of the education of his children in the higher class. A copy of the said representation has been set out at annexure-R3 to the reply. The respondents contend that the applicant's transfer order to Malda was not effected mainly at his instance and, ultimately,

he was given promotion to the post of Head Clerk and posted at Siliguri where there is facility available of English medium school for his children; non-availability of the same was the only ground for which he had represented for going to Malda. It is the stand of the respondents that since the applicant has given promotion and he has accepted it, it is incumbent on his part to go on transfer to Siliguri; otherwise, he should forego the promotion. The respondents have also denied the allegation made by the applicant, particularly against the respondent No.3, who is Superintending Engineer (Coordination) EZ Circle, C.P.W.D., Calcutta. They have, therefore, prayed dismissal of the application on the ground that it is devoid of merit.

4. The applicant has also filed a rejoinder, which I have perused.

5. During hearing, Mr. Banerjee, 1d. counsel for the respondents, invited my attention to Chapter 4, Section 8, para 23 of the CPWD Manual on Staff, Establishment, Organization and Office Procedure. The said para deals with the effect of refusal to accept promotion to avoid transfer. I have perused the contents of this para, but I find that the provisions contained therein are mainly for determining the effect on refusal of promotion by an employee. I am, therefore, of the view that the said para does not have much relevance so far as adjudication of the instant case is concerned. Mr. Banerjee submitted before me a copy of the judgement dated 1.5.96 passed by this Bench in O.A. 579 of 1995 (Debasish Chatterjee Vs. U.O.I. & Ors.), which deals with transfer on promotion. I find that facts involved in this case are different from the facts of the present case. Moreover, the applicant therein was a Stenographer whereas the instant applicant is UDC, who has <sup>very</sup> <sub>of</sub> much transfer liability. The judgement is, therefore, not much/help, in my view, in adjudicating the instant case.



6. I have examined the matter carefully after hearing the learned counsel for both the parties, perusing records and also considering the facts and circumstances of the case. Undisputedly, the applicant was posted to Balurghat, which falls within the IBB Zone and is a hard station. Therefore, as per the said O.M. dated 13.12.91, the applicant is required to be posted at his choice station after completion of two years at such station subject to the exigency of administration. In this case, said provision was also followed by the respondents and the applicant was posted on transfer from Balurghat to Malda in 1993. However, although the applicant was not released by the Executive Engineer despite the instruction of Superintending Engineer from Calcutta in the interest of public since no substitute was posted, I find that the applicant himself had represented to the authorities for his retention at Balurghat on the ground that at the material time, what is sometime in March, 1994, he was not in a position to transfer his family from Balurghat to Malda since it was not possible on his part to get admission in the English medium school at Malda in that year. On the basis of that representation, the applicant was retained in Balurghat. However, the validity of the order of retention had expired on 21.9.95 after the period of two years when the applicant had again become eligible for getting transfer. Mr. Banerjee argues that since the applicant had stayed in Balurghat on his own choice, the hard station become a choice station and so the guideline of 1991 was not applicable. I have considered this aspect of Mr. Banerjee's submission, but I am not impressed by it. Since earlier the applicant was functioning in a hard station, by virtue of the said O.M., he could claim station for getting him transferred on his own choice. There is no doubt, that as per law laid down by the Hon'ble Apex Court in the case of Union of India & Ors. Vs. S.L. Abbas, reported in 1993(2) ATJ 147, the guidelines regarding transfer do not confer an enforceable right upon the government

Or

servant. There is no doubt that the said O.M. has given rise to a cause for considering on the part of the respondents his request for transferring him to a place of his choice. I find in this case, that the Superintending Engineer, Calcutta had issued orders on the Executive Engineer, Balurghat to release the applicant, but the applicant was not released. Basically it is matter between the Superintending Engineer and the Executive Engineer, but the impression which I get is that the applicant was not released in public interest and at the same time there was a representation submitted by the applicant himself that at that particular point of time he was unable to move to the place of posting. Meanwhile, the applicant was given promotion as Head Clerk and he was posted in Siliguri, ~~where~~ at least the difficulty of not having CBSE school is not there. I also find that the applicant has accepted the transfer order to Siliguri, but he has not moved and asked for a posting in Malda instead of Siliguri, since, according to him, Malda was indicated earlier, ~~after~~ completion of two years of service at Balurghat, as his choice station. Mr. Mukherjee, 1d. counsel, also invited my attention to a number of annexures in the application whereby he wanted to prove that certain other persons, who were given / promotion to their choice place and thereby, the authorities concerned had discriminated against him. However, Mr. Banerjee submitted that if on promotion an employee does not move and stick to get a place of his own choice, that will result in administrative problem, which cannot be allowed. Normally, in such a situation there would have been a strong case to interfere with the order of transfer of the applicant, but I refrain from doing so on the ground that I find that the applicant himself had submitted a representation at that stage before the authorities concerned to keep him at Balurghat. I am, therefore, of the view that appropriate order to be passed in this case will be to issue a suitable direction on the respondents in the matter.



7. I further note that the respondents have stated in their reply that if the applicant joins at Siliguri, his case for transferring him to Malda will be considered. In view of the above, I am of the view that there is no justifiable ground for interfering with the impugned transfer order and at the same time I would like to order because of the particular background of this case <sup>that</sup> there are circumstances for which any prayer submitted by the applicant for transfer from Siliguri to Malda should be considered by the respondents. I have been given to understand that there is a vacancy in Malda. In view of the above, the application is disposed of with the direction that the applicant shall join at Siliguri within two months from the date of communication of this order. I grant him liberty to file representation before the appropriate authorities for his transfer from Siliguri to Malda. On receipt of such representation, the authorities concerned shall sympathetically consider his representation and pass appropriate orders thereon keeping in view the observation made in the judgement and also the background of the case. Such appropriate order shall be passed within a period of one months from the date of receipt of the said representation and the result thereof shall also be communicated to the applicant. I also direct the respondents to keep one post of Head Clerk <sup>at Malda</sup> vacant, provided there is a vacancy as on today and that post shall not be filled up without considering the representation to be filed by the applicant. No order is passed as regards costs.



( B.C.Sarma )  
MEMBER (A)