

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

M.A. 312 of 1997

O.A. 554 of 1997

Present : Hon'ble Mr. Justice A.K. Chatterjee, Vice-Chairman

Hon'ble Mr. M.S. Mukherjee, Administrative Member

Bijan Kanti Ghosh, s/o Late Gobinda Saran Ghosh, working for gain as Surveyor Assistant, Grade-I, posted at Garrison Engineer (North), 46, B.T. Road, Calcutta-700 050 and residing at 40, Phoolbagan Road, P.S. Jadavpur, Calcutta - 700 086.

..... Applicant

-Vs-

1. Union of India, service through the Secretary, Ministry of Defence, New Delhi ;
2. The Engineer-in-Chief, Army Head Quarter, DHQ, New Delhi - 110 011 ;
3. The Chief Engineer, Eastern Command, Fort William, Calcutta - 700 021 ;
4. The Chief Engineer, Calcutta Zone, Ballygunge Maidan Camp, Calcutta - 700 019 ;
5. The Commander Works Engineer (Suburb), Barrackpore, Dist - North 24-Parganas ;
6. The Garrison Engineer (North), 46, B.T. Road, Calcutta - 700 050.

..... Respondents

For applicant : Mr. P.K. Munsri, counsel

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

Heard on : 3.9.97 & 4.9.97 - Order on : 18.9.1997

O R D E R

A.K. Chatterjee, VC

The petitioner, a Surveyor Assistant - Gr.I posted at Garrison Engineer(North), Calcutta has challenged his order of transfer to Shillong on the ground that it is not in conformity with the transfer policy as laid down in the guidelines. He has further stated that since his joining in the service in March, 1970, he was transferred on six occasions including twice to Shillong and because of certain domestic commitment and his own poor health,

it is not possible for him to shift his family, nor to live along at the transferred place. He, therefore, prays for restraining the respondents from giving effect to the transfer order in question and other consequential reliefs.

2. The respondents have filed a reply and it was urged that no transfer guideline has been violated and in such situation, domestic problems are no consideration in the matter of transfer of a staff.

3. The petitioner has filed a Misc. Application disputing some of the grounds taken in the reply and also stating some further ground with the prayer that the Misc. Application may be heard along with the O.A.

4. The respondents have also filed a reply to the Misc. Application controverting the grounds taken therein.

5. We have heard the Id. Counsel for the parties and perused the records before us.

6. In the first place, ~~it was first place~~, it was urged that the transfer guidelines have not been followed since under it, no staff above the age of 50 years like the petitioner can be transferred to a tenure station, which includes Shillong and that Sri Ramanuj Chakraborty, in whose place he has been transferred has not completed the prescribed tenure of three years at Shillong. None of the two grounds appears to be sustainable. Regarding the first ground, a reference to the transfer guidelines will reveal that a staff above 50 years of age can very well be transferred to a tenure station but he cannot be retained there beyond the age of 53 years. Therefore, even if the petitioner is above 50 years of age, he can certainly be transferred to Shillong but cannot be retained at that place after he attains the age of 53 years.

7. About the other grounds<sup>of</sup>, it has been stated on behalf of the respondents that Sri Chakraborty was to complete three years at Shillong on 30.6.97 and in order to facilitate movement on completion of the prescribed tenure, process has to be initiated sometime in advance and accordingly, an order was made on 31.12.96 transferring both Sri Chakraborty and the petitioner and also some other staff and as a matter of fact, Sri Chakraborty has joined in Calcutta in <sup>later part of</sup> May, 1997. In the situation stated by the respondents as above, we are unable to interfere with the impugned transfer order on the ground that Sri Chakraborty should not have been disturbed.

8. The petitioner has also contended that he came to Calcutta in October, 1993 and could not be transferred out of Calcutta before completion of five years under transfer guidelines. This contention cannot also be upheld as it is found <sup>that</sup> under the revised guidelines dated 31.12.94 ~~that~~ the normal tenure is three years as against the earlier guidelines<sup>of</sup> of five years. The Ld. Counsel for the petitioner has, however, urged that the revised guidelines dt. 31.12.94, which came into operation after he was transferred to Calcutta cannot have any retrospective effect and therefore, he has to be retained to Calcutta for a period of <sup>five</sup> ~~three~~ years under the old guidelines. We see no merit in this contention as guidelines being <sup>the</sup> guidelines did not vest the petitioner with any right to continue in Calcutta for five years and thus, there is no question of attracting the earlier guidelines, which stood <sup>superseceded</sup> ~~substituted~~ by the current one. Thus, there is no violation of guidelines in transferring the petitioner, who came to Calcutta in October, 1993 by the impugned transfer order dated 31.12.96.

9. The next contention raised on behalf of the petitioner was that the station seniority in respect of transfer from Calcutta has not been followed as one Sri T.K. Roychowdhury, a Surveyor

Assistant, who was posted in Barrackpore in May, 1992 is still holding the post. It has, however, been stated in the reply by the respondents that Sri Roychowdhury was, in fact, transferred to Shillong in 1995 but this order could not be implemented because of an interim order passed by the High Court staying the same. In this situation, it cannot be successfully urged that the administration did not follow the station seniority at the time of transferring the petitioner to Shillong.

10. The petitioner has also unnecessarily burdened the record by pointing out an earlier order of this Bench in O.A.1220/89 filed by him and an order of the Hon'ble High Court on a writ application filed by one Sri Amitava Sengupta being C.O.No.7159(W) of 1993. None of these two orders are found to be relevant in any way as in the former, an order was made on 30.12.89 keeping the transfer order to Shillong in abeyance for a period of four months as his representation was not disposed of and no reply was filed in the OA and in the latter, the Hon'ble High Court also made an order to keep the order transferring Sri Sengupta in abeyance for six months in order to extend the deferment benefit for overstay in a tenure station. Therefore, these orders are totally irrelevant and vexatious.

11. The petitioner has also contended that he has certain domestic problem, such as education of children, marriage negotiation of his daughter, his own not so good health etc., which do not permit him to move out of Calcutta. It is possible as rightly stated on behalf of the respondents that each employee may have his own domestic problem but it is for him to sort it out and even though sympathy goes ~~out~~ to him, the administration is not expected to take care of all these problems as the interest of public service must get priority over personal problem, specially when the transfer order cannot be questioned either on the ground that it violates any


5/11

transfer guidelines or has been made in colourable exercise of power.

12. The petitioner has also referred to the strong recommendation of his immediate superior officer while forwarding his representation against the impugned transfer order. We are unable to make much of this contention and suffice it to say that the recommendation is not enough to quash the impugned order when the grounds taken by the petitioner are found by this Tribunal to be unsustainable.

13. We, therefore, see no merit in this application, which is rejected along with the M.A. No order is made as to costs.

  
18/9/1992  
( M.S. Mukherjee )  
Member(A)

  
18.8.92  
( A.K. Chatterjee )  
Vice-Chairman