

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, P A T N A

O.A.No.: 564 of 1996.

DATE OF DECISION: 28-NOV-1996

TUSAR KANTI GOSWAMI, : APPLICANT.
S/of Dr. A.C.Goswami, R/d
Jakkanpur Colony, Gardani bagh.
Vrs.

UNION OF INDIA & ~~XXX~~ through the
Regional Provident Fund Commissioner,
Bihar Road No.6, 'R' Block, Patna.

2. The Regional Provident Fund Commissioner,
Bihar, Road No.6, 'R' Block, Patna.

..... RESPONDENTS.

Counsel for the applicant : Shri P.N.Pandit.

Counsel for the respondents : Shri R.S.Prasad.

P R E S E N T

HON'BLE MR. D. PURKAYASTHA, MEMBER (J):

Heard learned counsel for both the parties
on admission of the application filed by the applicant
Shri Tusar Kanti Ghosh, Section Supervisor, O/o Regional
Provident Fund Commissioner, Patna, and he challenged the
validity of the impugned order of transfer (Annexure-3)
of the application on the ground that the said impugned
order of transfer was issued by the authority over-looking
the instructions and decisions contained in Annexures 4 & 5
issued by the Govt. of India and the applicant was deprived
from giving any representation against the said transfer
order. Therefore, he has been compelled to approach this
Tribunal for getting appropriate relief in respect of
the impugned order of transfer issued by the authorities.
It appears from the record that the impugned order of the
transfer was stayed by this Bench by order dated 15.11.1996
asking respondents to ~~show cause~~ submit counter against
the application. Respondents filed counter in this case

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stating inter-alia that the application is not maintainable and the stay order of transfer was issued in the public interest and as per policy decision taken by the Govt. on rotational basis. Learned counsel appearing on behalf of the respondents submit that the applicant may be asked to file a representation before the authority concerned to consider his case in view of the instructions contained in Annexures 4 & 5 where it is not in dispute that the applicant is a handicapped. From the Annexures 4 & 5, I find that there is some instructions ~~for~~ containing that the physically handicapped Group 'C' & 'D' employees will be given posting as far as possible near the native places. Similar instruction has been issued by the Govt. of India contained in Annexure-5 where it is stated that request from physically handicapped employees for transfer to native places may also be given preference.

2. Learned counsel for the respondents submit that in view of the transfer policy contained in Annexure-4 the applicant is liable to be transferred on rotational basis. But, clause-D of the said Annexure-A of the written statement submitted by the respondents indicates that the list of the persons to be transferred or brought back on rotational basis may be drawn up in such a way that it is possible to strike a balance between the individual's convenience and smooth running of the office. On perusal of Annexure-A of the W/s I am of the view that the said Memo, Annexure-A, remain silent about the annexures who are handicapped in the department.

3. Considering these facts it is true that the court should not ordinarily interfere in the matter of transfer unless ~~complete~~ ^{✓ to make} circumstances which amounts to malafide or transfer, without jurisdiction or authority.

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In the instant case it is not in dispute that the applicant is a handicapped and that contention of the applicant found to

have been fortified from the Annexure-C of the W/s. Annexure-C indicates that the applicant works with a Limb and on examination there is ~~xx~~ paralysis on thigh muscles and shorting of his left leg and he suffers from permanent dis-ability of more than 40%.

4. Having regard to the facts and circumstances mentioned above and submissions of both the parties I think it would be appropriate to dispose of this case with a direction to the applicant to file a representation before the authority, the Regional Provident Fund Commissioner (Respondent no.2), to consider his case in the light of the direction or decision contained in Annexures-4 & 5 of the application because transferring authority is competent to decide the question of hardship if it is being faced by the applicant on the face of the impugned order of transfer under challenge. Thereby I direct the respondent no.2 to dispose of his representation, if the applicant ~~has~~ filed the same within 7 days from today, within 30 days from the date of receipt of the representation with reasoned and speaking order.

5. Accordingly, the application is disposed of with the aforesaid observation and direction.

28/11/96
(D. PURKAYASTHA)
MEMBER (J)