

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 3rd day November, 2010

ORIGINAL APPLICATION No.467/2010

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. ANIL KUMAR, MEMBER (ADMINISTRATIVE)

Purshottam Srivastava,
s/o Shri Har Shiv Narayan Srivastava,
r/o 111/191, Vijay Path Circle,
Madhyam Marg, Mansarovar, Jaipur,
presently posted as Director,
G.S.I., Palaeontology Division,
Jhalana Doongari, Jaipur

.. Applicant

(By Advocate: Shri P.P.Mathur)

Versus

1. Union of India
through the Secretary,
Ministry of Mines,
Central Secretariat,
New Delhi.
2. The Director General,
Geological Survey of India,
Central Headquarter,
27, Jawahar Lal Nehru Road,
Kolkata

.. Respondents

(By Advocate: Shri Mukesh Agarwal)

ORDER

Per Hon'ble Mr. M.L.Chauhan, M(J)

This is third round of limitation. Earlier the applicant has filed OA No.320/2010 against the impugned order dated 1.6.2010 whereby he was transferred from Jaipur to Nagpur. The said OA was disposed of by this Tribunal at admission stage vide order dated 12.7.2010 thereby directing the applicant to file fresh representation and the respondents were directed to consider representation of the applicant in the light of the circular dated 14.6.2010. It was further observed that till representation is not decided, respondent No.2 shall maintain status quo qua the applicant. The said representation of the applicant was rejected vide impugned order dated 31.8.2010. The original order as well as the order dated 31.8.2010 was challenged by the applicant by filing OA No.408/2010. This Tribunal after noticing the personal difficulties such as mental disability of daughter of the applicant did not interfere in the matter by upholding the validity of the impugned order. At this stage, it will be useful to quote relevant portion of the judgment dated 9th September, 2010 (Ann.A/8), which is in the following terms:-

"3..... In exercise of power of judicial review and in view of the law laid down by the Apex Court, it was not legally permissible for this Tribunal to interfere with the order of transfer. From the facts as stated above, it is evident that the applicant is living at Jaipur with his spouse for the last 25 years at the same station, as such, no direction could have been granted in the facts and circumstances of this case to post the applicant at Jaipur through out entire career of his

service, more particularly, when the applicant is still having about 5 years to retire....."

2. However, keeping in view the circumstances mentioned by the applicant in Para 4 (XII) of the OA that applicant's wife who met with a serious accident about six months ago is still under recovery face and had to undergo one more operation in about 2 months from now to free her jammed knee and to remove 3 rods from her leg, this Tribunal suggested the applicant whether he is willing to reconsider his request for his posting at Jaipur for a reasonable period so that his wife can undergo fresh operation. The applicant filed additional affidavit in which the applicant has made the following averments:-

1. That my wife who had met with the accident and thereafter operated for knee surgery has been advised to undergo fresh operation for bone grafting by her doctor Dr. Vinay Goyal.
2. That the operation would be carried after two months. My wife is patient of diabetes and blood pressure and doctor has advised that it will take not less than 6 to 8 months of time for her to recover after the bone grafting surgery.
3. That I need at least one year of deferment of my transfer on account of my wife's ailment apart from our difficulty of taking care of a mentally challenged child with physical disability."

3. Keeping in view the aforesaid submissions, this Tribunal vide order dated 9th September, 2010 while deciding OA No.408/2010 directed respondent No.2 to reconsider the matter in the light of the submissions made in the additional affidavit and consider feasibility of retaining the applicant at Jaipur for a reasonable period. Liberty

was also granted to the applicant to file substantive OA, in case the applicant is not accommodated for such limited period, as prayed for. Now the respondents have passed a fresh order dated 30.9.2010 thereby rejecting representation of the applicant. At this stage, it will be useful to quote relevant portion of the order, which prevail with the authorities to decline request of the applicant for deferment of his transfer order for one year and thus reads:-

"..... The matter was critically examined by the competent authority in compliance of the judgment order dated 09-09-2010 of the Hon'ble CAT with emergence of the following points regarding his transfer from Jaipur vis-à-vis prayer made in O.A.No.408/2010.

- a) That a detailed, lawful and reasoned order was already issued under file of even no. dated 31-08-2010, explaining the situation for the inability of the Competent Authority to accede to his request for retention in Jaipur as prayed for.
- b) That after careful consideration of his 3-prayers, vis-à-vis, alleged ailments of his wife, the Competent Authority is of the view that after joining his new place of posting at Nagpur he can, if he is unable at all to shift his wife to his new place of posting, can avail leave available to him for his wife's proposed surgical operation and for this only his retention at Jaipur is not tenable considering his requirement for functional purpose at the new place of posting i.e. C.R.Nagpur.
- c) That his prayer for retention/deferment for one more year was considered sympathetically by the Competent Authority in the light of the functional/operational requirement, vis-à-vis, his personal problem with special reference to his wife's ailment and it was decided that due to functional requirement his prayer for deferment for one year for him to continue at GSI, Jaipur cannot be acceded to and therefore his prayer for deferment of his transfer to Nagpur stands rejected...."

4. The respondents have also annexed with the reply another order dated 25.10.2010 whereby case of the applicant was again reconsidered in the light of filing of the fresh OA, which thus reads:-

".....The matter was placed before the Director (HRD), GSI and it was informed that Shri P.Srivastava, Director had specialized, mainly in publication related work and Paleontology and Mission-III, C.R., Nagpur, his present place of posting needs an officer to his caliber for it's Publication Divn. The posting has been done as per functional requirement at Nagpur where his expertise will be fully utilized. It is also important that such post at C.R.Nagpur cannot be left vacant for such a long time as it will upset the timely publication schedule of scientific data. The above aspect may suitably be brought to the notice of the Hon'ble Court in consultation with the Govt. Counsel." (emphasis ours)

5. The applicant has filed rejoinder. In the rejoinder, the applicant has stated that the post against which the applicant has been transferred is presently manned by one Shri Subodh K.Sharma, who is working on the said post for the last 2 years. Thus, according to the learned counsel for the applicant, the reasoning given by the respondents not to accommodate the applicant for a period of one year is highly arbitrary and is a colorable exercise of power.

6. We have heard the learned counsel for the parties and gone through the material placed on record.

7. From the material placed on record, it is evident that this Tribunal in OA No.408/2010 decided on 9th September, 2010 has already upheld validity of transfer order in the light of the decision of the Apex Court in the case of State of U.P. and Ors. vs.

Gobardhan Lal, [2004 (11) SC 402] and on the basis of the reasoning given in the speaking order as against the normal tenure of 8 years, the applicant has been staying at Jaipur with his spouse for last 25 years and is about 5 years to retire. This judgment has attained finality as it has not been challenged.

8. Now the limited question which requires our consideration is whether it is permissible for us to interfere with the order passed pursuant to the observations made by this Tribunal in the light of the additional affidavit filed by the applicant whereby he has requested for his retention at Jaipur till June, 2011. The case of the applicant was rejected by the authorities vide order dated 30.9.2010 relevant portion of which has been reproduced in the earlier part of the judgment and again reviewed after filing of the OA vide order dated 25.10.2010, relevant portion of which is also reproduced hereinabove. As can be seen from these orders, the respondents have given reasoning why services of the applicant require at new place of posting. It has further been stated that the applicant can avail leave for the proposed surgical operation of his wife and his retention at Jaipur is not tenable in view of the reasoning given by the respondents in the order dated 30.9.2010 and further order dated 25.10.2010. As such, it is not permissible for us to substitute that finding and to allow the applicant to serve at Jaipur till June, 2011. The fact remains that the applicant already stands relieved. Thus, in view of what has been stated above, we are of the view that it is a case which requires no interference.

9. Accordingly, the OA is dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admvt. Member

M.L.Chauhan
(M.L.CHAUHAN)
Judl. Member

R/