

**Central Administrative Tribunal
Principal Bench**

OA No. 1003/2016

Order Reserved on: 05.04.2016
Order Pronounced on: 26.04.2016

Hon'ble Dr. B.K. Sinha, Member (A)

Vikas Anand,
Aged about 56 years,
S/o Shri P.N. Anand,
DGM (HO) as RM
Hotel Samrat,
Chanakyapuri,
New Delhi
R/o X-39, Green Park (Main)
New Delhi

-Applicant

(By Advocate: Shri Shiv Kr. Suri)

VERSUS

1. India Tourism Development Corporation Ltd,
Through its Chairman & Managing Director,
Human Resource Management Division,
Government of India enterprise
Under Ministry of Tourism,
SCOPE Complex,
Core-8,7, Lodhi Road,
New Delhi
2. Union of India through
Secretary,
Ministry of Tourism,
Transport Bhawan,
Sansad Marg,
New Delhi-110011

-Respondents

(By Advocate: Shri U.K. Jha)

O R D E R

The short question involved in the instant Original Application is that whether the transfer of the applicant to

Bhubaneswar ought to be cancelled on the ground of serious illness of his son who appears to be suffering from Thalassemia. The applicant has also adopted the ground that his retirement being due in August, 2017, he could be allowed to continue on the post in New Delhi.

2. The respondents have resisted the OA on the ground that the medical problem of the applicant's son could also be treated in absence of the applicant who is admittedly in a Government job. It has been submitted by the respondents that the applicant, who is in the rank of General Manager, has been transferred out in the interest of work.

3. I have considered the pleadings of rival parties as also the documents adduced and the citations relied upon on either side and have patiently heard the arguments advanced by the learned counsel for the parties.

4. It is an admitted position that the respondent organization is a Government of India Public Sector Undertaking with its own recruitment, promotion and seniority rules. It is further admitted that in terms of decisions of the Hon'ble Supreme Court in 20. In **Shilpi Bose versus State of Bihar** [AIR 1991 (SC) 532], **Union of India vs. S.L. Abbas**, [(1993) 4 SCC 357], **State of U.P. Vs. Gobardhan Lal** [(2004) 11 SCC 402], **National**

Hydroelectric Power Corpn. Limited vs. Shri Bhagwan

[2001 (8) SCC 574] and ***State of M.P. and Another Vs. S.S.Kourav and Others*** [1995] 3 SCC 270] that no

employee has allowed to remain posted at a particular place or post and the employer is the best judge as to where he can contribute his best to the organization.

However, vide OM dated 06.06.2014, a certain exceptions have been made in respect of which employees who have disabled dependants. For the sake of clarity, the relevant part of the OM is extracted as below:-

“3. Considering that the Government employee who has disabled child serve as the main care giver of such child, any displacement of such Government employee will have a bearing on the systemic rehabilitation of the disabled child since the new environment/set up could prove to be a hindrance for the rehabilitation process of the child. Therefore, a Government servant who is also a care giver of disabled child may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints. The word ‘disabled’ includes (i) blindness or low vision (ii) hearing impairment (iii) locomotor disability or Cerebral Palsy (iv) leprosy cured (v) mental retardation (vi) mental illness and (vii) multiple disabilities.”

5. It is an admitted position that Thalassemia is a life threatening disease which requires regular blood transfusion and continued care. I am also swayed by the fact that though the wife of the applicant may be a Government employee, the hassle involved in the treatment

of the applicant's child is so extensive that a single parent may find difficulty to handle. I also note that the applicant is due to superannuate in August, 2017. The applicant, in my view, therefore, has proved his point that the Government have made an exception in this case by excluding him from the categories which are subject to regular transfer and posting and placing him in separate category. I would just like to add that while not denying the rights of the employer, the case of the applicant is one which evokes compensation. The heavens would not fall, if the applicant is allowed to continue in Delhi for another year or so or till his superannuation. It is not to be treated compassion constraint. Hence, the impugned order dated 16.02.2016 is quashed to the limited extent of the applicant and the respondents are directed to give another posting to the applicant at Delhi. With these directions, the OA is disposed of. No order as to costs.

**(Dr. B.K. Sinha)
Member (A)**

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