

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.186 of 2018

Cuttack this the 24<sup>th</sup> day of April, 2018

CORAM:

THE HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)  
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Bichitrananda Dixit, aged about 51 years, S/o. Rama Chandra Dixit, at present working at ARC Charbati, PS-Chouduar, Dist-Cuttack.

...Applicant

By the Advocate(s)-M/s.S.B.Jena  
S.Behera  
C.K.Shoo

-VERSUS-

Union of India represented through:

1. The Director General of Secretary, Cabinet secretariat, Government of India, East Block, R.K.Puram, New Delhi-110 066.
2. Special Secretary, Aviation Research Centre, Headquarter, Government of India, East Block, R.K. Puram, New Delhi-110 066.
3. Joint Director, Aviation Research Centre, At/PO-Charbatia, Dist-Cuttack.

...Respondents

By the Advocate(s)-Mr.M.R.Mohanty

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant presently works as an Upper Division Clerk in the Aviation Research Centre (A.R.C.), Charbatia under Respondent No.3. In this O.A. he has challenged the order dated 9.3.2018(A/4) transferring him to A.R.C., Dumduma in the North East Region. He had submitted a representation dated 14.03.2018 requesting for his retention at his present place of posting at Charbatia on the ground that he is a physically

challenged person. However, by a common order dated 27.3.2018 (A/7), the request of the applicant along with 46 others has been rejected. Aggrieved by the above two orders at A/4 and A/7, the applicant has filed this O.A. praying for quashing of those two orders with direction to respondents to allow him to continue at Charbatia.

2. The applicant has based his prayer mainly on the ground that he is a physically challenged person and the order of transfer to ARC, Dumduma is in violation of the guidelines issued by the Government of India from time to time. As per the certificate issued by the CDMO, he has 40% disability and is also a victim of polio attack. He has severe impairment on his legs and hips and faces difficulty in walking. He cannot even board public transport facilities. As per the circular dated 10.5.1990, issued by the Government of India, Department of Personnel & Training, physically handicapped persons cannot be subject to rotational transfer and should be given a posting at a station near his native place. The applicant receives conveyance allowance on account of his being physically handicapped. He should not have been transferred from Charbatia to Dumduma in Assam. The applicant has contended that his representation requesting for retention at Charbatia has been rejected in a mechanical manner which is illegal and arbitrary.

3. The Respondents filed their short-reply on 10.4.2018 in which they have contested the claim of the applicant. It is their contention that the applicant joined at ARC, Charbatia as LDC in the year 1990 and has continued in the same station for more than 27 years. As per the transfer policy guidelines issued vide No.1/38-2009/Pers.1-851 dated 26.5.2017 (R/1) by the Directorate General of Aviation Security, Cabinet Secretariat, the normal tenure at any station would be for three years and only a maximum tenure of seven years is allowed. The post of LDC carries All India transfer liability and the rotational transfer order dated 9.3.2018 on All India basis has been issued in accordance with the transfer policy and in public interest. The applicant's representation has also been considered by the competent authority and has not been agreed to. As per Para-14 of the revised transfer guidelines, it is clearly stated that in case a decision has been communicated after due consideration of the request, no further appeal or review would be entertained and a transfer order should be complied with expeditiously. O.M. No.AB-14017/41/90-Estt.(RR) dated 10.5.1990 relied upon by the applicant also states that in case of holders of Group-C or Group-D posts who have been recruited on regional basis and who are physically handicapped, such persons may be given posting as far as possible subject to administrative constraints in their native places within the region. The respondents have claimed that ARC, Charbatia and ARC,

Dumduma are within the same Eastern Region and therefore, the transfer of the applicant is legally valid. Any cancellation of his posting will have implication on placement of many other personnel and will adversely affect operational requirement. Respondents have stated that two other physically handicapped employees, viz., S/Shri D.S.Chinara, UDC and M.D.Rath, UDC who were in the list of transfer dated 9.3.2018 have already spent spells in outstations whereas the applicant has continuously remained at Charbatia for 27 years without break. Therefore, the O.A. filed by the applicant is devoid of merit and should be dismissed.

4. The applicant has filed a rejoinder on 16.4.2018 in which he has reiterated his earlier prayer and has also enclosed the judgment of the Hon'ble Gujarat High Court in Dipika vs. State in which the petitioner was a handicapped unmarried lady with 40% blindness in the right eye and the Hon'ble High Court after considering the rule position had ordered the cancellation of her transfer. Similarly in K.K.Ambujakshy vs. Under Secretary(PVA) Ministry of External Affairs (CPV Division) in O.A.No.560/2010 as well as in A.N.Mohanan vs. Joint Secretary (PVA) & Chief Passport Officer, in O.A.No.358/10, the Ernakulam Bench of this Tribunal had considered the application of the physically handicapped Government employees and had granted relief to the applicants by way of cancellation of transfer orders.

5. I have heard the learned counsels from both the sides on 13.4.2018 and perused the documents submitted by them. The fact that the applicant is a physically challenged person is incontrovertible. The certificate issued by the Chief District Medical Officer, Cuttack on 26.7.1989 shows that the applicant suffers from post-polio deformity in the lower limb to the extent of 40%. It is also obvious that the applicant has served in the same station at ARC, Charbatia continuing for 27 years. His transfer had been cancelled on two occasions earlier in the year 1996 and 2003. The applicant has heavily relied on the policy of transfer of persons with disability from time to time issued by the Government of India, Department of Personnel & Training O.M. dated 10.5.1990(A/6), the relevant part of which reads as follows:

“Subject:- Posting of physically handicapped candidates near their native places:

The undersigned is directed to say that a suggestion has been made that physically handicapped candidates appointed under the Government should preferably be posted in their native places or at least in their native district. The matter has been examined carefully. It may not be possible or desirable to lay down that physically handicapped employees belonging to Group ‘A’ or Group ‘B’ who have All India transfer liability should be posted near their native places. However, in the case of holders of group ‘C’ or Group ‘D’ posts who have been recruited on regional basis and who are physically handicapped, such persons may be given posting, as far as possible, subject administrative constraints, near their native places within the region”.

6. On 31.03.2014, the Ministry of Public Grievances & Pensions, DOP&T issued an Office Memorandum. Paragraph-H thereof reads as follows:

“H. Preference in transfer/posting:

As far as possible, the persons with disabilities may be exempted from the rotational transfer policy/transfer and be allowed to continue in the same job, where they would have achieved the desired performance. Further, preference in place of posting at the time of transfer/promotion may be given to the persons with disability subject to the administrative constraints.

The practice of considering choice of place of posting in case of persons with disabilities may be continued. To the extent feasible, they may be retained in the same job, where their services could be optimally utilized”.

7. The applicant has also relied on the judgment of the Hon’ble Gujarat High Court in SCA/10232 & 10234 of 1996 (Dipika vs. State) decided on 6.09.2011 as well as two orders of Ernakulam Bench of this Tribunal (O.A.No.560 of 2010 decided on 19.10.2010 (K.K.Ambujakshy vs. Under Secretary (Pva) and A.N.Mohanan vs. 2 Regional Passport Officer (O.A.No.358/2010 decided on 10.11.2010) wherein the cases of the persons with disability have been considered and reliefs granted to the applicants. At Para-9 of the judgment in Dipika vs. State (supra), Hon’ble Gujarat High Court have held as under:

“9. This court is conscious of the legal position that an employer has the right to transfer its

employees in the interest of the administration and in public interest, since transfer is an incidence of service. However, when the employer itself has framed certain guidelines for certain categories of employees, with a clear intention, then the action of the concerned authorities should have a reasonable nexus with the objectives sought to be achieved. It is expected that the respondents will act within the guidelines framed by them, otherwise it will remain nothing more than an empty formality on paper. The very objective of framing the policy will be defeated in its implementation, which will result in arbitrariness and discrimination, resulting in violation of Article 14 of the Constitution of India.

8. The Hon'ble Judges have proceeded further in the succeeding Paragraphs-10, 11 and 12 which read as follows:

"10. In both the writ petitions, the petitioners have categorically averred that the persons who have been transferred in their places are not physically handicapped persons and the petitioners, in spite of being physically handicapped persons, are unnecessarily being disturbed and sent away from the places of their residence, in violation of the guidelines framed by the respondents. It is not understood what administrative exigencies or public interests will be served if a handicapped person is transferred and in his or her place a perfectly normal and healthy person is substituted. Moreover, the stand taken by the respondent No.2 in the reply that since it is not convenient to have ladies working in the office after office hours during the Legislative Assembly Session, is totally absurd. It is an admitted fact that the Session of the Legislative Assembly takes place in Gandhinagar and not in Ahmedabad and that too only for short durations. Secondly, it is upto the respondents whom to retain beyond office hours, if the pressure of work so demands. The stand of the respondents is therefore, totally

unconvincing and bereft of any sound reasoning.

11. Although the respondents are not estopped from transferring the petitioners in future, they should do so as per the guidelines framed by them for handicapped persons. It is directed that these guidelines be adhered to, wherever they find it necessary to transfer the petitioners at any point of time.
12. As a result of the above discussion, the writ petitions are partly allowed. The impugned orders of the transfer of the petitioners are quashed and set aside. However, it is made clear that the respondents can transfer, if necessary, in the administrative exigency, the petitioners, but such transfers should be in consonance with the above policy/guidelines framed in favour of handicapped persons. Rule is made absolute, accordingly, in both the matters. There shall be no order as to costs”.

9. The Hon’ble Supreme Court in a catena of judgments have held that transfer of an employee is a purely administrative decision and the Courts have limited jurisdiction to interfere unless the decisions are tainted by arbitrariness, illegality or bias.[Union of India vs. S.L.Abas reported in (1993) 4 SCC 357, Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey (2004) 12 SCC 299, Abani Kanta Ray vs. State of Orissa 1995 Suppl (4) SCC 169, Rajendra Singh & Ors. vs. State of U.P. & Ors. reported in (2009) 15 SCC 178, Shilpi Bose & Ors. vs. State of Bihar & Ors. in AIR 1991 SC 532 and N.K. Singh vs. Union of India & Ors. (1994) 6 SCC 1998]. However, the physically challenged employees are of a special category and needless to say the best performance from them can be extracted if they are



posted at a place which is nearest to their native places and where they have the confidence of medical care and related facilities. A perusal of the rule position and the laid down law makes it clear that persons with disabilities have to be dealt with in a separate and distinct way commensurate with their physical limitations as well as their capacity to perform in the best optimal manner. Public interest cannot be a valid ground for transferring a physically challenged employee unless he has committed acts which are against public interest. In the present case, the facts and the points of law, particularly guidelines issued in the Office Memoranda dated 10.05.2010 and 31.03.2014 come to the rescue of the applicant and we find enough justification to come to the conclusion that the transfer of the applicant at this belated stage in his service career is not in the interest either of the organization or the individual.

10. In view of the above, we quash the impugned order of transfer dated 9.3.2018(A/4) and the rejection order dated 27.3.2018 (A/7) in so far as it relates to the applicant. The applicant be allowed to continue in his present place of posting. Necessary orders to this effect to be passed within a period of two weeks from the date of receipt of this order. No costs.

(DR.MRUTYUNJAY SARANGI)  
MEMBER(A)

(S.K.PATTNAIK)  
MEMBER(J)

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