

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Misc. Application No. 040/00107 of 2018

in

Original Application No. 040/00196/2018

Date of Order: This, the 07th day of August 2018

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

1. HOUSING & URBAN DEVELOPMENT CORPORATION LIMITED
Through its Chairman & Managing Director
7A, IHC, Lodhi Road, New Delhi – 110003.
2. The Executive Director (HRMA)
HOUSING & URBAN DEVELOPMENT CORPORATION LIMITED
7A, IHC, Lodhi Road, New Delhi – 110003.
3. The Regional Chief
HOUSING & URBAN DEVELOPMENT CORPORATION LIMITED
Regional Office, Rukminigaon, Guwahati – 781022.

...Misc. Applicants

By Advocates: Mr. B.C. Das, Sr. Advocate assisted by
Mr. S. Dutta

-Versus-

Sri Shankar Medhi
Son of Late Bheboram Medhi
Working as Deputy Manager (Finance)
Housing & Urban Development Corporation Ltd.
Resident of Priyam Bhawan, Rani Road
Opposite BSF Camp, P.O. – Azara, Guwahati
District – Kamrup (M), Assam, Pin – 781017.

...Opposite Party/Applicant

By Advocates: Mr. A. Ahmed, Ms. R.R. Rajkumari,
Ms. D. Goswami & Mr. N. Barman

ORDER**MANJULA DAS, JUDICIAL MEMBER:**

By this M.A. No. 107 of 2018 arising out of O.A. No. 196 of 2018, the Misc. Applicants (Respondents in the O.A.) prays for modification/alteration of the interim order dated 04.06.2018 passed in O.A. No. 196 of 2018.

2. Heard Mr. B.C. Das, Sr. Advocate assisted by Mr. S. Dutta, learned counsel for the Misc. Applicants/Respondents and Mr. Adil Ahmed, learned counsel for the opposite party/applicant.

3. In the O.A. No. 196/2018, the applicant prays for setting aside the transfer order dated 01.06.2018 by which the applicant was sought to be transferred from Guwahati Regional Office to Agartala Development Office. The applicant is presently working as Deputy Manager (Finance) in Regional Office at HUDCO Ltd. While the O.A. No. 196/2018 was heard on 04.06.2018, this Tribunal passed interim order as hereunder:-

"In the meanwhile, the impugned Order No. 414/2018 under letter No. F.II(4)/2018-HRMA dated 01.06.2018 is stayed, in so as the applicant."

Against the aforesaid stay order, the instant vacation application has been filed,

4. Mr. B.C. Das, learned Sr. Advocate assisted by Mr. S. Dutta, learned counsel for the Misc. Applicants/Respondents submitted that against the impugned transfer order dated 01.06.2018, the applicant neither has filed any representation nor reported to the place of posting. Hence straightway approached this Tribunal by filing the O.A. No. 196/2018. According to learned Sr. Advocate, in view of the decision of Hon'ble Apex Court rendered in the case of **S.C. Saxena Vs. Union of India & Ors.**, reported in **(2006) 9 SCC 583**, the applicant violated the dictum of the highest court of the land and on this ground alone the ex-parte interim order dated 04.06.2018 is liable to be modified/altered and/or vacated.

5. Learned Sr. Advocate submitted that the applicant is a senior officer having wide experience and as such, he has been considered best suited for the job. Accordingly, he was chosen for posting at Agartala. As per the meetings with State Government officials at various levels, it was understood that, active participation of Finance/Accounts person is required for dealing with the State Government of Tripura. Moreover, recently vide letter dated 18.05.2018, the State Government of

Tripura has submitted loan proposal to HUDCO for loan of Rs. 200 crore for Agartala Smart City. Some other loan proposals are expected shortly. In order to facilitate and co-ordinate with officials of Agartala Smart City Ltd. (the borrowing agency), an experienced and knowledgeable finance person is required to be posted at Agartala on full time basis for day to day monitoring, so that such a big project (the largest loan size project under Guwahati Regional Office since its inception in 1988) can be monitored on daily basis for which the applicant was found suitable, as he has good knowledge of finance, good PR and having exposure in working in the North East for more than 20 years. Thus his transfer to Agartala is required on exigency.

6. Learned Sr. Advocate further submitted that the applicant has remained posted at Guwahati for continuous 18 years till the time he was posted to RO, Patna. In between he remained posted at Shillong Office for a period of 2-3 months and that too on account of his own request for change of cadre from Stenographer Gr. II to Assistant Grade – I. According to learned Sr. Advocate, there were only three officers at the level of the applicant at Guwahati RO, out of

which two officers have been transferred including the applicant.

7. Sr. Advocate Mr. Das reiterated that the applicant is a most suitable officer for the job at Agartala. According to the Sr. Advocate, the transfer order dated 01.06.2018 has been made due to exigencies of work and in public interest. In order to restore business operation in the State of Tripura, the necessity of posting a full-fledged Finance Officer at Agartala was considered essential so that all these financial issues and clarifications can be provided to the State Govt. from time to time.

8. In reply to the submission made by Sr. Advocate Mr. B.C. Das, Mr. Adil Ahmed, learned counsel appearing for the opposite side/applicant by filing objection dated 12.07.2018 submitted that the Misc. Petitioners/Respondents issued the impugned transfer order dated 01.06.2018 in a malafide manner wherein the applicant has been transferred from Guwahati Regional Office to Agartala Development Office in violation of 'Transfer Policy Guideline'. The applicant joined in the Regional Office, Guwahati on 16.05.2016 as Deputy Manager (Finance) HUDCO Limited and not yet completed the minimum tenure 5 years in Regional Office as per Transfer Policy

Guideline. Other officers working in the Regional Office, Guwahati for more than 20 years since their date of joining without any transfer till date which has been elaborately mentioned in paragraphs 4.9, 4.10, 4.11 of the O.A. No. 196/2018 including the Transfer Policy Guideline of HUDCO Limited. Apart from the above in the All India Level, similarly situated officers like Opposite Party i.e. Deputy Manager (Finance) HUDCO Limited are working more than 30 years in the same station without any transfer.

9. Mr. Ahmed further submitted that in the APAR 2016-17 of the Regional Office, HUDCO Limited, Guwahati Smt. Dharitri Medhi, Deputy Manager (Finance), who is working for last 25 years at Guwahati since her joining has secured 5 marks wherein the applicant secured only 4 marks in APAR 2016-17. Hence, Smti Dharitri Medhi, Deputy Manager (Finance) is senior most in the Guwahati Station and suitable fir person with vast experience having merit more than the applicant to be posted at Agartala.

10. It was submitted by Mr. Ahmed that on earlier occasion also, the applicant approached this Tribunal vide O.A. No. 45/2017 wherein this Tribunal vide order dated 20.04.2017 allowed the said O.A. by setting aside the transfer

order dated 11.08.2016 whereby the applicant was sought to transfer from Guwahati to Agartala. The Misc. Applicants i.e. the respondents thereafter, approached before the Hon'ble Gauhati High Court vide Writ Petition (Civil) No. 5170 of 2017 and the Hon'ble High Court vide order dated 30.08.2017 dismissed the said Writ Petition. Thereafter, the respondent authority approached before the Hon'ble Apex Court vide SLP (Civil) Diary No. (s) 39292/2017 which is also disposed of vide order dated 30.08.2017.

11. Having heard the learned counsel for the parties, perusal of the pleadings and the material placed on record, it is noted that vide order dated 11.08.2016, the applicant was sought to be transferred from Guwahati RO to Agartala DO against which the applicant approached this Tribunal vide O.A. No. 040/00045/2017 and this Tribunal after hearing both sides, vide order dated 20.04.2017 set aside the impugned transfer order dated 11.08.2018, in so far as the applicant is concerned. Against the order of this Tribunal dated 20.04.2017, the Misc. Applicants/respondents approached before the Hon'ble Gauhati High Court vide WP(C) No. 5170/2017 and the Hon'ble High Court vide order dated 30.08.2017 dismissed the said WP(C). Matter then went to the Hon'ble Apex Court vide

SLP(Civil) Diary No. (s) 39292/2017 where the Hon'ble Apex Court vide order dated 30.08.2017 disposed of the said SLP by observing as hereunder:-

“While we do not find any ground to interfere with the impugned order, we make it clear that the petitioners are not debarred from exercising their right of transferring the respondent to an appropriate place, if the exigency of service so requires.”

12. At the time of argument, Mr. Adil Ahmed, learned counsel for the opposite side/applicant submitted that Agartala is not appropriate place to get required medical facilities inasmuch as he is suffering from acute inflammatory Demyelinating Polyradiculoneuropathy with paralysis of all 4 limbs and under constant treatment at GNRC Hospital, Guwahati (HUDCO empanelled).

13. It is noted that one officer namely Smti Dharitri Medhi, Deputy Manager (Finance) who has been working for long 25 years at Guwahati since her joining and more meritorious so far APAR 2016-17 are concerned, however, allowed to retain at the same station at Guwahati without any transfer. As such, submission made by the learned Sr. counsel because of suitability ground, the applicant has been sought to be transferred to Agartala, is not acceptable. The case referred

by the learned Sr. Advocate in the case of **S.C. Saxena (supra)**, in my view, is not applicable in the present case inasmuch as the matter is not first round of litigation but second round of litigation where the issue of transfer has been travelled from CAT to Hon'ble High Court and then to Hon'ble Apex Court where the Hon'ble Apex Court while disposing of the SLP No. 39292/2017 vide order dated 30.08.2017 in the issue of transfer of the applicant from Guwahati to Agartala vide order dated 11.08.2016 made clear that the petitioners (present respondents) are not debarred from exercising their right of transferring the respondent to an appropriate place, if the exigency of service so requires.

14. From the papers and records, it appears that because of applicant's own request on medical ground, the respondents transferred him from Kohima to Guwahati vide office order No. 399/2016 dated 05.06.2016 and he joined at Guwahati on 16.05.2016. But the respondent authority only after three months, transferred him to Agartala from Guwahati in which this Tribunal interfered as well as well as Hon'ble High Court.

15. Thus, it is easily discernible that once the transfer of the applicant to Agartala was declined by the Court on medical ground, under what circumstances, the department again sought to be transferred to Agartala vide impugned order dated 01.06.2018? Hence, it is not at all applicable for warranting the applicability of the decision of **S.C. Saxena (supra)**. Once the Hon'ble Apex Court did not debar the respondent authority for transferring the applicant to appropriate place does not mean that the applicant again and again will be transferred to Agartala where the reasonability of the medical ground has been accessed on earlier occasion. As such, submission made by the learned counsel is failed to accept.

16. Presently I am of the view that since this Tribunal by considering all aspects of the case of the applicant, stayed the operation of the impugned transfer order dated 01.06.2018 (in so far the applicant is concerned) vide interim order dated 04.06.2018, as such, in view of the discussion made in foregoing paragraphs, I am not inclined to vacate the said interim order of this Tribunal dated 04.06.2018, otherwise the applicant may suffer irreparable loss and injury inasmuch as balance of convenience lies in favour of the applicant.

17. For coming to proper finding of the case, there needs a final hearing of the O.A. Hence matter be heard after completion of pleadings.

18. In view of the above, Misc. Application filed for modification/alteration of the interim order dated 04.06.2018 stands dismissed.

(MANJULA DAS)
MEMBER (J)

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