

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00227/2017

Date of Order: This, the 13th day of September 2018

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

Shri Bijoy Kumar Deka
S/o Kantiram Deka, Research Assistant
Office of the Executive Engineer
M.B. Division, Central Water Commission
Govt. of India, Ministry of Water Resources
Adabari, Guwahati – 781014.

...Applicant

By Advocate: Mr. M. Chanda, Mrs. U. Dutta and Mr. H. Das

-Versus-

1. Union of India
Through Secretary, Govt. of India
Ministry of Water Resources
Shram Shakti Bhawan, Rafi Marg
New Delhi – 110001.
2. Director, River Data Compilation Directorate
CWC, West Blokc – 1, Second Floor, Wing – 4
R.K. Puram, New Delhi – 110066.
3. Under Secretary Govt. of India
Central Water Commission
Room No. 310(S), Sewa Bhawan, R.K. Puram
New Delhi – 110066.
4. The Executive Engineer
M.B. Division, CWC
Adabari, Guwahati – 781014.

...Respondents

By Advocate: Mr. R. Hazarika, Addl. CGSC

ORDER (ORAL)**MANJULA DAS, JUDICIAL MEMBER:**

Mrs. U. Dutta, learned counsel for the applicant and Mr. R. Hazarika, learned Addl. CGSC for the respondents are present.

2. The instant petition has been filed by the applicant with a prayer to set aside and quash the impugned transfer and posting order dated 02.05.2017 as well as the impugned letter dated 20.07.2017 so far the applicant is concerned and to allow the applicant to continue in the present place of posting at Guwahati in the same capacity. While this matter was moved on 10.08.2017, this Tribunal issued notice by directing the respondents to file reply and interim order was granted as hereunder:-

“During the pendency of the OA or till the completion of examination of the applicant’s son Class XII, whichever is earlier, applicant’s transfer order will remain stayed.”

3. Thereafter, matter was listed on several occasions on 13.09.2017, 22.11.2017, 18.01.2018, 05.03.2018, 10.04.2018, 14.05.2018, 08.06.2018, 20.08.2018 and 13.09.2018 that is today.

However, neither stay vacation application nor written statement has been filed.

4. The applicant is presently working as Research Assistant under the office of the Executive Engineer, M.B. Division, Central Water Commission, Guwahati. Son of the applicant is studying in local School at St. Francis D' Assisi Sr. Sec School, Guwahati in Class XII.

5. Vide impugned transfer order dated 02.05.2017, the applicant was sought to be posted at CSRO, Coimbatore, in the State of Tamil Nadu on promotion to the grade of Assistant Research Officer. But due to unavoidable domestic problems as his both parents are aged where father is aged about 85 years and had undergone heart surgery as well as mother also had undergone heart surgery and as there is no other than the applicant to look after them and as the education of applicant's son is in mid academic session, as such, he did make representation dated 04.05.2017 before the respondent No. 3 through proper channel narrating his grounds of parents' illness and son's education and accordingly requested the authority to accept willingness to forgo promotion from the grade of Sr. Research Assistant to Assistant Research Officer.

However, the respondent authority by ignoring the request, rejected his prayer stating that request of the applicant to forgo promotion is considered but the same is not accepted due to exigency of work.

6. It was submitted by the learned counsel for the applicant Mrs. U. Dutta that issuance of impugned transfer and posting order dated 02.05.2017 during the middle of the academic session is highly arbitrary, illegal, unfair and discriminatory and on that score alone the Office Order dated 20.07.2017 is liable to be set aside and quashed. According to Mrs. Dutta, longer stayee officers in the cadre of Assistant Research Officers are working at Guwahati and Shillong respectively. As such, there will be no difficulty to consider their transfer and posting from Guwahati to Coimbatore in the event of necessity in the light of Transfer Policy.

7. Mrs. Dutta further submitted that no valid reason has been assigned in the impugned rejection letter dated 20.07.2017 with regard to application of the applicant to forgo the conditional promotion and on that score alone the impugned letter dated 20.07.2017 is liable to be set aside and quashed so far the applicant is concerned.

8. Heard the learned counsel for the applicant, perused the pleadings and the material placed before me. The following two points raised by the learned counsel for the applicant against the issuance of impugned Posting on promotion order dated 02.05.2017 so far the applicant is concerned:

- (a) That the impugned Transfer and Posting on promotion order dated 02.05.2017 is issued in the mid academic session of the applicant; and
- (b) That both parents are above 80 years old where father is aged about 85 years and both had undergone heart surgery and being only son to look after parents, it is not feasible to go far from Guwahati to work by leaving the entire family in distress by hampering education of his son. Hence he made request to the authority to accept the willingness to forgo the promotion. However, his request was turned down by the respondent authority vide office order dated 20.07.2017 which is not fair justice.

9. So far coming to fist point, I am taking the decision of Hon'ble Apex in the case of **Director of School Education, Madras & Ors. Vs. O. Karuppa Thevan 1994 Supp (2) SCC 666** where the Hon'ble Apex Court has held that – “Transfer of an employee during mid-academic term is not proper unless exigencies of service are urgent for making such transfer.”

10. Second point is regarding health condition of old parents who are staying at Guwahati and under treatment of GNRC LTD, Dispur, Guwahati.

If such a situation the applicant be moved, the education of his son as well as for treatment of the old parents will be hampered. Accordingly, he had given willingness to forgo the promotion from the grade of Sr. Research Assistant to Assistant Research Officer.

11. Mr. R. Hazarika, learned Addl. CGSC appearing on behalf of the respondents submits that in such a situation, liberty may be granted to the applicant to make a comprehensive representation so as to decide the case of the applicant afresh by the respondent authority where learned counsel for the applicant has no objection.

12. By accepting the prayer made by the learned counsel for the parties, without going into the merit of the case, I hereby direct the applicant to make a comprehensive representation within a period of two weeks from the date of receipt of this order. On receipt of such representation, the

respondent authority shall dispose of the same within a period of three months thereafter.

13. It is made clear that, whatever decision to be arrived by the Respondent Authorities, shall be reasoned and speaking one and shall be communicated to the Applicant forthwith. Till the disposal of the representation and communication of the decision to the applicant, the impugned transfer and posting order dated 02.05.2017 as well as the impugned rejection letter dated 20.07.2017 so far the applicant is concerned shall be kept in abeyance.

14. O.A. stands disposed of accordingly. No order as to costs.

**(MANJULA DAS)
MEMBER (J)**

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