

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : GWALIOR

Original Application No.202/00992/2018

Gwalior, this Wednesday, the 24th day of October, 2018

HON'BLE MR. R. RAMANUJAM, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Atul Kumar Shrivastava, S/o Santosh Kumar Shrivastava, DOB: 30.04.1987, Present Post : Divisional Accounts Officer, Grade-II, Mob. No.8989109602, R/o Type: III, 113, A.G. Colony, Bhadbhada Road, Bhopal (M.P.) – 462003 **-Applicant**

(By Advocate – Ms. Roma Bhagat with Shri Tej Singh Mahadik)

V e r s u s

1. Comptroller & Auditor General Pocket-9, Deen Dayal Upadhyaya Marg, New Delhi – 1100124.
2. The Principal Accountant General (A&E)-I, M.P. Lekha Bhawan, Jhansi Road, Gwalior (M.P.) - 474002 **- Respondents**

(By Advocate – Shri Avanish Kumar Dubey, proxy counsel of Shri M.K. Sharma)

O R D E R (O R A L)

By R. Ramanujam, AM.

Heard. The applicant has filed this Original Application seeking following reliefs:

“8.1 Set aside the transfer order of the Applicant dated 05.06.2017 and the subsequent rejection of second representation dated 10.10.2018.

8.2 Pass such other order(s) or direction(s) as may be deemed fit and proper in the facts and circumstances of the case.”

2. It is submitted that the applicant had challenged his transfer order from Bhopal to Hoshangabad on the ground of disability in OA No.202/481/2017 which was dismissed by an order of this Tribunal dated 21.08.2018. The applicant filed W.P. No.20006/2018 thereagainst before the Hon’ble High Court of Madhya Pradesh at Jabalpur who by an order dated 29.08.2018 dismissed the same observing that no illegality, infirmity or perversity was found in the impugned order warranting interference by the Court. However, on filing Review Petition-1377-2018 by the applicant, the Hon’ble High Court by an order dated 28.09.2018 granted liberty to the applicant to approach the authorities for re-adjustment or re-transfer and in such an event, the order passed by the Tribunal or by the High Court would not come in the way of the authorities in expeditiously considering his representation afresh or for recalling his order of transfer.

3. In pursuance of the above, the applicant submitted a fresh representation dated 30.09.2018, which was rejected by the respondents by Annexure A-14 impugned communication dated

10.10.2018. Aggrieved by the rejection, the applicant is before this Tribunal in this second round of litigation.

4. Learned counsel for the applicant would submit that the DoP&T has recently issued a fresh OM dated 08.10.2018, allowing even a Government employee who is a care-giver of a dependent daughter/son/parents/spouse/brother/sister with specified disability, as certified by the certifying authority as a Person with Benchmark Disability as defined under Section 2(r) of the Rights of Persons with Disabilities Act, 2016 to be exempted from the routine exercise of transfer/rotational transfer subject to administrative constraints. If even a care-giver is entitled to exemption from routine transfer, there is no reason not to exempt a disabled employee himself, it is contended.

5. It is alleged that the applicant has been subjected to routine transfer and the rejection of his representation dated 30.09.2018 for reconsideration of the order was also on the ground that he had completed six years at Bhopal. No other reason is specified in the impugned communication dated 10.10.2018. Clearly, the matter had been dealt with otherwise than in the light of the DoP&T OM cited above.

6. It is further submitted that the applicant would like to rely on the order of Hon'ble High Court of Madhya Pradesh, Bench at Indore in W.P. No.148/2017 (**Sudhanshu Tripathi vs. Bank of India & Others**) decided on 27.04.2018 by which a similarly placed disabled person had been granted relief in the matter of transfer. This judicial precedent had not been relied upon by the applicant either in the O.A before this Tribunal or the W.P. and the Review Petition before the Hon'ble High Court in the previous round of litigation and as such the applicant could be allowed to rely on the said order of the Hon'ble High Court while seeking exemption from routine transfer, it is submitted.

7. We have carefully considered the submission. Since the rejection of the applicant's representation dated 30.09.2018 by Annexure A-4 communication dated 10.10.2018 makes no reference to OM dated 08.10.2018 of the DoP&T and as such does not appear to have been considered in the light of the new policy of the Government, we are of the view that the applicant could be permitted to make a fresh representation placing reliance on the said OM of the DoP&T and seeking reconsideration of the decision conveyed by Annexure A-14 communication dated 10.10.2018. The applicant shall be at liberty to quote appropriate judicial

precedents in this regard which may not have been relied upon already in the earlier round of litigation so that the competent authority could consider the matter fairly in accordance with law and in the interest of justice.

8. In view of the above, the applicant is permitted to submit a fresh representation to the competent authority within a period of one week from the date of receipt of a copy of this order, on receipt of which the competent authority shall consider the matter comprehensively in accordance with law and pass a reasoned and speaking order within a period of three weeks thereafter. Status quo with regard to the transfer of the applicant shall be maintained in the meantime.

9. The O.A is disposed of in the above terms. No costs.

**(Ramesh Singh Thakur)
Judicial Member**

am/-

**(R. Ramanujam)
Administrative Member**