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**CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATA**

No. M.A. 350/00668/2018  
O.A. 350/00111/2018

Date of order: 11.9.2018

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sunil Kapoor MES 270477,  
Son of Lila Krishna Kapoor,  
Aged about 44 years,  
Residing at C/o. Shri Gour Maity,  
4/6, Ghosh Para Road,  
Siddhanta Para, Nona Chandan Pukur,  
Barrackpore – 700 122,  
West Bengal and working as JE (QS & C),  
Garrison Engineer (AF) Barrackpore,  
Pin – 700120.

Applicant

- VERSUS**
1. Union of India,  
Service through Secretary,  
Ministry of Defence,  
South Block,  
New Delhi – 110 011.
  2. Adjutant General,  
Adjutant General's Branch,  
IHQ MOD (Army),  
New Delhi – 110 066.
  3. Chief Engineer Eastern Command,  
Engineers Branch, Fort Willian,  
Port – 908542.
  4. Garrison Engineer (Air Force),  
Military Engineer Service,  
Barrackpore,  
Kolkata – 700 120.
  5. The Chief Engineer,  
Central Command,  
Lucknow.

.. Respondents

For the Applicant : Mr. L.K. Chatterjee, Counsel  
Mr. N. Roy, Counsel

For the Respondents : Mr. B.P. Manna, Counsel

**ORDER**

**Per Dr. Nandita Chatterjee, Administrative Member:**

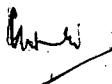
An Miscellaneous Application bearing No. 668 of 2018 arising from orders dated 3/8/2018 in O.A. No. 111 of 2018 has been filed by the applicants in the O.A. with the following prayer:-

" Therefore, it is most respectfully prayed that the order of transfer dated 23<sup>rd</sup> May, 2017 being non-est the same being set-aside by this Hon'ble Tribunal the order dated August 3, 2018 may kindly be modified/clarified and a specific direction be issued directing the respondent authorities and in particular the respondent No. 3 to pass a consequential order by transferring your petitioner from Tawang, Arunachal Pradesh to the post of JE (QS & C), Garrison Engineer (AF), Barrackpore, West Bengal with immediate effect and not later than 7 days from the date of the order to be passed on this application and for consideration of the application/representation for compassionate posting of your petitioner to Lucknow and may pass such other order or orders as to this Hon'ble Tribunal may deem fit and proper."

2. The Original Application bearing No. 111 of 2018 had been disposed of on 3.8.2018 by the Tribunal as follows:-

"8. Accordingly, in our considered view, the transfer policy guidelines have not been strictly adhered to while issuing the transfer order dated 23.5.2017 and also in the speaking order dated 28.12.2017, and, accordingly, as held in *Union of India v. S.L. Abbas, (1993) II LLJ 626* and more particularly in *N.K. Singh v. Union of India, (1995) I LLH 854* that if the decision is vitiated by mala fides or infraction of any professed norm or principle governing the transfer as contained in the respondents' transfer policy, this matter calls for intervention in judicial review.

We hence set aside the transfer order dated 23.05.2017 (Annexure A-1 to the O.A.) with respect to the applicant and direct the concerned competent respondent authority to consider his representations for compassionate posting in the light of their transfer policy particularly para "I" of the same without insisting on any replacement".



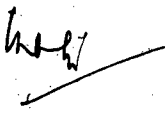
3. Heard Ld. Counsel for both sides. Ld. Counsel for applicant in the O.A. cites the dictum of Hon'ble Apex Court in **(2007) 5 SCC 591 Bikash Bhushan Ghosh and others. V. Novartis India Ltd. & anr.** in support.

Ld. Counsel for the respondents submits that there is no vacant post at Barrackpore to accommodate the applicant upon setting aside of the transfer order dated 23.5.2017 and that no decision has been taken as yet on consideration of representations for compassionate posting as preferred by the applicant. Ld. Counsel for the respondents also orally seeks a further clarification as to whether the speaking order dated 28.12.2017 has been set aside in Tribunal's order dated 3.8.2018.

After hearing Ld. Counsel for parties and having referred to the citation furnished by Ld. Counsel for applicant, the following clarifications are hereby issued with respect to orders dated 3/8/2018 in OA 111/2018:

(i) Once the transfer order dated 23.5.2017 (Annexure A-1 to the O.A.) is set aside, the order with respect to the applicant had become "non est" with respect to the applicant, implying that the applicant would be deemed to be continued in his posting at Barrackpore barring his tenure of posting at Tawang which he had joined during the pendency of the OA but without forfeiture of his rights to claim the relief as prayed for in the OA.. The Respondents will issue orders to such effect forthwith.

(ii) It is further clarified that both the transfer order dated 23.5.2017 and speaking order dated 28.12.2017 were referred to by the Tribunal while stating that the transfer policy guidelines had not been strictly adhered to therein. Accordingly, as a logical corollary, the speaking order dated 28.12.2017 has also been set aside.



(iii) The Tribunal had directed that the competent respondent authority will consider his representations for compassionate posting in the light of their transfer policy particularly para "I" of the same without insisting on any replacement. The competent respondent authority will hence issue orders on the prayer of the applicant for compassionate posting to Lucknow within 7 days of receipt of this order

4. With this, the Miscellaneous Application no 668/2018 is disposed of.

(Dr. Nandita Chatterjee)  
Administrative Member

(Bidisha Banerjee)  
Judicial Member

SP

