

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**



No. O.A. 759 of 2016

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member

Shri Subrata Mukherjee,
Son of Late Premtosh Mukherjee,
Aged about 51 years,
Assistant Field Officer (GD),
Government of India, Special Bureau,
Kolkata, Residing at Plot No. 22,
Block-D, Sarada Pally, Kolkata – 700 039.

.... Applicant

- Versus -

1. Union of India through the Secretary (R),
Cabinet Secretariat, Govt. of India,
Room No. 1001, B-2 Wing, 10th Floor,
Parya Varan Bhawan, CGO Complex,
Lodhi Road, New Delhi – 110 003.
2. The Additional Secretary (Personnel),
Government of India, Cabinet Secretariat,
Government of India, Room No. 1001,
B-2 Wing, 10th Floor, Parya Varan Bhawan,
CGO Complex, Lodhi Road,
New Delhi – 110 003.
3. Commissioner (EZ), Special Bureau,
Government of India, 316, Shanti Pally,
East Kolkata Township Project,
Kolkata – 700 039.
4. The Deputy Commissioner (Operations),
Special Bureau, Government of India,
Kolkata, 316, Shanti Pally,
East Kolkata Township Project,
Kolkata – 700 039.
5. The Deputy Commissioner (Administration),
Special Bureau, Government of India,
Kolkata, 316, Shanti Pally,
East Kolkata Township Project,
Kolkata – 700 039.

.. Respondents

For the Applicant

Mr. S.K. Dutta, Counsel

For the Respondents

Mr. P. Mukherjee, Counsel

Order dated: 9.6.16.

ORDER (Oral)

Ld. Counsels were heard.

2. Materials on record were perused.

3. The applicant in this O.A. posted as Assistant Field Officer (GD) in Special Bureau, Kolkata has challenged a transfer order dated 18.3.2015 whereby and whereunder he has been transferred from Kolkata to serve at Agartala Sector and release order dated 22.4.2016 issued pursuant to transfer order dated 18.3.2015. He has also challenged memo dated 29.4.2016 and office order dated 29.4.2016 and memo dated 15.4.2016.

4. The transfer order was issued on 18.3.2015 transferring him from FIP, Kolkata to SB, Agartala. On his prayer made on 24.3.2015 applicant was granted deferment upto 31.3.2016 with the approval of the Commissioner (EZ), Kolkata, vide order dated 19.5.2015. On 22.4.2016 i.e. after expiry of the deferment period the applicant was sought to be released from Kolkata. He preferred a representation/appeal to the Additional Secretary (Pers.) for retention at SB, Kolkata or transfer to SB, Siliguri on medical ground of his mother. The applicant stated that his mother aged about 73+ had endured three consecutive cerebral attacks in 2015, after his brother died of cardiac arrest in 2014. She was in a state of acute confusion with accelerated hypertension. She was admitted on emergency basis to the Intensive Care Unit of the Institute of Neurosciences, Kolkata on 30.3.2016 and was under treatment therein. In absence of any other male member in the family to look after the aged lady, his wife having to take care of a two year old daughter, the family would be completely disarranged if the transfer was effected as he would not be able to travel frequently from Agartala to

Kolkata.

5. On 29.4.2016 his prayer was turned down by the Deputy Commissioner (Admn.) with the approval of Commissioner, EZ, Kolkata on the ground that he was already given deferment for a year as he had not submitted any representation to AS (Pers.) when the deferment was granted and so his application to AS (Pers.) was not forwarded as it had become time barred. That apart on 15.4.2016 the applicant was intimated that he needed to serve in Agartala Sector "for his career progression" as he served Siliguri Sector earlier.

6. Ld. Counsel for the applicant would strongly urge that the orders dated 15.4.2016 and 29.4.2016 demonstrated that the transfer was not in public interest but for his career progression on a mistaken belief that the applicant had never served in Agartala Sector whereas the fact remains that after serving as Field Assistant in Kolkata from 1995-1997 he was transferred to Agartala in March, 1997 where he served till March, 2001 i.e. for four years against a normal tenure of two years. He was in Kolkata from March, 2001 till 2nd March, 2007 whereafter he was sent to Siliguri on 3.3.2007 and brought back in April, 2010. Ld. Counsel also cited the examples of three AFOs namely Shri Bablu Bhagat, Sri Tapas Bose and Sri Goutam Saha who were retained in Kolkata for the last 8 to 9 years.

Ld. Counsel further argued that in terms of the transfer policy of AFOs are governed by standing orders of Cabinet Secretariat, Government of India which provides the following:-

"Chapter-I

Clause 19 regarding procedure for submission of representations on various service matters (i) any grievance or representation relating to service matters should first be made to the immediate Superior Officer or Head of Office, (ii) if the official is not satisfied with the reply given by the immediate Officer or the Head of Office the official can make a representation to the Headquarters or the Commissioner through proper channel, (v) having exhausted the first two stages if the official is not satisfied he is allowed a final chance to represent to the Additional Secretary/Secretary.

Chaper - III on general orders relating to posting and transfers, fixing of tenure, handing over of charge and maintenance of service books. Clause-6 inter alia states that the underlying Principle behind the modified guidelines is the need to avoid transfers in lower ranks. 6 (v) subject to exigencies of service general frame work of the transfer policy, individual request on domestic, personal and compassionate ground will be given due consideration. 8 this clause inter-alia states that low paid employees from FA to AFO belonging to Junior Executive cadre and equivalent ranks in other cadres will not be transferred unless there are strong administrative grounds like unavoidable of filling up the vacancies etc.

Clause 20 the officials in the grades of FA, SFA, AFO, UDC, LDC, Stenographer and AFO (T) will be transferred outside their respective regions only if an official at a particular place has completed his tenure of three years and has requested for a change, if there is existing vacancy which is required to be filled up and there are no locals available and if there is an urgent request for transfer on compassionate ground which has been accepted and the resultant vacancy has to be filled up and no locals are available.

Clause 24 is regarding time limit for making representation but here the representation was made within the stipulated period being not satisfied with the rejection to the Additional Secretary."

7. Ld. Counsel for the respondents vociferously objecting to the provisions cited by Ld. Counsel for the applicant as extracted supra which were provided in a typed copy, submitted the original transfer policy of the respondents that was applicable to the present applicants. Relevant extracts from the said policy would run as under:-

"BASIC FEATURES

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6. *Since large number of posts of Senior/Junior Executive and Telecom Cadres are located along the North-Eastern/Western and Northern sectors, the scope for agreeing to post a person to a place of one's choice is limited. In order to ensure that the request of all officials whether posted at Hqrs. Or SBx are accommodated, rotation of staff from Hqrs. To SBx, SBx to Hqrs. And from one SB to another is inevitable.*

7. *It would be the Organisation's endeavour to restrict the transfers of low paid employees in the ranks of FA/SFA/AFO/LDC/Stenographer/AFO*

(Tele) and MT Cadre officials to the barest minimum Transfers either on promotion or on rotational basis in the above ranks would be effected only when there is a need to fill up any vacancy at outstation when no locals/vacancies are available or only on request basis.

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JUNIOR EXECUTIVE CADRE

(i) Transfers in the ranks of FAs/SFAs and AFOs would be minimum. These would generally be effected under the following conditions:

- (a) If an official at a particular place has completed his tenure of three years at Hqrs./SBx and has requested for a change.
- (b) If there is an existing vacancy which is required to be filled up and there are no locals available.
- (c) If there is an urgent request for transfer on compassionate grounds which has been accepted and the resultant vacancy has to be filled up and no locals are available.
- (d) On administrative grounds."

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REPRESENTATIONS AGAINST TRANSFERS/IMPLEMENTATION OF TRANSFER ORDERS-

The existing policy guidelines on representations against transfers, which permit only two representations viz. to the Appointing and Appellate Authorities would continue. All officers making representations against transfers would continue to certify that they have applied for TA/DA advance within 7 days of issuance of orders. **First representation must be submitted within 15 days of receiving transfer order and the second within 7 days of receiving reply on first representation. Decisions on the representations would be taken within 3 months of issuing transfer orders and the officers would be required to move immediately thereafter. If needed officers will be administratively relieved, to effect the transfer.**

The representations received at Hqrs. Will be examined expeditiously and decision communicated to the applicant within one month from the date of receipt of the representation. Officials should refrain from sending advance copies of their representation directly to Pers. Division.

All representations should contain all the difficulties faced by a person proceeding on transfer. Therefore, it would be in the interest of the official to put in a representation soon after the transfer orders are issued if they have any genuine problem. Generally, a second representation on the subject either reiterating the same point or incorporating any difficulties would not

merit favourable consideration. Representations against transfers may be made to the competent authority and in case an appeal is made it lies only to the officer next above the appointing authority. No further appeal lies and such appeals will not be entertained."

8. A cursory glance at the cited provisions of the transfer policy would exemplify and demonstrate the following;

- (i) Transfers in the ranks of AFOs would be minimum.
- (ii) It would be effected if an official at a particular place had completed his tenure of three years and requested for a change.
- (iii) If there was an existing vacancy which was required to be filled up and no locals was available.
- (iv) If there was an urgent request for transfer on compassionate ground which was accepted and no locals were available to fill up the resultant vacancy.
- (v) On administrative grounds.
- (vi) A representation against the transfer order had to be made within 15 days of its receipt for the first time and within 7 days of receiving a reply to the same.

Therefore, the contention of the Ld. Counsel that power to transfer on administrative ground was not available with the authority could not be supported.

9. In the present case it could be noted that the applicant's prayer on 24.3.2015 was already granted by allowing a deferment upto 31.3.2016 during which period he never sought for any reconsideration or appeal to the higher authority. It was only on his release on 24.3.2016 that he preferred a representation on 25.4.2016 for retention or transfer to Siliguri. Nevertheless it was preferred to the Additional Secretary (Pers.) i.e. the next higher authority. The transfer policy as enumerated supra, provided for right to appeal but did not prescribe⁸ any time limit for preferring an appeal to the authority higher to that

which considered and rejected the representation. Therefore, in my considered opinion, it was not proper for the authorities to hold back the representation/appeal from being forwarded to AS (Pers.) on the ground that it had become time barred. The respondents in all fairness ought to have forwarded the representation to AS (Pers.).

It could also be noted that the transfer policy is explicit that AFOs have the right to prefer representation against transfer and such representation had to be examined expeditiously and decision thereof communicated to the applicant within one month from its receipt. It also provides for appeal with no time limit prescribed. It could be appreciated that the applicant belongs to the Special Branch, the affairs of which are secretly maintained nevertheless when the authorities themselves have allowed concession in favour of its employees (AFOs etc.) to seek respite from transfer and to prefer appeal without any time limit, non-forwarding of such representation ^{or B.} a appeal could neither be comprehended nor countenanced.

10. Accordingly, the O.A. is disposed of with a direction upon the authorities to forward the representation / appeal of the applicant to the Additional Secretary (Pers.) for disposal in accordance with law and within the prescribed time limit.

11. The O.A. is, accordingly, disposed of. There shall be no order as to costs.

(Bidisha Banerjee)
MEMBER(J)

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