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CENTRAL ADMINISTRATIVE TRIBUNAL CALCUTTA BENCH

No. OA 350/3/2017

Present: Hon'ble Mr.A.K.Patnaik, Judicial Member
Hon'ble Ms.Jaya Das Gupta, Administrative Member

TAPAN BHATTACHARYA
S/o Late Haranarayan Bhattacharya,
Working as Hostel Warden,
Indian Meritime University,
Kolkata Campus,
R/o 30 Janata Road,
1st Floor, Santoshpur,
Kolkata - 700075.

APPLICANT

VERSUS

1. Union of India, service through
The Secretary,
Min. Of Shipping,
Parliament Street,
New Delhi - 110001.
2. Director General of Shipping,
Min. Of Shipping,
9th Floor, Beta Building,
Think Techno Campus,
Kanjur Marg (East)
Mumbai - 400042.
3. Indian Meritime University,
Through the Registrar,
East Coast Road,
Chennai - 600119.
4. The Vice Chancellor,
Indian Meritime University,
East Coast Road,
Chennai - 600119.
5. The Registrar,
Indian Meritime University,
East Coast Road,
Chennai - 600119.

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6. The Director, IMU,
 Kolkata Campus,
 MERI,
 P-19, Taratala Road,
 Kolkata - 700066.

...RESPONDENTS.

For the applicant : Mr.A.Chakraborty, counsel

For the respondents: Mr.J.Sengupta, counsel

Heard on : 16.2.2017

Order on : 21.2.2017

O R D E R

Ms.Jaya Das Gupta, A.M.

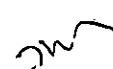
This OA has been filed by the applicant under Section 19 of the A.T. Act, 1985 seeking the following prayers :

- a) To cancel and/or withdraw and/or rescind the alleged order of transfer and release dated 22.12.2016.
- b) To direct the respondents to allow the applicant to remain in Kolkata until his operation is completed and he is fully recuperated and declared fit by the doctors of R.N.T. for the ends of justice.
- c) To direct the respondent concerned to release necessary advance as indicated by the doctors of CGHS approved hospital and the prayer made for by the applicant forthwith.
- d) To direct the competent respondent authority to consider the prayer of the applicant dated 22.12.2016 for stalling of order of transfer or alternatively the prayer for voluntary retirement after giving an opportunity of being heard after his full recuperation after operation.
- e) To restrain the respondents from initiating apprehended disciplinary proceeding against the applicant without disposal of his representation dated 22.12.16 as prayed for in prayer (d) hereinabove.
- f) To direct the respondents to grant necessary medical leave as prayed for vide his representation dated 22.12.16 and to extend the sum from his credit until he is fully recuperated.
- g) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper.

JKW

2. From the record it appears that the applicant filed the present OA apprehending that he will be transferred from the post of Hostel Warden (he is an ex-Army man) from Indian Marine Engineering Research Institute, Kolkata, now Indian Maritime University, Kolkata, to Indian Maritime University, Vishakhapatnam Campus. There are a number of posts of Hostel Warden in the Calcutta Campus while the Vishakhapatnam Campus is yet to get any Hostel Warden posted. The applicant has attained 58 years of age and he is due to retire from service on superannuation in December 2018. He has stated that Government of India has promulgated the Indian Maritime University Act 2008 and by virtue of such act all the seven Marine Engineering Training Institutions were brought under one umbrella of the Indian Maritime University which is a Central University under the Ministry of Shipping. Since he was working at the Indian Marine Engineering Research Institute, Kolkata prior to the setting up of Indian Maritime University, as per stipulations in the statute he will be considered as a deputationist to the Indian Maritime University enjoying all the service conditions of his previous service.

It is his case that from sometimes during mid part of 2015 he felt some pain in his knees which was creating problem for his locomotor movement. He was under the treatment for his knees initially at Peerless Hospital & Research Centre Ltd. It is his contention that the private hospital namely Peerless Hospital & Research Centre Ltd. had recommended around September 2016 that he had advance free compartmental osteoarthritis in both knees and opined for total knee replacement.



The applicant states that in the evening of 21.12.16 he came to learn that a fax message has been forwarded regarding transfer of one post of Hostel Warden, Indian Maritime University, Kolkata Campus to Indian Maritime University, Vishakhapatnam Campus and upon the basis of a letter dated 19.12.16 the Registrar on 20.12.16 decided to divert one post of Hostel Warden along with the occupant from Indian Maritime University, Kolkata Campus to Indian Maritime University, Vishakhapatnam Campus. Eventually a transfer order transferring him along with the post to Vishakhapatnam was issued by the respondent authorities. He stated that on 22.12.16 the applicant went to the Peerless Hospital and he was advised total knee replacement as early as possible. He had made an appeal to the Vice Chancellor of Indian Maritime University with copy to Registrar against his probable transfer and requested that he may not be considered for such transfer because of his present medical status when he has been advised knee replacement in both knees.

It is the submission of the applicant, who is about 58 years of age, that he was not served with any transfer order as it was only on 2.1.17 he received the transfer order via Speed Post. He has alleged malice on the part of the respondent authorities regarding non-consideration of his application of Medical Leave (commuted) for 25 days w.e.f. 22.12.2016 to 15.1.2017 for getting his knee operated upon and also for non-consideration of his application for voluntary retirement in case his prayer for remaining in Kolkata is rejected. The applicant has also expressed his grievance regarding non-payment of 90% advance for medical treatment which was required for his treatment at R.N. Tagore Hospital. Therefore he has approached CAT in



the present OA for redressal of his grievance that since he has both domestic and serious medical problems, he may not be transferred to Vishakhapatnam. If at all the authorities do not consider his appeal favourably, then he should be allowed to retire voluntarily.

3. Per contra it is the contention of the respondent authorities that the transfer order has been issued by the competent authority as per the existing rules of the Indian Maritime University.

No statute or office guideline has been violated by the transfer order which was issued two years prior to his retirement in December 2018.

It is also the contention of the respondents that the medical condition of the applicant which he seeks to establish through his OA is actually not so serious as he makes it out to be as a Medical Board of State Govt. Hospital namely Medical College has opined that the applicant is suffering from Grade III osteoarthritis of both knees and he needs regular treatment and follow up in the OPD (Out Patient Department) of Orthopaedics and Physical Medicine Department.

It is the further contention of the respondent authorities that earlier no action was taken on his voluntary retirement application as it had not been made as per rules. His prayer for voluntary retirement dated 20.1.2017 has been received as per rules and processing of such application has been accepted by the respondent authorities. The respondent authorities further apprehends that since the medical report shows that the applicant had made an exaggeration of his actual medical condition in all likelihood he may withdraw such application for voluntary retirement within three months and make an application for its revocation and hence would like to

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bc posted back in Calcutta itself thus avoiding the transfer which has been made on administrative ground.

For the above reasons the respondent authorities have prayed for dismissal of the case.

4. Heard Mr.A.Chakraborty, Id. Counsel appearing for the applicant and Mr.J.Sengupta, Id. counsel appearing for the respondents.

5(a) It is seen from the records that the applicant stood relieved from Indian Maritime University, Kolkata Campus w.e.f. 23.12.2016 (afternoon).

Such order dated 22.12.2016 is extracted below :

“Indian Maritime University
A Central University, Govt. of India
Kolkata Campus

No. IMU-KC/DIR/TP/2016

December 22,2016

RELIEVING ORDER

In compliance with the Indian Maritime University (IMU) Headquarter Order No. IMU/EST/HQ/Staff/01-2016 dated 21.12.2016 (copy enclosed) Shri Tapan Bhattacharya, Hostel Warden, is transferred to IMU Visakhapatnam Campus with immediate effect and accordingly he is relieved from the IMU - Kolkata Campus with effect from 23.12.2016 (After Noon).

Director

Shri Tapan Bhattacharya
Hostel Warden
IMU Kolkata Campus.”

Therefore the applicant is at present on leave.

(b) It appears from the pleadings at Annexure A/10, which has been issued by R.N.Tagore International Institute of Cardiac Science on 29.12.2016, that the applicant was advised admission on 10.1.17 for right total knee replacement as early as possible. The relevant portion of which is as under :

[Handwritten signature]

December 29, 2016

To Whom It May Concern

This is in reference to Mr. Tpan Bhattacharya (58 years) having hospital MR No. 17510000600578, Warden; bearing CGHS Card No. S 645085; an employee of your organization, who was reported at our hospital to Dr. Surya Udai Singh (Consultant Orthopaedic Surgeon) on 29.12.2016 with the case of pain in both knee joints (RT>LT). He was diagnosed as OA Both Knee for TKR. After reviewing his condition with all the reports **Dr. Singh has advised him to undergo Total Knee Joint Replacement (Right)**. Mr. Bhattacharya will be admitted on 10.1.17 for his above mentioned surgery and his surgery will be on 11.1.17

The total approximate estimated cost for his treatment at our hospital **as per CGHS Kolkata 2014 rate (Rates for NABH Accredited)** would be as under :

Approx. Break up & Estimate :-

Total Knee Joint Replacement (Right)(General Ward Pkg)	Rs. 1,02,465/-
(SL/No.1198 as per CGHS Kolkata 2014 rate)	
Knee Implant Cemented (Unilateral)	Rs. 60,000/-
Cost of Bone Cement	Rs. 5,000/-
Total (Approximate)	<u>Rs. 1,67,465/-</u>
(Rupees One Lakh Sixty Seven Thousand Four Hundred Sixty Five Only)	

Kindly issue an **Advance Cheque** of **Rs.1,67,465/-** in favour of '**Narayana Hrudayalaya Ltd.**' and deposit the same at the time of admission.

Please note that all the rates are as per CGHS Kolkata 2014 rate.

Post Package will be charged as per actual.

Personal cheque is not accepted.

Thanking you and assuring best of our services.

For RTIICS
Sushanta Kumar Sahoo
Assistant Manager Corporate Affairs."

However, on perusal of the Medical Board report issued by Medical College Hospital which is a reputed State Govt. hospital shows otherwise.

Such Medical Board report annexed at page 36 of reply is extracted below :

"MEDICAL REPORT

JKW

With reference to the letter of the Registrar, IMU Kolkata campus, vide memo NO. IMU/REGR/2016 dated 30.12.2016 Shri Tapan Bhattacharya, Hostel Warden, is examined by a three member medical board on 6.1.2017 at 1.30 pm and opined the following -

After proper examination of the candidate and going through all medical reports and x-rays, the board members are of the opinion that the candidate is suffering from grade III osteoarthritis of both knees.

He requires regular treatment and follow-up in the OPD of Orthopaedics and Physical Medicine dept. of any state medical college & hospital.

Dr.(Prof) Jayanta Roy
HOD, Physical Medicine
Dept, MCH, Kolkata

Dr. Jayanta Mondal, Associate Prof.
Orthopedics Department
MCH, Kolkata

Dr. K.K.Sabul, Assistant Professor
Orthopaedics Department
MCH, Kolkata.”

In such view of the matter we are constrained to observe that it is correct that the applicant is suffering from knee pain/osteoarthritis. But his condition is not so grave and serious as he made it out in his pleadings.

We are constrained to add on seeing both the medical reports that while we expect the respondent authorities to act as a model employer, we also expect the employee to serve with all honesty and submit proper medical status to the respondent authorities. After all the applicant is depending on the respondent authorities for his bread and butter.

However, it is also seen that he had also applied as per rules for voluntary retirement on 19.1.17 which is extracted below :

“To
The Vice Chancellor
Indian Maritime University,
East Coast Road,
Uthandi,
Chennai – 600119.

dw

To
 The Director General of Shipping,
 9th Floor, Beta Building,
 i-think Techno Campus,
 Kanjurmarg (East),
 Mumbai - 400042.

Through Proper Channel
Director, IMU, Kolkata Campus

**Sub : Appeal for Voluntary Retirement under Rule 48(A) of CCS
 (Pension)**

Sir,

With reference to the E-mail dated 18.1.2017 and letter No. IMU/REGR/2016/02 dated 23.12.2016, where it is stated that, notice of Voluntary Retirement should be given under Rule 48(A) of CCS (Pension) Rules.

I have already submitted my appeal on 22.12.2016 and 10.1.2017 to the appropriate authority for re-consideration of transfer in view of my physical condition and I may be allowed and give proper opportunity to complete my treatment in Kolkata and kindly grant my medical leave which I have applied on 16.1.2017.

If my appeal in the event is become impossible to consider my wretched condition, I may be allowed to retire voluntarily and this applicant may be treated as the notice under Rule 48(A) of CCS (Pension) Rules for Voluntary Retirement.

Thanking you,

Yours faithfully,

(TAPAN BHATTACHARYA)
 WARDEN, MERI, KOLKATA
 INDIAN MARITIME UNIVERSITY,
 KOLKATA CAMPUS."

From the pleadings of the respondent authorities it appears that they have accepted this application.

6. We feel that in the interest of justice as the applicant is about age 58 years and is suffering from osteoarthritis and is very much unwilling to be transferred to Vishakhapatnam, it would be just if the respondent authorities consider his appeal for voluntary retirement under Rule 48(a) of CCS (Pension) Rules, the relevant portion of which is extracted below :

"Retirement on completion of 20 years' qualifying service

(1) At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service.

Provided that this sub-rule shall not apply to a Government servant, including scientist or technical expert who is –

- (i) on assignments under the Indian Technical and Economic Cooperation (ITEC) Programme of the Ministry of External Affairs and other aid programmes,
- (ii) posted abroad in foreign based offices of the Ministries/Departments,
- (iii) on a specific contract assignment to a foreign Government

unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority :

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3) - Deleted

- a) Government servant referred to in sub-rule (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefor
- b) on receipt of a request under clause (a), the appointing authority subject to the provisions of sub-rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(4) Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority :

Provided that the request for withdrawal shall be made before the intended date of his retirement."

7. Therefore it is directed that his application for voluntary retirement dated 19.1.17 be considered as per rules and a decision be given as per rules if he is eligible for such voluntary retirement. However, as apprehended by the respondent authorities if the applicant withdraws his appeal for voluntary retirement within three months from 19.1.2017, the respondents will be at liberty to take action as per rules.

8. The OA is accordingly disposed of. No order is passed as to costs.

(JAYA DAS GUPTA)
MEMBER (A)

in

(A.K.PATNAIK)
MEMBER (J)

(a) Dt. No. of the appln.
 (b) Name of the applicant:.....
 (c) Dt. of presentation of application for copy:.....
 (d) No. of pages:.....
 (e) Circular fee charged
urgent or ordinary:.....
 (f) Dt. of preparation of copy:.....
 (g) Dt. of delivery of the copy
to the applicant:.....