

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. MA. 484/AN/2017
OA. 87/AN/2017

Date of Order: 26.02.2018

Present: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Dr. Suni Lukose, wife of Dr. P. Lal, aged about 43 years, by occupation service as Medical Officer, Primary Health Centre, Garacharma under the Directorate of Health Services, Andaman & Nicobar Administration, residing at Garacharma Village, Port Blair Tehsil, District South Andaman, Pin- 744 105.

.....Applicant.



1. Union of India, service through the Secretary to the Government of India, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi- 110011.
2. The Lt. Governor, A&N Islands, Raj Niwas, Port Blair- 744101.
3. The Principal Secretary (Health), A&N Administration, Secretariat, Port Blair- 744101.
4. The Director of Health Services, Directorate of Health Services, A&N Administration, Atlanta Point Port Blair – 744104.

.....Respondents.

For the Applicant : Mr. S. Samanta, Counsel
Mr. B. Samanta, Counsel

For the Respondents : Mr. SK Ghosh, Counsel

ORDER

Per Ms. Manjula Das, Judicial Member :

Being aggrieved with the Order No. 87 dated 10.01.2017 by which the applicant's representations dated 05.12.2016 has been rejected, the applicant approached before this Tribunal under section 19 of AT Act, 1985 seeking the following :

"8(a) Direction do issue quashing and/or setting aside the impugned reasoned order dated 10.01.2017, being Annexure "A-5" hereto, and the order of transfer dated 01.12.2016, being Annexure "A-2" hereto in respect of the applicant along with the order of release dated 19.12.2016 being Annexure "A-6" hereto, and thereupon issuing mandatory directions directing the respondent authorities to retain the applicant at Port Blair by forthwith issuing appropriate orders in this regard either keeping the applicant at her present place of posting at PHC, Garacharma or posting her to any other vacancy of Medical Officer at Port Blair;

(b) Direction do issue directing the respondent authorities to regularize the leave period of the applicant and thereupon disburse the salaries of the applicant month by month;

(c) Injunction do issue restraining the respondent authorities from acting in any manner or any further manner on the basis of the impugned reasoned order dated 10.01.2017 being Annexure "A-5" hereto, and the order of transfer dated 01.12.2016, being Annexure "A-2" hereto in respect of the applicant along with the order of release dated 19.12.2016 being Annexure "A-6" hereto;

(d) Direction do issue upon the respondent authorities directing them to produce and/or cause to be produced the entire records of the case and upon such production being made to render conscionable justice by passing necessary orders thereon;

(e) Cost and costs incidental hereto;

(f) And/or to pass such other or further order or orders as to your Lordship may seem fit and proper."

2. The brief facts of the applicant in her original application is that she is a doctor by profession and was appointed as Medical Officer on contract basis in December, 2001 which is extended from time to time.

While on contract basis the applicant participated in the selection process of 2012 for appointment as MO and became successful and was offered appointment in November, 2015. In December, 2015, the applicant was appointed on regular basis and was posted at her present place of posting at PHC, Garacharma.

It was contended by the applicant that on completion of just one year at Garacharma, the order of transfer dated 01.12.2016 was issued by transferring her from PHC, Garacharma (Zone-‘A’) to BJR Hospital, Car Nicobar (Zone-‘D’) in violation of the transfer policy which speaks of posting for 3 years in Zone “A” as well as in violation of the circular of 2016 regarding mid-term transfer.

3. Being aggrieved, the applicant immediately preferred a representation dated 05.12.2016 before the authority with a request to retain her at PHC, Garacharma till the School education of her elder daughter is completed. As the said representation was not responded by the authority, the applicant approached before this Tribunal vide OA-1467/2016 where this Tribunal vide order dated 22.12.2016 disposed of the OA and directed the respondents to consider the representation of the applicant positively by 15.01.2017. Further ordered that till then the applicants shall not be transferred if they have not been relieved and joined the places where they have been transferred in accordance with rules.

In compliance with the order passed by this Tribunal, the respondent no. 3 thereafter issued a speaking order dated 10.01.2017 under Order No. 87 whereby rejecting the case of the applicant by keeping intact the transfer order. Hence this original application before this Tribunal.

4. The respondent authority vide their reply countering the averments made in the original application, stated that the applicant was appointed during the year 2015 but she was given retrospective date of effect from 01.11.2012 but the financial benefit was granted only from the date of reporting for duty in the Health Department of Andaman & Nicobar Administration.

It was further stated that the applicant was posted in Zone "A" since 2008 that the date of her regular appointment as per the transfer policy the maximum period of 3 years.

It was further stated that the applicant cannot dictate the Andaman & Nicobar Administration regarding her choice place of posting which is done by a duly constituted "Transfer Committee Board" with the approval of the Lt. Governor, Andaman & Nicobar Islands.

According to the respondents the case is devoid of merit and hence the same is liable to be dismissed.

5. Mr. S. Samanta, leading counsel appeared on behalf of the applicant and Mr. SK Ghosh, learned counsel appeared on behalf of the respondents.

6. Mr. Samanta submitted that the applicant was initially appointed as Medical Officer on 19.12.2001 under the Respondent No. 4 on contract basis and the same was extended from time to time. During the said contract appointment the applicant worked in several places under the Respondent No. 4.

It was further submitted by the learned counsel that on having participated in the selection process for appointment to the post of Medical Officer under the Respondent No. 4 in the year of 2012, the applicant was offered the regular appointment vide order dated 03.11.2015. In the said appointment

letter, it was categorically mentioned that the applicant will be on probation for a period of two years from the date of appointment and the period of probation is likely to be extended at the discretion of Andaman & Nicobar Administration.

After the appointment, the Respondent No. 2 vide order dated 01.12.2015, posted the applicant at Primary Health Centre, Garacharma, South Andaman. However, only after one year, the applicant was sought to be transferred from Primary Health Centre, Garacharma to BJR Hospital, Car Nicobar vide order dated 01.12.2016.

It was submitted by the learned counsel that by circular dated 30.07.2007, the respondents issued the guidelines by specifying the provision and according to learned counsel the said guidelines has not been followed by the respondents while transferring the applicant.

It is forcefully argued by Mr. Samanta that as per the transfer policy dated 30.07.2007 issued by the respondents, the tenure in Zone "A" (South Andaman) is 3 years and admittedly the applicant has completed only one year of her regular service in Zone "A" (South Andaman).

It was further submitted that the applicant's family consists of her husband and two daughters aged about 14 years and 8 years studying in Class IX and Class III respectively in Carmel School, Port Blair, South Andaman. Her husband was transferred to BJR Hospital, Car Nicobar and the applicant alone was looking after the children at Port Blair and there is none to look after the two daughters of applicant who are studying in Class IX and Class III respectively. More so, since the daughter of the applicant is studying in Class IX and her academic year for Class X will be commencing on and from April, 2017 and admittedly apart from Port Blair nowhere in the islands the facilities for coaching

classes, tuition and the avenue for entrance examination are available. According to the learned counsel, at this stage if the transfer order is given effect to, the applicant along with her family will be subject to irreparable loss and injury and education of the children will be seriously hampered.

The applicant did make a representation dated 05.12.2016 before the Respondent No. 3 for consideration to cancel the transfer of the applicant. It was submitted by the learned counsel, as the representation was not responded to, the applicant approached before this Tribunal vide OA No. 350/00146/2016 where this Tribunal vide order dated 22.12.2016 disposed of the OA by directing the respondents to consider the representation of the applicant positively by 15.01.2017. Thereafter the impugned order was passed on 10.01.2017 rejecting the prayer of the applicant. While disposing the representation made by the applicant, the respondent authority has passed the order without considering the case of the applicant in a correct perspective, but also without applying the mind to the relevant materials, more particularly the policy guidelines of transfer. As such the rejection order is bad in law and is liable to be set aside.

It was further submitted by the learned counsel that while issuing the transfer order as well as rejection order, the respondents authority did not follow the guidelines of DOPT OM dated 30.09.2009.

Mr. Samanta further submitted that as a consequence to the rejection order, the respondents authority has issued a release order dated 19.12.2016 but the applicant was on leave from 09.12.2016 with due medical certificate.

7. By countering arguments advanced by Mr. Samanta, learned counsel for respondents Mr. SK Ghosh submitted that the impugned order dated 10.01.2017 is well justified and the same has been issued as per the direction of this Tribunal passed in OA. 350/146/2016.

However, it is further submitted by the learned counsel for respondents that the case of the applicant was not considered as the applicant has been posted in Zone-‘A’ since 2008 and as per the transfer policy prevailing Andaman & Nicobar Administration, the case was not acceded to, since the applicant has rendered more than 9 years of service in Zone- ‘A’. Thus the impugned order was issued as per the policy decision and the applicant cannot question the policy decision, so taken by the Andaman & Nicobar Administration.

8. Heard both the parties, perused the pleadings and material placed before us.

9. The issue before us to decide as to whether the impugned transfer order dated 01.12.2016 by which the applicant is sought to be transferred from Primary Health Centre, Garacharma (South Andaman) to BJR Hospital, Car Nicobar as well as the rejection order dated 10.01.2017 impugned herein, are in accordance with the transfer guidelines.

10. The basic ground taken by the learned counsel for applicant to establish his case is that the respondents authority while transferring the applicant as well as passing impugned rejection order has not followed the provision of transfer guidelines as well as guidelines of OM dated 30.09.2009 issued by the DOPT.

11. For coming to a logical conclusion, it is needed to discuss the factual aspect of the case in our hand. We find that the applicant was initially appointed

in the year of 2001 on contract basis and her period of service was extended from time to time.

12. While the applicant was in service under the authority on contract basis in the year of 2012, a selection process was initiated by the respondent authority for appointment to the post of Medical Officer on regular basis under the respondent no. 4.

Being eligible the applicant did participate in the selection process for appointment to the post of Medical Officer.

On being selected the applicant along with 4 others were issued the offer of appointment for the post of Medical Officer in the Andaman & Nicobar Administration vide order dated 03.11.2015. The applicant has been posted at PHC, Garacharma vide order dated 01.12.2015 issued by the Andaman & Nicobar Administration and immediately she joined at Garacharma on regular basis.

13. The grievances arose as and when the applicant only after one year of completion of her service at PHC, Garacharma, she has been sought to be transferred from Garacharma (Zone-'A') to BJR Hospital, Car Nicobar (Zone-'D') vide order dated 01.12.2016 which is impugned herein.

14. Being aggrieved the applicant made her grievances vide representation dated 05.12.2016, however, the same has not responded as a result the applicant approached before this Tribunal by filing the case being OA.No. 350/146/2016 where this Tribunal passed an order on 22.12.2016 by directing the respondents authority to dispose of the representation of the applicant. In compliance with the order passed by this Tribunal the respondents authority disposed of the representation by rejecting the prayer made by applicant vide impugned order dated 10.01.2017.

15. Now, we have in hand the circular dated 30.07.2007 on the subject of transfer policy. The said circular contains the tenure of posting which is hereunder:

Zone	Group of Islands	Tenure of posting
Zone A	South Andaman District, except Little Andaman, Havelock, Neil Island & Offices of the A&N Administration located at mainland	03 years
Zone D	Car Nicobar, Campbell Bay, Nancowrie & Kamorta	Gr A & B- 02 years Gr C & D- 01 years

Again Clause No. 4 (ii) provides as under:

“(ii) Transfer of officials shall be made strictly in accordance with the period of stay of officials in that station; the official with more tenure being considered first for such posting from one Group of Island to other or Port Blair.”

Clause 4(v) specifies as under:

“(v) Those employees who are willing to work in Nicobar Group of Islands may be permitted to stay there for a longer period on the following grounds:

- (a) Spouse is working in the same Island;
- (b) Continuation of educational career of children.”

Clause 7 provides as under:

“7. Calender of Transfer Orders:

Transfer orders shall as far as possible be issued during the period from 15th April to 15th June each year, keeping in view the end of the financial/academic year. Out of time transfer should be avoided. However, in the completing administrative exigencies, limited transfer orders which become inevitably may be resorted to.”

16. In the present case the applicant’s services as Medical Officer under the respondents authority has been regularized vide order dated 03.11.2015 by giving effect from 01.11.2012 and thereafter the respondents Administration vide order

dated 01.12.2015 posted the applicant at PHC, Garacharma in the post of Medical Officer in the A&N Health Institute under the Directorate of Health Services. The applicant immediately joined there.

From the transfer guidelines in terms of circular dated 30.07.2007, Clauses 2 & 5 provides for normal tenure of posting and zones in different group of Islands where Zone- 'A' includes the group of Islands is as under:

- (a) South Andaman District, except Little Andaman, Havelock, Neil Island & Offices of the A&N Administration located at mainland.

And the tenure is 3 years.

- (b) Car Nicobar, Campbell Bay, Nancowrie & Kamorta.

And tenure of Group A & B is 02 years and Group C & D is 1 year.

Admittedly, the PHC Garacharma under the group of South Andaman District and BJR Hospital under the group of Car Nicobar.

17. Thus there is no room for any confusion and candidly be expressed that without completion of tenure at Garacharma, the applicant has been sought to be transferred from Garacharma to BJR Hospital, Car Nicobar.

18. It is explicit clear that while the impugned transfer order was issued vide order dated 01.12.2016, the respondents' authority did not follow their own transfer guidelines issued by the Administration which says that transfer orders shall as far as possible be issued during the period from 15th April to 15th June each year.

The respondents either from their reply or from the arguments advanced failed to substantiate that the said impugned transfer order was made on administrative exigency.

More so, the said impugned transfer order was issued in the mid-academic session of the applicant's children.

In **Director of School Education, Madras and others vs. O. Karuppa Thevan 1994 Suppl. 2 SCC 266**, the Hon'ble Supreme Court held that "transfer of a employee during mid academic term is not proper unless exigency of service are urgent for making such transfer."

19. In the instant case, we note that one daughter of the applicant is studying in Class-IX and another daughter is studying in Class-III in Carmel School, Port Blair respectively. In our view, if the impugned transfer order as well as the consequential orders of the applicant have been given effect to the career of the children will be seriously affected.

In the above circumstances of the case as a whole the impugned transfer order as well as the consequential orders are not permissible under the law.

We have observed that the respondents while issuing the impugned transfer order dated 10.01.2017 did not follow the various Clauses incorporated in the transfer guidelines dated 30.07.2007.

In our view once the benevolent benefits or circular has been circulated that ought to have been extended to the employees as a whole. Such circular have to be applied with sympathetically as well as brought and liberal manner.

In **Sarvesh Kumar Awasthi vs. U.P. Jal Nigam 2003(11) SCC 740** where the Hon'ble Supreme Court held that "transfer of officer is required to be effected on the basis of set of norms or guidelines etc."

In **Union of India vs. Dr. Umesh Kumar Mishra (OA No. (SH) 17/12)**, the Hon'ble Guwahati High Court has held that "fairness requires that if a policy has been laid down, the same may be deviated from only if there is any reason to do so. If no reason is forthcoming, the exercise of power of transfer in violation of law laid down the policy may be held is arbitrary."

20. By taking into account the entire conspectus of the case and in view of the ratio laid down by the Hon'ble Supreme Court mentioned in the foregoing paragraphs, we are of the view that the transfer order dated 01.12.2016(Annexure A-2), the release order dated 19.12.2016(Annexure A-6) and the impugned speaking order dated 10.01.2017(Annexure A-5) are not permissible under the law.

21. Accordingly, the same are set aside.

22. Ordered accordingly.

23. OA stands allowed. No order as to costs.



(Dr. Nandita Chatterjee)
Member (A)

(Manjula Das)
Member (J)

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