



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 351/108/2018

Date of order : 31.1.2018

Present: Hon'ble Ms. Manjula Das, Judicial Member

SMT. BERNADETH EKKA
W/o Shi Egnesh Ekka,
R/o Bambooflat,
South Andaman - 744104
Working as Lab Assistant
In G.B.Pant Hospital
At Port Blair under Health Dept.,
A&N Administration.

...APPLICANT

VERSUS

1. Union of India, through
The Secretary,
Ministry of Health & Family Welfare,
Govt. of India,
'A' Wing, Nirman Bhawan,
New Delhi - 110011.
2. The Chief Secretary,
A&N Administration,
Port Blair - 744101.
3. The Director of Health Services,
A&N Islands,
A&N Administration,
Port Blair - 744101.
4. The Secretary (Personnel)
Office of Directorate of Health Services,
A&N Administration,
Port Blair - 744101.
5. The Assistant Director (Administration)
Office of Directorate of Health Services,
A&N Administration,
Port Blair - 744101.

...RESPONDENTS.

For the applicant : Mr.P.C.Das, counsel
Ms.T.Maity, counsel

For the respondents: None

O R D E R (ORAL)Per Ms. Manjula Das, Judicial Member

Being aggrieved by the inaction of the respondent authorities, the applicant working as Lab Assistant in the G.B.Pant Hospital, Port Blair under the Andaman & Nicobar Administration have filed this application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

- a) To quash and/or set aside the impugned speaking order No. 4352 dated 7.8.2017 issued by the Director of Health Services, A&N Administration, Port Blair being Annexure A/14 of this original application by which the case of the applicant has been rejected by not explaining the administrative exigency and by violation of their own Transfer Policy which is not sustainable in the eye of law;
- b) To quash and/or set aside the impugned office memo dated 6.7.207 issued by the Medical Superintendent, G.B.Pant Hospital, A&N Administration by which your applicant was relieved but no relieve order has been served upon her by which your applicant was relieved from G.B.Pant Hospital to PHC Radhanagar under CHC Diglipur during her leave period being Annexure A/10 of this original application.
- c) To quash and/or set aside the impugned transfer order No. 2093 dated 28.3.2017 along with impugned modified Transfer Order No. 2527 dated 21.4.2017 issued by the Assistant Director (Administration), A&N Administration, Directorate of Health Services by which your applicant has been transferred from G.B.Pant Hospital, Port Blair to PHC, Radhanagar being Annexure A/4 and A/6 of this original application which is in utter violation of the Transfer Policy introduced by the A&N Administration dated 30.7.2007 since our applicant will be retiring on superannuation w.e.f. 31.8.2018 and there is no emergency situation has arisen and a public interest is involved in respect of issuing such transfer order;
- d) To pass an appropriate order directing upon the respondent authority to allow your applicant to resume duty to the post of Lab Assistant in the G.B.Pant Hospital at Port Blair till her superannuation i.e. till August 31, 2018;
- e) To pass an appropriate order directing upon the respondent authority to follow the Transfer Policy dated 30.7.2007 issued by the A&N Administration and further directed the respondent authority to reconsider the case of the applicant for resuming her duty in G.B.Pant Hospital at Port Blair till her superannuation i.e. upto August 31, 2018 and release all the salaries and consequential benefits during those periods in favour of the applicant.

2. The brief fact of the case is that the applicant was initially appointed on 18.3.1987 on ad hoc basis to the post of Ward Attendant in the office of Directorate of Health Services, A&N Administration and got permanent appointment against the sanctioned post on 21.4.1994. By the impugned transfer order dated 28.3.2017 the applicant has been transferred from CHC,

Bambooflat to PHC, Radhanagar. The applicant made a representation before the respondent authority on 29.3.2017 for cancellation of the transfer order dated 28.3.2017 as she is going to retire on superannuation w.e.f. 31.8.2018. The respondent authority on partial modification of the transfer order, transferred the applicant from G.B.Pant Hospital Port Blair to PHC, Radhanagar on 21.4.2017. Again the applicant made a representation on 27.4.2017 for cancellation of the modified transfer order dated 21.4.2017 on the ground that she will be retiring from service on 31.8.2018. But the respondents did not pay any heed to it.

Being aggrieved by such inaction of the respondent authorities the applicant approached this Tribunal in OA 351/850/2017 which was disposed of on 30.6.2017 with a direction that status quo as on date in so far as the applicant's continuance in the said post will be maintained till the representation dated 27.4.2017 is considered and disposed of by the respondent authorities. This order was duly communicated to the respondent authorities by the Id. Counsel for the applicant. Despite this order of the Tribunal, the applicant has been relieved from G.B.Pant Hospital, Port Blair to PHC, Radhanagar under CHC Diglipur by the letter dated 6.7.2017. The applicant again made representations before the respondent authorities with the same prayer. But on 7.8.2017 the respondent authorities issued the impugned speaking order rejecting the case of the applicant.

Hence the present Original Application is filed.

3. Heard Mr.P.C.Das, Id. Counsel assisted by Ms. T.Maity, Id. Counsel appearing for the applicant and perused the pleadings on record.

4. Mr.Das, Id. Counsel for the applicant submitted that the applicant has completed long 32 years of service and during her tenure she has served at North & Middle Andaman and South Group of Islands and is going to retire from service w.e.f. 31.8.2018. Mr.Das also submitted that in respect of Transfer Policy of A&N Administration vide circular dated 30.7.2007, officials having less than 2 years of service left shall be allowed a posting of his/her choice and should not be transferred from that post within that period unless there are

compelling administrative exigencies. The relevant portion of the circular dated 30.7.2007 is quoted hereinbelow :

"As far as possible, officials having less than 2 years of service left shall be allowed a posting of his choice and should not be transferred from that post within that period unless there are compelling administrative exigencies."

But in violation of this policy the applicant has been transferred on 28.3.2017 from CHC, Bambooflat to PHC, Radhanagar. On being represented the transfer order was partially modified transferring the applicant from G.B.Pant Hospital, Port Blair to PHC, Radhanagar. It is further submitted by Mr.Das that the impugned transfer order there is no whisper of administrative exigency or compelling circumstances under which the transfer order has been issued. Therefore the impugned speaking order dated 7.8.2017 is clearly against the Transfer Policy of the respondent authorities and should be quashed.

5. In **Somesh Tiwari -vs- Union of India & Ors. [(2009) 2 SCC 592]** Hon'ble Apex Court has laid down that - when an order of transfer is passed in lieu of punishment the same is liable to be set aside being wholly illegal.

It is the policy of the Govt. of India that in case of an officer due to superannuation within 2 years, posting to station of choice shall be given due weightage. There is an objection based on consideration of welfare behind such provision in the transfer policy as it would enable a person about to retire after a long and devoted service to make arrangements for settling down thereafter with his family, acquire a house if not already done and to make necessary arrangement for his superannuated life.

In **Union of India -vs- Dr. Umesh Kr. Mishra [OA No. (SH) 17/12]** Hon'ble Guwahati High Court has held that - Fairness requires that if a policy has been laid down, the same may 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 a laid down policy may be held to be arbitrary.

In **Narayan Chowdhury -vs- State of Tripura & Ors. [WP(C) No. 239/1999 - (2000) 1 SLR 519]** Apex Court has laid down :



"The petitioner is retiring towards the end of 2000 and he has to serve hardly one and half years, no practical purpose will be served by asking the writ petitioner to proceed to his place of posting at Gomit just for a period of 5/6 months."

6. After taking into account the entire conspectus of the case and in view of the ratio laid down by the Hon'ble Apex Court in the above mentioned cases, the impugned order 7.8.2017 is set aside and the OA is disposed of with a direction upon the respondent authorities to allow the applicant to continue in his service at the present place of posting at G.B.Pant Hospital till her retirement.

7. The OA is therefore disposed of. No order as to costs.



(MANJULA DAS)
JUDICIAL MEMBER

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