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CENTRAL ADMINISTRATIVE TRIBUNAL

KOLKATA BENCH, 234/4 A.J.C Bose Road Nizam Palace Kolkata

ORDER SHEET

COURT NO. : 1

22.11.2017

O.A./350/1617/2017
(MENTIONED)DR PRASAN KUMAR DAS
-V/S-
S E RAILWAY

ITEM NO:17

FOR APPLICANTS(S) Adv. :

Mr. S.K Datta
Ms. A. Roy

FOR RESPONDENTS(S) Adv.:

Mr. S. Banerjee
Mr. C.S Bag

Notes of The Registry	Order of The Tribunal
	<p>By this O.A. the applicant makes prayer for setting aside the impugned order dated 20.11.2017 whereby the applicant was spared from the post of ACMS/ADRA (Annexure A-10) and also the impugned speaking order dated 20.11.2017(Annexure A-11) wherein it has been mentioned that ".....representation of Dr. Prasan Kr. Das seeking transfer to Kharagpur and the transfer order dated 29-08-2017 for transfer to Bondamunda, will stand good in the terms of the Speaking order.....".</p> <p>The applicant has also prayed for a direction upon the respondent authorities to allow him to continue to serve at his present place of posting as Assistant Chief Medical Superintendent(ACMS) at Adra.</p> <p>Ld. counsel Mr. S.K. Datta being assisted by Ms. A. Roy appearing on behalf of the applicant submits that while working as Assistant Divisional Medical Officer at Chakradharpur, he was transferred to Kharagpur on 02.01.2001 and thereafter promoted to the Junior Administrative Grade in the post of Senior Divisional Medical Officer (Gyne) and subsequently he was given selection grade w.e.f. 12.10.2004. Thereafter he was transferred to Adra on 25.02.2004 in the same post and subsequently given promotion to the post of Additional Chief Medical Superintendent and till then he is holding the post of Senior Chief Medical Officer, Adra.</p> <p>It is was further submitted by the ld. counsel for the applicant that after working for more than five years in the post of Senior Divisional Medical Officer(O&G) at Adra the applicant made a representation to</p>

the authorities on 15.01.2010 requesting for transfer from Adra to Kharagpur on the ground that his spouse who is also a Medical Practitioner was posted at IIT, Kharagpur and his only daughter was studying at Class-X at Kharagpur. His request was not considered by the respondent authorities.

Thereafter, the applicant again made a representation on 09.02.2011 with a request to transfer him to Kharagpur. After consideration of the said representation, the Department issued an order dated 18.04.2011 whereby the applicant was transferred to Kharagpur on his own request and posted there as Senior Divisional Medical Officer(O&G). But this order was modified subsequently to accommodate two other persons.

Mr. Datta submits that another order was passed on 12.06.2015(Annexure A-5) whereby Dr. Subrata Kumar Mishra was sought to be transferred to Adra where the applicant was already posted as ACMS(O&G) and was to be transferred to Kharagpur on his own request. The said order dated 12.06.2015 was not carried out and it was modified vide a Memo No.150/2016 dated 22.07.2016 by transferring Dr. Subrata Kumar Mishra to Chakradharpur against an existing vacancy. In the said Memo dated 22.07.2016 it was further indicated that on reporting of Dr. Subrata Mishra at Chakradharpur Dr.(Ms.) Usha Kumari would be released to carry out her own request transfer. According to Id. counsel for the applicant, on all occasions both Dr. Subrata Kumar Mishra and Dr.(Mrs.) Usha Kumari were considered for their own choice posting and the respondent authorities did not pay any heed to the prayer of the applicant for his transfer to Kharagpur and he was transferred from ACMS/Adra to Sub-divisional hospital at Bondamunda(BNDM) vide order dated 29.08.2017 issued by the Respondent No.5.

Being aggrieved the applicant approached before this Tribunal vide O.A.No.1282/2017 which was disposed of by this Tribunal vide order dated 14.09.2017 by giving liberty to the applicant to file a comprehensive representation before the authorities by narrating his grievances within 2 weeks and the respondent authorities were directed to consider and dispose of the same by passing a reasoned and speaking order within a period of 4 weeks from the date of receipt of such representation. The respondents were also directed to maintain status quo with respect to the present place of posting of the applicant till disposal of his representation.

It is submitted by the Id. counsel for the applicant that in compliance with the order of this Tribunal, the respondent authorities passed a speaking order dated 20.11.2017(Annexure A-11) , relevant portion of which reads as under:-

"Para No.8 Thereafter his transfer to Kharagpur was revalidated on

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12-06-2015 by issue of another order. However, again, due to acute crisis of doctors at Adra, he could not be spared. As a result, his posting at Kharagpur could not be given effect to.

Para Nos.9 &10 Considering the need to shift Dr. Das out of Adra, based his earlier representation and the background about his earlier term at KGP and also his specialisation in Gynecology, he was transferred to Bondamunda hospital, after a doctor was posted vice him at Adra. It may be mentioned that Bondamunda is a major hospital where services of a gynaecologist is not available. In fact Bondamunda hospital is the only of South Eastern Railway not having the services of a Gynecologist and Dr. Das's specialisation would be better utilized there.

Para Nos. 11 &12 In this regard it is further to mention that there is no pinpointing for IRMS posts in S.E. Railway. From an ADMO to an SAG(DACP) can be posted anywhere from a Central Hospital to a Health unit.

In the above background, Dr. Das has been ordered to be posted at Bondamunda in consideration of his own interest regarding posted out of Adra while considering the interest of the Railway employees. The order is entirely justified and will sustain."

It was submitted by Mr. Datta, the ld. counsel for the applicant that the action of the respondent authorities is not in accordance with law because to accommodate others the applicant's request for transfer to Kharagpur was not acceded to by the authorities. Ld. counsel Mr. Datta has further prayed for an interim relief for stay of the operation of the impugned order dated 20.11.2017 (Annexure A/10) as well as the speaking order dated 20.11.2017(A/11)

Mr. S.Banerjee, ld. counsel for the respondents submitted that the speaking order dated 20.11.2017 was rightly passed and no interim order should be granted.

I have heard the ld. counsel for both sides, perused the pleadings and the several orders annexed to the O.A.

It was submitted that the applicant's wife is also serving at Kharagpur. Admittedly after long stay at Adra the applicant made several representations before the authorities requesting for his transfer from Adra to Kharagpur. It is noted that on two occasions the request of the applicant for his transfer from Adra to Kharagpur was first acceded to and thereafter cancelled to accommodate two other incumbents.

In the aforesaid facts and circumstances, I am of the view that it is a

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prima facie fit case to entertain the O.A. Issue notice to the respondents returnable within 6 weeks. The respondents are granted 6 weeks' time to file reply. The applicant may file rejoinder, if any, within 2 weeks thereafter. Meanwhile as an interim measure the impugned order dated 20.11.2017 sparing the applicant from ACMS/Adra (Annexure A-10) as well as the speaking order dated 20.11.2017(Annexure A-11) by which the department has taken a decision to revalidate the order dated 12.06.2015 shall be kept in abeyance till the next date, otherwise the applicant shall be put in hardship and injury and will face irreparable loss. Liberty is, however, granted to the respondent authorities for vacation/modification/cancellation of the interim order, if they so desire.

List the matter on 15.01.2018.

(MANJULA DAS)
MEMBER (J)

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