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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

LIBRARY

No. OA 350/01785/2015

Date of order : 18.1.2016

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

NEELADRI SHEKHAR ROYCHOWDHURY

VS

UNION OF INDIA & ORS. (POSTS)

For the applicant : Mr.A.N.Ghosh, counsel

For the respondents : Mr.P.N.Sharma, counsel

O R D E R

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. This is a sequel to an earlier OA numbered OA 1628/15 and the applicant has assailed a speaking order passed on 5.11.15 pursuant to the directions given in the earlier OA.

3. The applicant in this OA has made an effort to resist his transfer from Kolkata to Shillong on the following grounds inter alia :

(i) He was transferred from North East Circle to West Bengal Circle, Kolkata on 14.11.14 and the authority concerned took ten months time to find out that the applicant was transferred inadvertently when the applicant settled in Calcutta after joining to his new place of posting on 1.12.14 leaving the quarter which was allotted to him at Shillong and taking back all his belonging from Shillong to Kolkata and as such the re-transferring order dated 22.9.15 could not stand on the face of it.

(ii) He along with others have been promoted as Assistant Accounts Officer and from the lists dated 14.11.14 it would appear that 11 persons have been transferred from one circle to another circle which was a

routine transfer. Yet the authority concerned re-transferred only the applicant to Shillong, in the North East Circle, which smacks of malafide and is a punitive re-transfer.

(iii) His only daughter is reading in Class IV and she is in the midway of her academic session and as such if the applicant is re-transferred to Shillong the academic life of the applicant's only daughter will be jeopardised.

(iv) His mother is a cancer patient and he is the only son of his mother and there is no other male member in the applicant's family to look after her.

(v) Once the applicant and others were promoted to the posts of Assistant Accounts Officer it formed a single cadre and there could not be any discrimination so far as transfer and posting of Assistant Accounts Officer and the memorandum are uniformly applied to the cadre of Assistant Accounts Officer and as such there could not be any transfer and promotion policy of the persons and/or officers who were recruited through 10% quota basis and as such transferring the applicant was violative of Articles 14 & 16 of the Constitution of India.

4. Ld. Counsel for the respondents would vociferously reiterate the contentions as the speaking order projected.

5. On 13.1.16 the following direction was given :

"The respondents shall also take instruction whether the persons who are occupying the post of AAO in N.E. Region are not transferred n policy basis or any other reasons despite having All India Transfer liability."

No satisfactory reply has come from the respondents.

6. I have heard the Ld. Counsels for the parties and perused the materials on record.

From the arguments advanced and pleadings perused the following could be discerned :

- (i) The applicant gave his willingness to join NE Circle on permanent transfer basis as JA way back in 12.10.99, but the respondents failed to show any materials that would demonstrate that applicant had willingly forfeited his claim to seek a change of his posting to another region for ever, due to acceptance of such posting. No undertaking to that effect could be deciphered.
- (ii) He had been promoted as AAO in the meantime. No specific order could be made available in support of the contention of the respondents that AAO constituted a Circle Cadre. On the contrary 'Guidelines for posting and transfer of the officers of IP & TAFS Group 'B' vide office memorandum dated 31.12.2013 would stipulate that

"On promotion to AAO cadre and from AAO to AO cadre the candidates would be posted out of circle. The officers retiring within two years would be adjusted in their parent circles as per their general seniority subject to the extent of availability of vacancies; save administrative exigencies."

Therefore AAOs are as per policy to be posted out of Circle and the applicant who has been posted out of Circle on 14.11.14 has not completed his tenure at the present Circle yet.

(iii) In support of his contention that the applicant deserved equality of treatment alike other AAOs, the Id. Counsel for the applicant would cite the decision rendered in **UOI & Ors. -vs- Atul Shukla** by Hon'ble Apex Court in Civil Appeal Nos. 4717-4719 of 2013 wherein Hon'ble Apex Court opined as follows :

"17. The Tribunal has rejected both the reasons aforementioned and, in our opinion, rightly so. Classification of employees based on the method of their recruitment has long since been declared impermissible by this Court. There can be no differential treatment between an employee directly recruited vis-a-vis another who is promoted. So long as the two employees are a part of the same cadre, they cannot be treated differently either for purposes of pay and allowances or other conditions of service, including the age of superannuation. Take for instance, a directly recruited District Judge, vis-a-vis a promotee. There is no question of their age of

superannuation being different only because one is a direct recruit while the other is a promotee. So also an IAS Officer recruited directly cannot for purposes of age of superannuation be classified differently from others who join the cadre by promotion from the State services. The underlying principle is that so long as the officers are a part of the cadre, their birth marks, based on how they joined the cadre is not relevant. They must be treated equal in all respects salary, other benefits and the age of superannuation included."

(iv) It is also to be borne in mind that the mother of the applicant is a cancer patient undergoing treatment for cancer and is on chemotherapy.

The transfer and her shifting may be detrimental to her health.

(v) No element of administrative exigency is involved in the transfer as nothing have been spelt out in the impugned order.

8. In view of the above factual revelations I would direct the authorities to allow the applicant to complete his tenure at Kolkata and pass appropriate orders within one month and till such time the applicant be not compelled to join the transferred post.

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

(BIDISHA BANERJEE)

MEMBER (J)

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