

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 260/00237/2018

Cuttack, this the 12th day of December, 2018

C O R A M:

**THE HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (ADMN.)
THE HON'BLE MR. SWARUP KUMAR MISHRA, MEMBER (JUDL.)**

Sudhansu Kumar Kanungo, aged about 54 years, Son of Late Prana Krushna Kanungo, Presently working as Asst. Section Officer, ARC(Aviation Research Centre) Charbatia, Cuttack. At-Qtr No. 2RB/125, ARC, Charbatia, Cuttack.

.....Applicant

For the Applicant :M/s. A. Kanungo, J. K. Lenka, C. Nayak

-Versus-

1. The Director General of Security, Aviation Research Centre, (ARC), Cabinet Secretariat, Government of India, East Block-V, R.K. Puram, New Delhi-110066.
2. Special Secretary, ARC, Directorate General of Security, Cabinet Secretariat, Government of India, East Block-V, R.K. Puram, New Delhi-110066.
3. Joint Deputy Director(Personnel), ARC, Head Quarters, ARC, Directorate General of Security, Cabinet Secretariat, East Block-V, R.K. Puram, New Delhi-110066.
4. Joint Director, ARC Charbatia, At/PO-Charbatia, PS-Choudwar, Dist-Cuttack, Odisha-754028.

.....Respondents

For the Respondents: Mr. S. Behera, Ld. Sr. CGPC

O R D E R

MR. GOKUL CHANDRA PATI, MEMBER (ADMN.):

The Original Application filed by the applicant seeks the following reliefs:

“A) The order of transfer & Posting under Annexure-A/2 so far as it relates to the applicant may be quashed declaring the same illegal, arbitrary & discriminatory.

B) The rejection of the representation vide Annexure-A/6 serves may be quashed declaring the same as arbitrary mechanical & total no application of mind;

C) Any other Direction/Directions be issued under the circumstances as this Hon'ble Court would deem fit and proper;”

2. The facts of the case in brief are that the applicant, was initially appointed as LDC under Sima Surakhya Bala(in short SSB) on 13.03.1989 in Assam. After working in different stations, he has been posted at Charbatia, Aviation Research Centre (in short ARC) in May, 2015. He has been transferred from Charbatia to

ARC, Head Quarter, New Delhi vide order dated 08.03.2018 (Annexure-A/2), which is impugned by him in this O.A. The applicant has filed this O.A mainly on the ground that he did not complete the normal tenure of three years in Charbatia as on 01.04.2018 for which he had not submitted his option for transfer for the year 2018 -19, which was called for from the Officers/Staffs of ARC, wanting transfer from the present place of posting after completion of their tenure or being considered for transfer.

3. It is further submitted in the O.A that the applicant's wife has the fracture of left leg and was unable to move and he is the only attendant to assist his wife. If he is transferred, then his wife will be handicapped. It is also mentioned that the impugned transfer is against the transfer policy of the respondents and some other employees have been retained at Charbatia for more than three years, whereas the applicant has been transferred before completing his three years of tenure.

4. The Respondents have filed a short reply to the O.A, stating that in view of the experience of the applicant in different aspects of the work and his functional suitability, his transfer to ARC headquarters is necessary as an operational requirement and it is in public interest. It is further submitted that the applicant will be completing his tenure of three years in May, 2019, for which the date of his relief was specifically mentioned in the impugned order to be in May, 2019. Therefore, the impugned transfer order is as per the transfer policy. Regarding some employees, who have been retained, it is stated that Mrs. Lalita Joshi is a cancer patient and in the another case, the spouse was transferred to Charbatia on 31.07.2017 and both of them were adjusted in Charbatia so that they can continue as the same Head Quarter. Regarding illness of the applicant's wife, it is mentioned that that the applicant was posted from 2012-15 in Uttar Pradesh when his wife was staying without him at Charbatia. It is further stated that the

transfers are the incident of service and are made in public interest keeping in view that functional requirements. Therefore, the respondents have requested for vacating the interim order dated 04.05.2018 directing the respondents not to relieve the applicant.

5. This matter was considered by the Tribunal on 04.05.2018 and the following interim order was passed:-

“Respondents are directed not to relieve the applicant till further order of this Tribunal. Let the matter be listed on 23.05.2018. Copy of this order be given to both the Parties.”

The Respondents, through the M.A No. 373/2018, have moved for vacating the above interim order of this Tribunal.

6. With the consent of counsels of both the parties, we have heard the learned Counsels on the O.A finally along with the M.A No. 373/18, which has been filed by the Respondents for vacation of interim order and not to relieve the applicant.

7. Learned Counsel for the Applicant submitted that he has filed an affidavit on 04.12.2018, wherein it is mentioned that in the meantime the respondents have invited the option for transfer for the year 2019-20 effective from 01.04.2019 and the applicant has given his preferences as ARC Doom Doma, ARC, Chakrata and ARC HQ, New Delhi in order of preference and this has been forwarded vide letter dated 19.11.2018(Annexure A/7) of the respondents.

8. Learned Counsel for the respondents on the other hand, prays for vacation of interim order dated 04.05.2018 so that the applicant can be relieved to join in Delhi as per the impugned order. Learned Counsel for the applicant submitted that in view of the personal difficulties and ongoing academic session, the applicant may be allowed to continue in Charbatia till March, 2019 and that the applicant has expressed his willingness for his transfer from Charbatia during 2019-20.

9. In view of the above submissions by both the learned counsels, it is noticed that the applicant has furnished his option for transfer from Charbatia as per the transfer policy, which implies that the applicant is willing to be transferred from Charbatia during the year 2019-20. But he has requested to be retained till March, 2019. It is noticed that the applicant has been transferred because of his experience and the requirement of the Organisation.

10. Hence this O.A is disposed of with a liberty to the applicant to file a representation before the Respondent No. 3 / Competent Authority, if he wants to be retained in his present place of posting till March, 2019, giving justifications for the same and if such a representation is made by the applicant within 07 days from the date of receipt of a certified copy of this order, then the Respondent No.3/Competent Authority shall consider the same by passing a speaking order on merit to be communicated to the applicant within six weeks from the date of receipt of the aforesaid representation from the applicant, taking into account the ground mentioned by the applicant in the representation and the requirement of the organisation. Till a decision on the representation to be submitted by the applicant as stated above, is taken by the respondents No.3/competent authority, the applicant shall not be relieved from the present place of his posting. It is clarified that in case no representation from the applicant as stated above is received within seven days from the date of receipt of a copy of this order, then the respondents will be at liberty to relieve the applicant in pursuance to the impugned transfer order. The interim order dated 04.05.2018 stands modified accordingly.

11. The MA No. 373/2018 and this O.A are disposed of accordingly. No order as to the costs.

(Swarup Kumar Mishra)
Member (Judl.)

(Gokul Chandra Pati)
Member (Admn.)

