

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00038 of 2019

Date of Order: This, the 06th day of February 2019

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. NEKKHOMANG NEHSIAL, ADMINISTRATIVE MEMBER

Smt. Kunjalata Teron, Aged about 44 years
W/o Sri Achyut Saikia
R/o S.B. Housing Complex
Jayanagar Chariali, Khanapara
P/S – Basistha, Guwahati
Dist – Kamrup (M), Assam, Pin – 781022.

... Applicant.

By Advocates: Mr. K.K. Das & Mr. S. Barman

-Versus-

- 1 The Union of India
Represented by the Directorate General
Central Public Works Department
Nirman Bhawan, New Delhi – 110011.
2. The Deputy Director (Admn)-III
Office of the Directorate General
Central Public Works Department
Nirman Bhawan, New Delhi – 110011.
3. The Chief Architect (ER-II)
Central Public Works Department
Garchuk, Guwahati
Dist – Kamrup (M), Assam, Pin – 781035.
4. The Senior Architect (NEZ)
Central Public Works Department
Dhankheti Cleve Colony, Shillong – 793003.

... Respondents

By Advocate: Mr. S.K. Ghosh, Addl. CGSC

ORDER (ORAL)**MANJULA DAS, JUDICIAL MEMBER:**

The instant petition has been preferred by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- “8.(i) Set aside and quash the impugned order being Office Order No. 28/04/2018-EC-V dated 05.12.2018 passed by the Deputy Director (Admn)-III office of the Directorate General, Government of India, Central Public Works Department, Nirman Bhawan, New Delhi – 110011 by which the Applicant has been transferred from the office of the Chief Architect (ER-II), Central Public Works Department, Garchuk, NH-37 By pass, Guwahati – 781035 to the office of the Senior Architect, NEZ, Central Public Works Department, Dhankheti, Cleve Colony, Shillong – 793003.
- (ii) Set aside any subsequent Order to this impugned Order dated 05.12.2018 in respect of transfer of the applicant.
- (iii) Pass such further Order or Orders as Your Lordships may deem fit and proper.”

2. The applicant also prays for the following interim relief:-

- “9. During the pendency of this Original Application Your Lordships may be pleased to stay/suspend the operation of the impugned Order being Office Order No. 28/04/2018-EC-V dated 05.12.2018 passed by the Deputy Director (Admn)-III office of the Directorate

General, Government of India, Central Public Works Department, Nirman Bhawan, New Delhi-1100111 by which the Applicant has been transferred from the office of the Chief Architect (ER-II), Central Public Works Department, Garchuk, NH-37 By pass, Guwahati-781035 to the office of the Senior Architect, NEZ, Central Public Works Department, Dhankheti, Cleve Colony, Shillong-793003 and any subsequent Order to this impugned Order dated 05.12.2018 in respect of transfer of the applicant and to protect the service conditions of the applicant as held by her as on date."

4. Mr. K.K. Das, learned counsel appearing on behalf of the applicant submitted that applicant is presently working and discharging her duties as an Assistant (Architectural Department, Central Public Works Department in the office of the Chief Architect (ER-II), Central Public Works Department, Garchuk, NH-37. Initially, the applicant joined in her service as Assistant (Architectural Department), Central Public Works Department at Shillong on 02.03.1995. According to Mr. Das, after completion of more than 20 years in her service at Shillong, the respondent authority had transferred the applicant to the office of the Chief Architect (ER-II), Garchuk, Guwahati vide office order dated 25.05.2015. Accordingly, the applicant joined at Guwahati on 01.04.2015 and since then, she has been working as Assistant (Architectural Department), in the office of the Chief Architect (ER-II), CPWD, Garchuk, Shillong.

However, the respondent No. 2 i.e. Deputy Director (Admn)-III, office of the Directorate General, Government of India, CPWD, New Delhi vide order dated 05.12.2018 has sought to transfer the applicant from Guwahati to Shillong wherein the applicant was continuously serving there since 1995 to 2015 i.e. more than 20 years.

5. Learned counsel for the applicant highlighted that the applicant has been suffering from a serious type of disease i.e. TB (Malty Drug Resistant TB) since 4 years. A surgical operation had been done on her husband due to the fact that he was suffering from severe illness of 'Hernia'. According to the learned counsel, both of them are under medical treatment. Considering the disease of the applicant and her husband, stating all the present facts and circumstances, the applicant filed an application before the respondent No. 2 on 17.12.2018 with a request for staying the operation of her transfer order dated 05.12.2018 till recovery from her disease. Since the applicant was on leave w.e.f. 26.12.2018 to 28.12.2018, applicant made another application before the respondent No. 3 i.e. Chief Architect (ER-II), Garchuk, Guwahati on 30.12.2018 requesting him to extend her leave till 04.01.2019 due to severe illness and surgical operation of her husband. But these two applications have not been attended to. Thereafter, the applicant made another application dated 01.01.2019 before the respondent

No. 2 for staying the operation of her transfer order dated 05.12.2018. But the same is pending till date before the respondent authority for the reasons best known to them.

6. Learned counsel for the applicant has drawn our attention at para 4.14 to the O.A. where the applicant categorically stated that – *“she has two Children one namely Anish Madhab Saikia is studying in class IX in Delhi Public School, Khanapara, Kamrup (M), Guwahati and his final examination will commence from the last week of February, 2019 and the registration for the Class X already done in the said School and he is studying in the said School from the own resident of the applicant, so it will be extremely difficult for her to work in the new transfer place at Shillong during the mid academic session.”*

7. On the other hand, Mr. S.K. Ghosh, learned Addl. CGSC appearing on behalf of the applicant submitted that in the earlier applications dated 17.12.2018, 30.12.2018 & 01.01.2019, nowhere applicant mentioned that out of two children, one is studying in Class IX and his final examination will commence from the last week of February 2019. However, he has no objection if this Tribunal directs the respondent authorities to dispose of the pending applications and pass orders accordingly.

8. We have heard the learned counsel for both the parties, perused the pleadings and all the documents.

9. The main plank of the argument advanced by the learned counsel for the applicant is that during mid academic session, the impugned Office Order No. 28/04/2018-EC-V dated 05.12.2018 (so far the applicant is concerned) was issued without involving any public interest or exigencies of service and the said impugned order is bad in the eyes of law in view of the decision rendered by the Hon'ble Supreme Court rendered in the case of **Director of School Education, Madras & Ors. Vs. O. Karuppa Thevan 1994 Supp (2) SCC 666** where the Hon'ble Apex Court has held that – “Transfer of an employee during mid-academic term is not proper unless exigencies of service are urgent for making such transfer.”

10. However, it is noted that the applicant has not filed any representation before the respondent authority highlighting her grievance that one son is in 'mid academic session'. As such, we deem appropriate that justice will be made if we direct the applicant to submit this O.A. before the respondent authority within 10 (ten days) and on receipt of the said O.A., the respondent authorities shall treat the same as a representation and dispose of within a period of four months thereafter keeping in mind that—

- (a) Applicant is suffering from serious type of disease i.e. TB (Malty Drug Resistant TB);
- (b) Applicant's husband is suffering from 'Hernia' disease; and
- (c) Applicant's one son is in Mid Academic Session; hence, judgment and order passed by the Hon'ble Supreme Court in the case of **O. Karuppa Thevan (supra)** is applicable in the present case.

Ordered accordingly.

11. It is made clear that, whatever decision to be arrived by the Respondent Authorities, shall be reasoned and speaking and shall be communicated to the Applicant forthwith. Till such time, applicant shall be allowed to continue her service in her present place of posting i.e. CPWD, Garchuk, Guwahati.

12. O.A. stands disposed of accordingly at the admission stage itself. No order as to costs.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)