

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00137/2018
&
Original Application No. 040/00193/2018
With
Misc. Application Nos. 64/2018, 113/2018, 125/2018,
22/2019 and C.P. No. 6.2018

Date of Order: This, the 6th day of May, 2019

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE MR. NEKKHOMANG NEIHSIAL, ADMINISTRATIVE MEMBER

Smti. Anuradha Chakraborty
Wife of Shri Susanta Chakraborty
Working as Works Clerk Grade II
O/o – The Asstt. Engineer, Postal
Electrical Sub-Division Guwahati
Meghdoot Bhawan, 2nd Floor
Pan Bazar, Guwahati – 781001.

...Applicant

By Advocates: Mr. M. Chanda, Mrs. U. Dutta, Ms. D. Neog & J. Tikkom

-VERSUS-

1. The Union of India
Represented by the Secretary to the
Government of India
Ministry of Communication and Information Technology
Sanchar Bhawan, New Delhi – 110001.
2. The Superintending Engineer (C)
Postal Civil Cirlce, 4th Floor
P-36, C.R. Avenue, Yogayog Bhawan
Kolkata – 700012.
3. The Asistant Engineer (Electrical)
Postal Electrical Sub-Division
Panbazar GPO, Guwahati – 781001.

... Respondents in O.A. 137/2018

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

1. The Union of India
Represented by the Secretary to the
Government of India
Ministry of Communication and Information Technology
Sanchar Bhawan, New Delhi – 110001.
2. The Superintending Engineer (C)
Postal Civil Circle, 4th Floor
P-36, C.R. Avenue
Yogayog Bhawan, Kolkata – 700012.
3. The Executive Engineer
Postal Civil Division
Panbazar GPO, Guwahati – 781001.
4. The Executive Engineer
Postal Civil Division
Opposite Raj Bhawan, R.N. Compound
Shillong, Meghalaya, Pin – 793001.
5. Shri Deepak Kumar
Work Clerk, Grade – II
Office of the Asstt. Engineer
Postal (Electrical) Sub-Division
Meghdoot Bhawan, 2nd Floor
G.P.O., Panbazar, Pin – 781001
Guwahati, Assam.
6. The Superintending Engineer (C)
Postal Civil Circle, 4th Floor
P-36, C.R. Avenue
Yogayog Bhawan, Kolkata – 700012.
7. Mr. Giri Sankar Khakhalary
Assistant Engineer (Electrical)
Postal (Electrical) Sub-Division
Meghdoot Bhawan, 2nd Floor, G.P.O. Panbazar
Guwahati – 781001, Assam.

...Respondents in O.A. No. 193/2018

By Advocate: Mr. R. Hazarika, Addl. CGSC

Date of Hearing: 08.04.2019

Date of Order:

ORDER**MANJULA DAS, MEMBER (J):**

These two cases i.e. O. A. No. 040/00137/2018 and O.A. No. 040/00193/2018 are analogous and similar question of law and facts are involved, thus, they are being decided by this common order.

2. Mr. M. Chanda, learned counsel appearing on behalf of the applicant submitted that against the transfer order dated 14.06.2017 by which the applicant was sought to be transferred from Guwahati to Silchar, the applicant approached this Tribunal vide O.A. No. 040/00265/2017 where this Tribunal vide order dated 19.09.2017 disposed of the said O.A. and directed the respondents to accommodate the applicant at Guwahati till class XII examinations of her elder daughter are over. Further directed to consider the case of the applicant sympathetically by diverting the applicant to the place where her husband is posted or nearby. Thereafter, the department vide order dated 17.10.2017, allowed the applicant to continue till the Class XII examination of her elder daughter is over and thereafter, she will be immediately relieved. Being aggrieved with the impugned office order dated 17.10.2017 along with impugned transfer order dated 14.06.2017, the applicant approached this Tribunal vide O.A. No. 040/00137/2018 and this

Tribunal vide order dated 09.04.2018 directed the respondents to maintain status quo.

3. Mr. Chanda submitted that during pendency of this O.A., the department passed the impugned office order dated 19.04.2018 and relieve order dated 20.04.2018 against which orders, the applicant approached this Tribunal for setting aside the same vide O.A. No. 040/00193/2018.

4. As both the O.As i.e. O.A. No. 040/00137/2018 and 040/00193/2018 are connected each other, accordingly, hearing have been conducted analogously and are being decided by this common order.

5. In O.A. No. 040/00137/2018, the applicant prayed the following reliefs:-

- “8.1 That the Hon’ble Tribunal be pleased to set aside and quash the impugned transfer order dated 14.06.2017 and consequential impugned office order dated 17.10.2017.
- 8.2 That the Hon’ble Tribunal be pleased to direct the respondents to allow the applicant to continue in the present place of posting i.e. PESD, Guwahati or alternatively to accommodate her in any other establishment at Guwahati under Postal Civil Division, Guwahati, on spouse ground as well as on the ground of her children’s education as per statutory provision laid down in GOI’s OM dated 30.03.2009 and in terms of the direction contained in order dated 19.09.2017 passed by this Hon’ble Tribunal in O.A. No. 265/2017.”

In O.A. No. 040/00193/2018, the applicant prays the following reliefs:-

- “8.1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned transfer order dated 19.04.2018 and consequential impugned relieving order dated 20.04.2018.
- 8.2 That the Hon'ble Tribunal be pleased to direct the respondents to allow the applicant to continue in the present place of posting i.e. PESD, Guwahati or alternatively to accommodate her in any other establishment at Guwahati under Postal Civil Division, Guwahati, on spouse ground as well as on the ground of her children's education as per statutory provision laid down in GOI's OM dated 30.03.2009.”

6. Heard Mr. M. Chanda, learned counsel for the applicant, Mr. S.K. Ghosh, learned Addl. CGSC in O.A. No. 040/00137/2018 and Mr. R. Hazarika, learned Addl. CGSC in O.A. No. 040/00193/2018. From records, it appears that O.As, written statement and rejoinder have been filed in O.A. No. 040/00193/2018 however, neither written statement nor rejoinder has been filed in O.A. No. 040/00137/2018.

7. The contention of the learned counsel for the applicant Mr. M. Chanda is that initially while the impugned transfer order dated 14.06.2017, so far the applicant is concerned, was issued by the Postal Department i.e. respondent No. 2, the applicant approached this Tribunal vide O.A. No. 040/00265/2017 and this Tribunal vide order dated 19.09.2017 passed an order directing the respondents to accommodate the applicant at Guwahati till Class XII examinations of her elder daughter are over. During continuation

of the examination applicant's daughter, the applicant was relieved vide order dated 17.10.2017. Immediately, the applicant filed the O.A. No. 040/00137/2018 and this Tribunal vide order dated 09.04.2018 passed an order for maintaining status quo.

8. Learned counsel vehemently argued that despite there was court order by maintaining status quo and the applicant was rendering her services, she has been transferred vide impugned order dated 19.04.2018, so far the applicant is concerned, from PESD, Guwahati to PCSD, Jorhat. On the next date i.e. on 20.04.2018, another office order was issued by Assistant Engineer (Electrical), Postal Electrical Sub-Division, Guwahati by which the applicant was relieved from Guwahati and directed to report for duty to the Assistant Engineer (Civil), Postal Civil Sub Division, Jorhat under Postal Civil Division, Guwahati. According to Mr. Chanda, both the orders dated 19.04.2018 and 20.04.2018 are violative of the order passed by this Tribunal on 09.04.2018. Accordingly, applicant filed M.A. No. 64/2018 for stay of the operation of the relief order dated 20.04.2018 and this Tribunal vide order dated 01.05.2018 in M.A. No. 64/2018 arising out of O.A. No. 137/2018, stayed the operation of the impugned relieve order dated 20.04.2018. Further this Tribunal vide order dated 14.06.2018 passed an another order in O.A. No. 197/2018 by staying the operation of impugned transfer order dated 19.04.2018 so far the applicant is concerned.

9. It was further submitted by Mr. Chanda that the applicant having been posted at Guwahati is now only about 328 km away from her husband's workplace i.e. Golaghat and she has been managing her two minor daughters at Guwahati. If the transfer order dated 19.04.2018 is carried into effect and the applicant is ousted from Guwahati and will be sent to Jorhat, then the applicant and her minor daughters will be displaced from Guwahati who are studying at Guwahati, making the entire family in a helpless and distressing condition.

10. Mr. Chanda further submitted that vide transfer order dated 14.06.2017, one Shri Pankaj Rai who is working as WC Gr.-II at PCD, Guwahati, was ordered to join in place of the applicant thus accommodating Shri Pankaj Raj at Guwahati itself where he has been sought to be ousted from Guwahti for no valid reason. However, said Sri Pankaj Raj has subsequently been allowed to proceed on deputation post at DAP on deputation basis. As such, there is no difficulty to accommodate the applicant at Guwahati, in the present place of posting which is much nearer to her husband's work place i.e. Golaghat without any disturbance to the education of the children. Applicant did make representations on 16.06.2017, 16.02.2018 and 16.06.2018 narrating all the facts and circumstances she has been undergoing and requested to allow her to continue in

her present place of posting at PESD, Guwahati or alternatively to accommodate her in any of the establishments at Guwahati under Postal Civil Division, Guwahati, but to no avail.

11. Mr. Chanda alleged malafide against private respondent Nos. 6 & 7 and submitted that the impugned order of transfer and posting dated 19.04.2018 has been passed whereby respondent No. 5 Shri Deepak Kumar, who was transferred and posted from Silchar to Jorhat earlier vide transfer order dated 14.06.2017, has been modified with an ill motive and said Shri Deepak Kumar is now posted at Guwahati on verbal instruction in place of the present applicant following impugned order dated 19.04.2018 whereby applicant is now sought to be transferred and posted from Guwahati to Jorhat although said Deepak Kumar never represented for posting at Guwahati but with the malafide intention to block the posting of the applicant at Guwahati. The impugned transfer and posting order dated 19.04.2018 whereby the applicant is sought to be transferred and posted from Guwahati to Jorhat has been issued in deliberate violation of the interim order passed by this Tribunal on 09.04.2018 passed in O.A. No. 137/2018 since notice of said O.A. along with interim order received by the office of the Assistant Engineer (E) at Guwahati at around 4 PM on 19.04.2018 as evident from Assistant Engineer (E)' communication dated 19.04.2018. Mr. Chanda has

drawn our attention to para 11 of the draft transfer policy dated 31.10.2017 which stipulates as here under:-

“11. In cases of official working in the cadre of Works Clerk Gr.-II and MTS the rotational transfer policy guidelines may to be enforced and posting will be done as far as possible in various offices of same station. However, this will be subject to availability of posts, feasibility and administrative constraints.”

12. Mr. Chanda further submitted that in similar final transfer policy of the same respondent department dated 13.01.2017 wherein Ahmedabad Circle has exempted works clerk grade II and MTS from the purview of routine transfer, therefore, applicant being a employee working in the cadre of works clerk grade II is liable to be exempted from the purview of rotational routine transfer.

13. On the other hand, Mr. R. Hazarika, learned Addl. CGSC appearing on behalf of the respondents, by filing written statement argued that as per request of the applicant, on earlier occasion, she was allowed to retain at Guwahati on the ground of children's education. The applicant herself vide her representation dated 16.06.2017, requested to transfer her at PCSD, Jorhat instead of Silchar in future which is nearer to her husband's posting. Moreover, the applicant continued at Guwahati since 1999 and the Transfer Policy dated 31.10.2017 which has been relied upon by the applicant in the O.A. is merely a Draft Transfer Policy against which

suggestions/comments of all the Stakeholders were invited on the same to be reached within 31.11.2017. According to Mr. Hazarika, said Draft Transfer Policy has got no existence as on date as the same is not yet approved by the competent authority. As such, both of transfer guideline more particularly para 11 of the Transfer Guideline cannot be taken into consideration as enforceable right in the eye of law.

14. In reply to the arguments advanced by the learned Addl. CGSC for the respondents, Mr. M. Chanda, learned counsel for the applicant submitted that the allegation of serving at Guwahati for 19 years cannot be sustained in the eye of law inasmuch as such retention is permitted by the Govt. of India through statutory Circular dated 30.09.2009 inasmuch as husband of the applicant worked at Guwahati for last 17 years and in view of the Office Memorandum dated 30.09.2009, husband and wife in the same station is mandatory.

15. Mr. Chanda further submitted that during pendency of these two O.A.s, the husband of the applicant who is working at Golaghat in the office of the NABARD has submitted a representation to the Chairman, NABARD, Head Office, Mumbai praying for his transfer and posting at Guwahati as he has already completed his 02 years service tenure at Golaghat. As such, in view

of the above, if the applicant is now transferred to Jorhat then the whole meaning of O.M. dated 30.09.2009 will be frustrated. On the other hand, the daughter of the applicant Ms. Anushmita Chakraborty is presently studying in Class VII at Holly Child School, Guwahati, during mid academic sessions; it would be difficult on the part of the applicant to shift her daughter at this critical juncture for admission in any other school at Jorhat. Mr. Chanda relied a decision of Hon'ble Supreme Court in the case of **High Court of Gujrat and another Vs. Gujarat Kishan Mazdoor Panchayat and Ors.** reported in (2003) 4 SCC Page 712 wherein it was held that – 'Draft Policy can be implemented'.

16. Mr. Chanda fairly submitted that at this moment, one post of WC Grade II under Guwahati Postal Sbu Division also fall vacant du tot promotion of Shri Tarak Majhi WC Grade II in the cadre of Assistant Account Officer on passing the departmental examination and posted at New Delhi. As such, there is no difficulty on the part of the respondents to accommodate the applicant in the resultant vacancy of WC Grade II in view of education of her children.

17. Mr. Chanda contended that the Draft Transfer Policy dated 31.10.2017 has been issued long after the issuance of Circulars of the Central Vigilance Commission i.e. O.M. dated 01.05.2008 and 11.09.2013 and also after the issuance of O.M. dated 07.10.2016

identifying the sensitive posts and non-sensitive posts. In the aforesaid CVC O.M. dated 01.05.2008 as well as O.M. dated 11.09.2013, nowhere it is stated that the incumbent holding the sensitive post required to be transferred from one station to another station, rather the circular dated 01.05.2008 has stated as follows:-

"CIRCULAR NO. 17/4/08

Subject: Rotation of officials working in sensitive posts.
Attention is invited to the Commissioner's Circular No. 98/VGL/60 dated 15/4/99 and 21/11/01.

2. The Commission vide circular dated 15/4/99, had asked the CVOs of Ministry's/Departments/ Organizations to identify the sensitive posts in their organizations and also to send to the Commission, the list of posts so identified. Further, CVOs were also asked to ensure that officials posted on sensitive posts were rotated every two/three years to avoid developing vested interest.
3. No information in this regard has been received in the Commission so far. The CVOs may, therefore, complete the exercise expeditiously now, and send to the commission, a list of posts identified as sensitive in their organization. The exercise may be completed by 30th June 2008."

Again the CVC circular dated 11.09.2013, also provided as follows:

"Circular No. 03/09/13

Subject: Rotation of officials working in sensitive posts-regarding.

Central Vigilance Commission and the Department of Personnel and Training have issued instructions for effecting rotational transfers of officials posted on sensitive posts. As per Commission's instructions issued vide letter Nos. 98/VGL/60 datd 15.04.1999, 02.11.2001 and 004/VGL/90 dated 01.05.2008 and 04.01.2012 (for public sector banks) on this issue, it was

prescribed posts and staff working in these posts and also ensure that they are strictly rotated after every two/three years to avoid developing vested interest."

18. The basic objection into the case of transfer, the respondent authority stated that the applicant continued for more than 19 years at Guwahati and accordingly, she has to be transferred. But at the same time, firstly – we need to go Transfer Policy in respect of staff working in the cadre of works clerk grade II and MTS under the Govt. of India, Ministry of Communication and IT.

Secondly, the applicant was initially transferred to Silchar vide order dated 14.06.2017 and in pursuance of court's order dated 09.04.2018, the applicant was allowed to retain at Guwahati. However, subsequently, she has been transferred to Jorhat vide order dated 19.04.2018 as well as relieve order dated 20.04.2018 which has been stayed by this Tribunal vide order dated 14.06.2018.

Thirdly, although as stated by the respondents that 31.10.2017 is a Draft Transfer guideline, however, in our view, the basic object of the department is very emerged for formulating the guideline for the benevolence of the employees like Group 'C' where the applicant is a Group 'C' rendering her services as WC Grade II.

19. Transfer policy in respect of staff working in the cadre of works clerk grade II and MTS under the various postal civil circles

under the Govt. of India, Ministry of Communication and IT, under department of posts under Civil Wings, final transfer policy was issued by Postal Civil Circle, Ahmedabad, dated 13.01.2017 wherein as per clause 11 and 12 Works Clerk Gr II have been exempted from routine transfer and posting out of the station rather it was instructed that posting of works clerk Gr. II and MTS to be done as per as possible in various offices of same station. Similarly the drat transfer policy of Kolkata Circle dated 31.10.2017 also followed the same guideline as clause 11 and 12 of final transfer policy guideline of Postal Civil Circle, Ahmedabad, as such impugned order of transfer and posting dated 19.04.2018 as well as impugned relieving order dated 20.04.2018 are liable to be set aside and quashed with exemplary cost since the same has been issued by private respondent Nos. 6 & 7 during operation of the interim order dated 09.04.2018 in O.A. No. 193/2018. The Hon'ble Supreme Court in the case of **Sarvesh Kumar Awasthi Vs. U.P. Jal Nigam & Ors. reported in (2003) 11 SCC, 740** has laid down the law that – '*Transfer of officers is required to be effected on the basis of set norms or guidelines. The power of transferring an officer cannot be wielded arbitrarily, malafide or an exercise against efficient an independent officer or at the instance of politicians whose work is not done by the officer concerned.*'

20. We further noted that the applicant who is a Group 'C' employee having two daughter – one is school going and now mid

academic session is going on and if the applicant has been transferred, education of younger children will be very much affected who is studying at Holly Child in Missionary School and in view of the decision of Hon'ble Apex Court in the case of **Director of School Education, Madras & Ors. Vs. O. Karuppa Thevan 1994 Supp (2) SCC 666**, applicant's case can be considered.

21. The respondent department in their written statement, has taken categorical stand that the Draft Transfer Policy has not yet been finalized. However, the same will be finalized by 2017. Here we noted that the department is slept over the matter for finalizing the said Transfer Guideline dated 31.10.2017 and now coming with the plea that as the Transfer Policy is not finalized; the same is not enforceable under the law.

22. Keeping in view of the above aspects, in our view, the claim of the applicant cannot be straightway defeated by the respondents' submission on the ground of Draft Transfer Guideline dated 31.10.2017.

23. After taking into entire conspectus of the case and the precedents relied upon, we direct the respondent authority to accommodate the applicant immediately at Guwahati in any other suitable post commensurate to her official rank.

24. With the above observations and directions, O.A.s are disposed of accordingly.

25. Consequently, M.A. No. 040/00064/2018, C.P. No. 040/00006/2018 arising out of O.A. No. 040/00137/2018 as well as M.A. No. 040/00113/2018, M.A. No. 040/00125/2018 and M. A. No. 040/00022/2019 arising out of O.A. No. 040/00193/2018 also stands disposed of.

26. There shall be no order as to costs.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

PB