

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 042/00420/2018

Date of Order: This, the 19th day of December 2018

Circuit Court at Imphal

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER
THE HON'BLE MR. N. NEIHSIAL, ADMINISTRATIVE MEMBER

Shri Gaipuichung Kamei
Aged about 45 years,
S/o Ajaina Kamei of Namdunlong Stadium Road
Imphal East District, P.O. & P.S. – Porompat
795002, Presently at Noney Bazar
Nungba Sub-Division Tamenglong District
795159.

...Applicant

By Advocates: Mr. M.G. Singh & Mr. N.T. Singh

-Versus-

1. The Union of India
Represented by the Secretary
Ministry of Agriculture
Department of Agricultural Research
& Education, New Delhi, India – 110001.
2. Indian Council of Agriculture Research
Represented by its Secretary Krishi Bhavan
Raisina Road, New Delhi – 110001.
3. The Director, Indian Council of Agriculture Research
ICAR Research Complex for NEH Region
Umroi Road, Umiam – 793103, Meghalaya.
4. The Joint Director
ICAR Research Complex for NEH Region
Manipur Centre, Imphal – 795004.

5. The Senior Scientist & Head (PC)s, KVK
Tamenglong, Manipur – 795141.
6. The Administrative officer (P)
ICAR Research Complex for NEH Region
Umroi Road, Umiam – 793103, Meghalaya

...Respondents

O R D E R (O R A L)

MANJULA DAS, JUDICIAL MEMBER:

Being aggrieved with the transfer order dated 05.04.2018 by which he has sought to be transferred from KVK, Tamenglong to KVK, Longleng, Nagaland, the applicant preferred the instant O.A. under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

“8.(i) Set aside and quash the impugned orders being No. RC(E)2/97/3, dated 05-04-2018 issued by Administrative Officer, Indian Council Agricultural Research, ICAR Research Complex for NEH Region, Umroi Road, Umiam-793103, Meghalaya by which the applicant was transfer from KVK, Tamenglong to KVK, Longleng, Nagaland.

(ii) Pass such further order or orders as Your Lordships may deem fit and proper.”

2. Mr. M. G. Singh, learned counsel appearing on behalf of the applicant submitted that applicant is presently working as SMM (Agronomy) at KVK, Tamenglong (Manipur) since 2010. Vide

impugned order dated 05.04.2018, so far the applicant is concerned, the applicant was sought to be transferred from KVK, Tamenglong (Manipur) to KVK, Longleng (Nagaland). According to Mr. Singh, applicant's wife is working as Staff Nurse in the Regional Institute of Medical Science (for short RIMS), Imphal and there is no one to look after the family since they have four minor school going children as well as old aged parents. Moreover their school session for academic year 2018-19 has already been started.

3. Mr. Singh further submitted that as per Office Memorandum No. 30.09.2009 issued by the DOP&T, they are entitled to get benefit for spouse posting so as to lead their normal family life and also to ensure the education and welfare of the children. At this situation, if is transferred, their education carrier will be hampered/disturbed for leading their normal family life. In view of that, applicant made a representation before the authority on 16.04.2018 and 22.09.2018 respectively. Since the said representations are pending disposal before the respondent authority, having no alternative, the applicant approached before the High Court of Manipur by filing Writ Petition (Civil) No. 361 of 2018 for quashing of the impugned transfer order dated 05.04.2018 issued by the Administrative Officer (P), Indian Council of Agriculture Research, ICAR Research Complex for NEH Region, Meghalaya where the Hon'ble High vide order dated 30.04.2018

passed an interim order directing the respondents not to give effect to the impugned transfer order dated 05.04.2018 so far the applicant is concerned. Thereafter, the Hon'ble High Court was pleased to dispose of the aforesaid Writ Petition on 06.08.2018 with a direction to the respondent particularly respondent No. 2 to consider sympathetically the representation dated 16.04.2018 submitted by the wife of the applicant in terms of the provisions contained in the Office Memorandum dated 30.09.2009 issued by the Department of Personnel and Training, Govt. of India and also directed that interim order passed by the Hon'ble High Court on 30.04.2018 to the effect that impugned order dated 05.04.2018 shall not be given effect to so far the applicant is concerned, shall continue till the disposal of the said representation.

4. According to Mr. Singh, said representation dated 16.04.2018 has not yet disposed of. In view of the order of the Hon'ble High Court of Manipur dated 12.09.2018 passed in Review Petition No. 6 of 2018, the applicant has approached this Tribunal by filing the instant O.A. No. 042/00420/2018 by making grievances.

5. We have heard the learned counsel for the applicant, perused the documents placed on record. We have noted that the Hon'ble High Court of Manipur has previously entertained the matter of transfer of the applicant where interim order was passed by directing not to give any effect the impugned transfer order

dated 05.04.2018. Further protection has been by the Hon'ble High Court of Manipur by giving liberty to approach this Tribunal which is appropriate forum for adjudication of the matter.

6. We have further noted that wife of the applicant is also serving as Staff Nurse in the Regional Institute of Medical Science, Imphal which is under the Govt. of India and as per provisions of Office Memorandum dated 30.09.2009 on the subject of 'Posting of husband and wife at the same station', they are eligible to avail the benefit of spouse posting or to enable them to lead a normal family life and also to ensure the education and welfare of the children inasmuch as their children are in the mid academic session. In the case of **Director of School Education, Madras & Ors. Vs. O. Karuppa Thevan 1994 Supp (2) SCC 666**, 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."

7. By taking into note of the Office Memorandum dated 30.09.2009 as well as ratio laid down by the Hon'ble Apex Court in the case of **O. Karuppa Thevan** (supra), we deem fit and proper to hold that presently transfer of the applicant during mid academic session is not fair, just and proper and not permissible under the law. However, since the representations of the applicant 16.04.2018 and 22.09.2018 are pending, the respondents are directed to adjudicate the same within a period

of three months from the date of receipt copy of this order in the light of Office Memorandum dated 30.09.2009 as well as ratio laid down by the Hon'ble Apex Court in the case of **O. Karuppa Thevan** (supra). The decision to be arrived by the respondent authorities shall be a reasoned and speaking and will be communicated to the applicant forthwith. Till the disposal of the said representations or till the academic year 2018-19 of his children is over whichever is later, the applicant shall not be disturbed from his present place of posting i.e. KVK, Taamenglong (Manipur).

8. With the above observation and direction, O.A. stands disposed of accordingly at the admission stage. No order as to costs.

(N. NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

