

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/00159/2019

Date of Reserve:23.07.2019
Date of Order:29.07.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Sri Prashanta Kumar Pradhan, aged about 49 years, S/o. Late Ghanashyam Pradhan of Village:Dandamir, PO/PS-Tritol, Dist-Jagatsinghpur – at present working as Assistant Communication Officer, Ministry of Home Affairs, Government of India, Inter State Police Wireless Station (MHA), Unit No.VIII, in front of Stewart School, Nayapalli, Bhubaneswar, Dist:Khordha (Odisha) now under order of transfer to Rachi, Jharkhand.

...Applicant

By the Advocate(s)-M/s.R.Mohapatra
S.Shankar Pradhan
S.Dash

-VERSUS-

Union of India represented through:

1. The Secretary, Government of India, Ministry of Home Affairs, New Delhi-110 001.
2. Director, Directorate of Coordination, Police Wireless (DCPW),Ministry of Home Affairs, Block No.9, Central Government Offices (CGO) Complex, Lodhi Road, New Delhi-110 003.
3. Station Superintendent, Inter State Police Wireless Station, Unit No.VIII, in front of Steward School, Nayapalli, Bhubaneswar, Dist:Khordha (Odisha) – 751 012.

...Respondents

By the Advocate(s)-Mr.B.R.Mohapatra
ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T. Act, 1985, the applicant has sought for the following reliefs:

- i) The order of transfer vide Order No.33 of 2018 dated 24.07.2018 under Annexure-A/3, order dated 20th February, 2019 under Annexure-A/7 and all other consequential orders may kindly be quashed.

- ii) The Hon'ble Tribunal may graciously be pleased to allow the application and direct the respondents to allow the applicant to continue as Assistant Communication Officer, at Inter State Police Wireless Station (ISPS), Unit No.VIII, Nayapalli, Bhubaneswar, Dist-Khordha in terms of the Office Memorandum dated 26.10.2015 & 30.09.2009 issued by DOPT under Annexure-A/1 series and he may be extended all the service benefits as admissible within a reasonable time to be stipulated by this Hon'ble Tribunal.
- iii) And to pass any other appropriate direction/order as the Hon'ble Tribunal deems fit and proper to which the Applicant is entitled to.

2. Short facts leading to filing of this O.A. are thus: Applicant is presently working as Assistant Communication Officer (in short ACO), Inter State Police Wireless Station under the Ministry of Home Affairs, Government of India. While working as such under the administrative control of the Station Superintendent, Inter State Police Wireless Station, Bhubaneswar (Respondent No.3), he was transferred to Ranchi vide order dated 24.07.2018 (A/3). Aggrieved with this, he had approached this Tribunal in O.A.No.260/00858/2018 challenging the legality and validity of the said order of transfer. This Tribunal vide order dated 21.12.2018 disposed of the aforesaid O.A. in the following terms:

"The O.A. is disposed of at this stage with liberty to the applicant to file a detailed representation raising the grounds which have been taken in this O.A. along with copy of the O.A. to the Respondent No.2/competent authority within one week of receipt of copy of this order. If such a representation along with paper book of this O.A. is received by Respondent No.2/competent authority, he shall reconsider the matter and dispose of the same by issuing a fresh order, copy of which shall be communicated to the applicant within one month from the date of receipt of such representation.

It is made clear that till that time the applicant shall not be relieved, if he has not been relieved already as on today, in view of the fact that no substitute has been posted against the applicant vide the transfer order dated 24.07.2018".

3. In compliance with the above direction, the respondents have passed an order dated 20.02.2019 (A/7), the relevant parts of which are extracted hereunder:

"Whereas, Shri P.K.Pradha, ACO has been transferred vide this Directorate's Office Order Part-II (No.33/2018) dated 24th July, 2018 from ISPW Station, Bhubaneswar to ISPW Station Ranchi due to administrative/operational reasons in General Transfer-2018.

2. And whereas, Shri P.K.Pradhan, ACO filed an O.A.No.260/858/2018 dated 12.12.2018 before the Hon'ble CAT, Cuttack, challenging the transfer Order dated 24.07.2018 of this Directorate and prayed for quashing the same.

3. And whereas, Shri P.K.Pradhan, ACO has already been stand relieved with the direction to join at ISPW Station, Ranchi vide Hqrs. Signal No.C-11032/(JR)/2018-COM dated 18.12.2018 w.e.f. A/N of 18.12.2018.

4. And whereas, the Hon'ble CAT, Cuttack disposed of the said O.A. on 21.12.2018 and passed following order that:

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5. And whereas, Shri P.K.Pradhan, ACO submitted a fresh application dated 22.12.2018 with the request for retention/accommodation at present place of posting i.e., ISPW Station, Bhubaneswar on the following grounds:

- i) His elder brother is suffering from Gull Blader cancer and under treatment at Acharya Harihar Regional Cancer Centre, Government of Odisha.
- ii) His wife is working as P.A. at Odisha High Court.
- iii) His son and daughter are studying in 5th & 6th standards respectively.,
- iv) He has lost his Patella in a Railway accident.
- v) His spouse right hand arm (shaft human) bone joined by rod and screw and operated twice.

6. And whereas, the application dated 22.12.2018 of Shri P.K.Prahan, ACO regarding retention/accommodation at present place of posting, i.e., ISPW Station Bhubaneswar has been considered sympathetically but could not be acceded to as the grounds of compassion stated by the applicant do not justify relaxation at ISPW Bhubaneswar on compassionate grounds against Transfer Policy of

Directorate. Other officials have also been transferred in similar conditions. Moreover, he was posted at ISPW, Bhubaneswar w.e.f. 01.07.2011 i.e., Completed more than 7 years there. Accordingly, he was transferred as per the transfer policy of this Directorate and he is liable to serve anywhere in India.

7. Hence, order dated 21.12.2018 issued by the Hon'ble CAT, Cuttack in O.A.No.260/858/2018 has been complied, the matter stands disposed of accordingly".

4. Aggrieved with this, the applicant has approached this Tribunal in the 2nd round of litigation praying for the reliefs as mentioned above.

5. The grounds urged by the applicant in support of the reliefs sought are that the order dated 20.02.2019 (A/7) passed by the respondents in pursuance of the direction of this Tribunal in O.A.No.260/858/2018 is an outcome of total non-application of mind inasmuch as the grounds urged by him in his representation dated 22.12.2018 (A/6) have not been considered in its proper perspective. According to applicant, his wife being a working lady, apart from right hand arm (shaft human) bone joined by rod and screw and operated twice, his representation ought to have been considered in the light of transfer policy issued by the Directorate of Coordination Police Wireless vide Office Memorandum dated 26.10.2015. According to applicant, as per his official source of information, his name had not been recommended by the Transfer Committee of DCPW and in the absence of any such recommendation, the order of transfer is unjust and improper. Applicant has cited the names of some officials, viz., S/Shri Nilamani Tendulkar, ACO, Disput, Assam, D.K.Pathak, ACO, Shillong, Meghalaya, K.D.Jamadagni, ACO, Jeypore, Rajasthan and some staff Portblair, Andaman & Nicobar Island, Portblair and Delhi, who, although have completed more than eight years, have not been transferred whereas, he having served less years, has been transferred.

Further, the applicant has pointed out that the Department of Personnel & Training have issued guidelines on posting of spouse at the same station vide Office Memorandum dated 30.09.2009 requiring the authorities to communicate the specific reasons in case the authorities fail to post the employee at the station of his/her spouse. The applicant has pleaded that the respondents have not scrupulously followed the said guidelines as well as the Transfer Policy issued vide Office memorandum dated 26.10.2015 (A/1 series to the OA) nor have communicated any specific reason while not acceding to his request for retention at Bhubaneswar.

6. Contesting the claim of the applicant, respondents have filed their counter. It has been submitted that in order to meet the operational requirement of ACO, the applicant has been transferred to ISPW Station, Ranchi. Respondents have pointed out that the applicant has already stayed for more than 15 years at ISPW Station Bhubaneswar out of his total service of 21 years and 8 months since his joining in 1997. As per DoP&T guidelines, 2009, the applicant has been transferred to the nearest station, i.e., Ranchi from the place of posting of his wife and therefore, there has not been violation of any guidelines. Drawing attention of this Tribunal to Transfer Policy dated 26.10.2015 (A/1 series), the respondents have laid emphasis on Clause – 4 thereof, which stipulates as follows:

"The transfer will normally be made as per the 'Station Seniority' related to the concerned trade/category on first come first go basis except for those who are required to be moved out earlier on completion of mandatory tenure in the NE region or in one of the Island Territories station. The minimum tenure for normal stations except stations in NE Region and Island Territories will be three years and maximum tenure is six years"

7. Based on this, the respondents have submitted that there is no illegality by transferring the applicant since he has already stayed for more than 7 years

at this time and stayed for more than 15 years at Bhubaneswar station in his entire service period of 21 years and 8 months. It has been brought out on record that the applicant holds a transferable job and is liable to be transferred all over the country. The guidelines issued by the DOP&T dated 30.09.2009 which speaks about posting of husband and wife at the same station is not mandatory and nor does it confer any right on an employee to continue at a particular station of his choice indefinitely. As regards retention of some officials at Dispur, Shillong, Jaipur and Port Blair, the respondents have clarified that those officials have been transferred as per the seniority of their stay at the stations. Officials posted in ISPW Station at Dispur, Shillong and Port Blair have been retained after considering their choice of request as they are posted in Hard Stations. The official retained in ISPW Station at Jaipur is next to the applicant in seniority list of longest stay at a station and hence, he has not been considered for transfer. The respondents have also submitted that senior to the applicant has been retained at Bhubaneswar since he is going to superannuate on 30.09.2020.

8. We have heard the learned counsels for both the sides and perused the records. Before delving into the matter on merit, we would like to reduce it in writing that this Tribunal while disposing of earlier O.A. filed by the applicant had directed Respondent No.2, i.e., Director, Directorate of Coordination, Police Wireless (DCPW), Ministry of Home Affairs, Block No.9, Central Government Offices (CGO) Complex, Lodhi Road, New Delhi-110 003, being the competent authority to consider and dispose of the representation to be filed by the applicant within a stipulated time frame. It appears from the order dated 20.02.2019(A/7) passed in pursuance of the direction of this Tribunal that the Respondent No.2 has not considered the representation of the

applicant. On the other hand, one Hemant Kumar, Assistant Director (Admn.), in the office of the Directorate of Coordination (Respondent No.2) has disposed of the representation. A plain reading of the order does not make it impliedly or expressly clear that the same has been issued with the approval of Respondent No.2 inasmuch as, there is no such indication that as if the Assistant Director (Admn.) is conveying the decision of Respondent No.2 nor the order has been issued with the approval of Respondent No.2. When the Tribunal had directed Respondent No.2/competent authority to consider the representation, it was imperative on the part of Respondent No.2 to apply his independent mind to the facts and rules on the subject in order to come to a definite finding. Instead, the grievance of the applicant as raised in his representation appears to have been considered and decided by an authority, who is neither competent to take any such decision nor this Tribunal had ever directed him so.

9. Coming to the merit of the matter, although the grounds urged by the applicant in his representation dated 22.12.2018 have been mentioned in the impugned order dated 20.02.2019 (A/7), but those have been left out of consideration just by mentioning that representation of the applicant dated 22.12.2018 regarding retention/accommodation at present place of posting, i.e., ISPW Station, Bhubaneswar has been considered sympathetically but could not be acceded to as the grounds of compassion stated by the applicant do not justify relaxation at ISPW, Bhubaneswar on compassionate grounds against Transfer Policy of Directorate. Besides, even though the applicant in his representation had made a categorical submission to consider his case having regard to Para-12 of Transfer Policy dated 26.10.2015 since his wife is an employee, but the same was not duly considered, a duty was cast on the

authorities to consider his grievance in the light of the instructions on the subject. In the fitness of things, Clause-12 of the Office Memorandum dated 26.10.2015 is quoted hereunder:

"12. The guidelines of DOP&T will be followed on posting of spouse at the same station and posting of disabled Govt. Official(s)/parents of disabled children. The posting of differently able official(s) be considered case to case".

10. In this connection, it is to be noted that the instructions issued by the DOP&T in Office Memorandum dated 23.08.2004 on the subject of posting of husband and wife at the same station reads as follows:

"The undersigned is directed to say that the policy of the Government has been to give utmost importance to the enhancement of women's status in all sectors and all walks of life. Keeping this policy in view, the Government had issued detailed guidelines about posting of husband and wife at the same station vide O.M.No.28034/2/97-Estt.(A) dated 12th June, 1997. Attention of the Government was drawn that the instructions contained in these Office Memoranda are not being followed in letter and spirit by the Ministries/Department even when there were no administrative constraints. Accordingly, it is impressed upon all Ministries/Departments that the guidelines laid down in the aforesaid Office Memoranda are strictly followed while deciding the request for position of husband and wife at the same station".

11. In the meanwhile, DOP&T have issued Office Memorandum dated 30.09.2009 which deals with posting of husband and wife at the same station. The relevant paragraphs are as follows:

"In view of the utmost importance attached to the enhancement of women's status in all walks of life and to enable them to lead a normal family life as also to ensure the education and welfare of the children, guidelines were issued by DOP&T in O.M.No.28034/7/86-Estt.(A) dated 3.4.80 and No.28034/2/97-Estt.(A) dated 12.6.97 for posting of husband and wife who are in Government service, at the same station. Department had on 23.8.2004 issued instructions to all Mins/Deptts. to follow the above guidelines in letter and spirit.

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4. The consolidated guidelines will now be as follows:

(vii) Where one spouse is employed under the Central Govt. And the other spouse is employed under the state Govt:

The spouse employed under the Central Govt. may apply to the competent authority and the competent authority may post the said officer to the station or if there is no post in that station to the State where the other spouse is posted.

5. Complaints are sometimes received that even if posts are available in the station of posting of the spouse, the administrative authorities do not accommodate the employees citing administrative reasons. In all such cases the cadre controlling authority should strive to post the employee at the station of the spouse and in case of inability to do so, specific reasons therefor may be communicated to the employee".

12. No such reason has been assigned keeping in view the DOP&T instructions by the respondents while passing order dated 20.02.2019. On the contrary, the authorities have mentioned that the representation of the applicant regarding retention/accommodation at the present place of posting has been considered sympathetically, but could not be acceded to as the grounds of compassion stated by the applicant do not justify relaxation at ISPW, Bhubaneswar on compassionate grounds. While issuing direction to Respondent No.2/competent authority, this Tribunal never directed to consider the representation of the applicant sympathetically. Therefore, this sort of approach on the part of the respondents does not appeal us to come to a conclusion that the representation of has reasonably been rejected.

13. We have gone through the decision of the Hon'ble Supreme Court in Union of India vs. S.L.Abbas (AIR 1993 SC 2444) as cited by the respondents in

support of their case. In Paragraph-7 of the judgment, it has been held by the Hon'ble Supreme Court as follows:

"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt the authority must keep in mind the guidelines issued by the Government on the subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guidelines however, does not confer upon the Government employee a legally enforceable right".

14. In Paragraph 9, the Hon'ble Supreme Court has observed as follows:

"...No doubt the guideline requires the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible."

15. In the instant case, it to be noted that by virtue of the consolidated guidelines issued by the DOP&T vide Office Memorandum dated 30.09.2009 as quoted above, the cadre controlling authority should strive to post the employee at the station of the spouse and in case of inability to do so, specific reasons therefor may be communicated to the employee. No such consideration has been made by the respondents while rejecting the representation of the applicant. Secondly, the Hon'ble Supreme Court in Union of India vs.S.L.Abbas (cited supra) has observed that if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. As already mentioned above, the consideration of representation of the applicant stands to the contrary being not in conformity with the decision of the

Hon'ble Supreme Court in S.L.Abbas case. Therefore, this Tribunal finds substantial force in the contention of the applicant that his representation has not been considered in the light of the rules and instructions issued by the Government from time to time and on the contrary, the same has been rejected in an unreasonable and arbitrary manner and as is apparent, the respondents are bent upon to their decision already taken while issuing the orders of transfer.

16. The applicant, besides taking the ground of serving of his spouse at Cuttack has also taken the stand of serious illness of his elder brother who is suffering from gall bladder cancer. He has also pointed out that he has lost his patella in a railway accident and it is difficult for him to travel to far off place by train. The further ground urged is that that his children are persecuting their studies and his presence is required for their better education and welfare. In this context, the transfer guidelines as per OM dated 26.10.2015 (A/1) also stipulate that the normal transfer order will invariably be issued by the end of February of the year and all transfer movements will be completed latest by 30th June of that year. Those grounds have not been considered by the respondent-authorities while rejecting the representation of the applicant. Apart from this, although it has been mentioned in the counter that in order to meet the operational requirement of ACO, the applicant has been transferred, the same has not been mentioned in the impugned order of transfer dated 24.7.2018 (A/3).

17. Having regard to what have been discussed above, we quash the order of transfer dated 24.07.2018 (A/3) in so far as applicant is concerned, order dated 20.02.2019 (A/7) and the consequential order relieving the applicant to join the transferred post and direct the respondents to allow the applicant to

continue at Bhubaneswar forthwith. The interregnum period, i.e., from the date of relief till the date of joining back to duty shall be regularized by granting leave of the kind as due and admissible to the applicant if an application for such leave is submitted by the applicant as per the rules. It is made clear that the respondents will be at liberty to pass a fresh order of transfer in accordance with the DOP&T OM dated 30.09.2009 as well as the OM dated 26.10.2015 (Annexure-A/1 series of the O.A).

17. In the result, the O.A. is allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBR(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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