

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCHNo. MA 350/00330/2016
OA 350/00783/2016Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. Uday Kumar Varma, Administrative Member

DR. PIYALI PAUL

VS

UNION OF INDIA & ORS.

For the applicants : Mr.A.Chakraborty, counsel
Ms.P.Mondal, counsel

For the respondents : Mr.S.Paul, counsel

Order on : 20.9.16

O R D E RMs.Bidisha Banerjee, J.M.

Ld. Counsels for the parties were heard and materials on record were perused.

2. The present OA has been filed seeking the following reliefs :

- a) Speaking order dated 18.5.16 issued by the Sr. General Manager, Discipline Section, Metal & Steel Factory, Ishapore, cannot be sustained in the eye of law and as such the same may be quashed;
- b) Office order No. 254/04/16/per /M dated 1.4.16 issued by respondent No.2 cannot be tenable in the eye of law and as such the same may be quashed.

3. The admitted facts that could be culled out from the pleadings of the parties are as under :

The applicant at present is working as Senior Medical Officer at Ordnance Factory Hospital, Metal & Steel Factory, Ishapore. On receipt of memo dated 9.2.16 asking her to submit her choice in respect of transfer and posting , she submitted a representation praying for her retention at Kolkata for taking care of her child. On 1.4.16 the applicant received a transfer order by which she was sought to be transferred to Ordnance Factory, Bolangir, Orissa.

The applicant has stated that her husband is posted at Sankara Netraloy, Kolkata a private hospital and he is unable to accompany her because of some legal bond with his employer. The applicant has further stated

that her son is one year and seven months old and needs periodical check up and treatment at Super-Speciality hospital which will not be available at Bolangir. She therefore prays for her transfer and posting at any hospital/dispensary situated at Calcutta to enable her son to get normal health.

The applicant has averred that the transfer policy provides that posting of husband and wife at the same station shall be considered as per Government of India guidelines on the subject, and that the DOPT circular dated 30.9.09 provides that where only wife is a Government servant, the concessions to look after the welfare of the children specially till the children attain 18 years of age, will be applicable to the wife and therefore it shall apply in her case.

Being aggrieved by her transfer order dated 1.4.16, she moved OA 596/16, which was disposed of with the following order :

- 6. *In view of such and to meet the ends of justice, I dispose of the OA with a direction upon the respondent No. 3 or any other competent authority to look into the grievance of the applicant considering her case in accordance with DOPT OM dated 30.9.09 particularly para (viii) thereof and the health condition of her son who is at present 1 year 7 months old.*
- 7. *Let a reasoned and speaking order be issued within one month from the date of communication of this order. Till such time the applicant shall not be released from the present place of posting.*
- 8. *The OA is accordingly disposed of. No order is passed as to costs.*

The applicant has alleged that pursuant to that order, the concerned authority passed a speaking order dated 18.5.16 rejecting her prayer without considering the DOPT OM dated 30.9.09 and also without considering the physical condition of her son.

Further she has alleged that some officials, who have completed more than 15 years at a station, have not been disturbed whereas she has completed only seven years, yet she is not considered. She has alleged that her transfer is in violation of the transfer policy.

Hence the present OA has been filed.

4. Dispelling her claim, the respondents in their reply have stated as follows:

The applicant was recruited as Asst. Medical Officer in the IPFHS on 16.4.07 through special recruitment drive conducted by UPSC and after induction training programme she was posted at Metal & Steel Factory, Ishapore on 12.6.07. Since then the applicant has been serving in the same unit.

At the time of joining, the applicant was an MBBS. Thereafter on her request she was allowed to join DNB anaesthesia course in August 2010 with leave. After exhaustion of all possible admissible leave the applicant was granted Extra Ordinary Leave of 972 days for completion of her DNB course in anaesthesia, despite shortage of Medical Officers. After completion of the course, the applicant joined back on 2.8.13 and thereafter proceeded on 180 days maternity leave from 14.7.14 followed by 180 days CCL from 10.1.15. Therefore she was always accommodated.

5. The respondents have further averred that the Ministry of Defence vide its letter dated 27.2.12 has empowered the DGOF and Chairman/OFB as the competent authority to decide upon the transfer and posting of IOFHS officers based on the recommendation of the transfer committee for IOFHS. Accordingly respondent No.2 had published transfer policy for IOFHS vide instruction dated 7.3.12. As per policy the maximum tenure at a unit is limited to 5 years and based on the said transfer policy the applicant was transferred to Bolangir vide transfer order dated 1.4.16.

Immediately thereafter the applicant made a representation dated 5.4.16 before the respondent No.3 for her retention at Kolkata and filed OA 596/16 before the Tribunal praying for a direction upon the respondents to cancel the transfer order dated 1.4.16. The said OA was disposed of with a direction upon the respondent authority to pass reasoned and speaking order after consideration of the representation dated 5.4.16 and till such time the applicant should not be released from the place of posting. In view of the said order, a detailed speaking order was passed on 18.5.16 and release order dated

18.5.16 was issued to the applicant for relieving her of her duties at OFH, Ishapore.

Against the release order dated 18.5.16, the applicant has filed the present OA on 23.5.16. The applicant has banked upon a certificate dated 31.3.16 issued by a private doctor regarding the present health condition of her child and on that basis she is trying to cancel her transfer order, though she is continuing for 9 years in the same station.

6. The respondents have further stated that they are ready to constitute a Medical Board to decide the issue and if the said Board opines that some serious life threatening ailment is really there in the child and medical ground of the child is the only issue involved, the respondents have no hesitation to consider the change in the place of posting of the applicant to any other place like Chennai, Pune, Jabalpur, Kanpur or other place which has requisite medical facilities.

The respondents have prayed for dismissal of the OA.

7. The ld. Counsel for the applicant took us through the order passed in OA 755/13 by this Tribunal in a case of one Indira Dutta, another Medical Officer of the same organisation, wherein on the basis of ^{an} observation of Hon'ble High Court in WPCT 349/13 filed by her against refusal of interim order of this Tribunal, this Tribunal held as under :

"Government of India has felt the need to make a concerted effort to increase representation of women in Central Government jobs. Perusing para 4(viii) of the above office memorandum it is seen that where only the wife is a Government servant, the above concession will be applicable to the Government servant. The above concession is 'The husband & wife, if working in the same Department and if the required level of post is available, should invariably be posted together in order to enable them to lead a normal family life and look after the welfare of their children especially till the children attain 18 years of age.'

In the present case the husband of the applicant who is a Doctor in Kolkata Municipal Corporation (KMC) is admittedly not performing his work in KMC from 2006 till date though he is maintained in the roll of KMC. He has engaged himself for private practice as Visiting Consultant and Surgeon at Madhyamgram and New Barrackpur Municipality Hospitals and similar other institutions. As KMC has the status of a 'Local Body' by no stretch of imagination the husband of the applicant can be termed as a State Government employee. Therefore, for all practical purpose the present applicant comes under the purview of Para 4(viii) of the DOP&T Guidelines dated 30.9.09. Agreeing with the spirit of the intention of the Government of India for enhancement of women's status and as the only daughter of the applicant is about 13 years old, I am of the

opinion that concession should be given to the Government servant to be posted together with husband.

xxx

xxx

xxx

xxx

Hence the impugned order of transfer dated 10.7.12 transferring the applicant, Dr. (Mrs.) Indira Dutta to Nalanda is quashed as far as the present applicant is concerned. Respondent authorities may consider to transfer her as she is already serving in his present posting for nearly 12 years to any place in and around Kolkata and consider transferring her to a hard posting when her daughter attains majority."

Ld. Counsel would submit that the said order being not challenged higher up but implemented, the applicant would deserve the same relief.

8. Ld. Counsel would further vociferously submit that the husband of the applicant being posted in Sankar Netralaya a private organisation, she should be allowed the same concession i.e. till her child attained 18 years of age, in scrupulous observation of para 4(viii) of DOPT OM dated 30.9.09 which explicitly reads as under :

"the husband & wife, if working in the same Department and if the required level of post is available, should invariably be posted together in order to enable them to lead a normal family life and look after the welfare of their children especially till the children attain 18 years of age. This will not apply on appointment under the central Staffing Scheme. Where only wife is a Govt. servant, the above concessions would be applicable to the Govt. servant."

9. Ld. Counsel for the respondents per contra would vehemently oppose the claim and submit that the services of the applicant being urgently required at Bolangir, the authorities should be permitted to constitute a Medical Board to ascertain the medical condition of the child.

10. We have considered the rival contentions and materials on record and given our anxious consideration to them.

11. We noticed that in the case of Indira Dutta, another lady Medical Officer of the same department, applicant in OA 755/13, who sought for exemption in terms of para 4(viii) of DOPT OM dated 30.9.09, this Tribunal has already held that the concession as available in terms of para 4(viii) of DOPT OM dated 30.9.09 would apply to her. Such being the position, in our considered opinion it would be highly unfair to the applicant as, infact, a discriminatory treatment is being meted out to the present applicant vis-a-vis another lady Medical Officer of the same department Indira Dutta, who was allowed the benefit of

... 2016

6

para 4(viii) of DOPT OM dated 30.9.09, if the same concession as allowed to Indira Dutta, the applicant must also be shown the same as she is identically circumstanced, more so since she has to rear up a little child, irrespective of the fact whether the child requires constant medical supervision or not.

12. Hence it is ordered that the respondents would consider posting of the applicant to any place in or around Kolkata, and shall suitably modify her transfer order within one month from the date of communication of this order. The OA accordingly stands disposed of. No order is passed as to costs.

(UDAY KUMAR VARMA)
MEMBER (A)

... Banerjee
(BIDISHA BANERJEE)
MEMBER (J)

in