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**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 350/00659/2019

Date of order: 17.05.2019

**Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

Shri Tapan Kumar Sarma,
Son of Late Gouranga Chandra Sarma,
Aged about 56 years,
Working as SPT/AIR/Chinsurah,
Residing at Flat No. 4F, Block I,
Trinayana Apartment,
12 B.T. Road, Rathala, Belgharia,
Kolkata - 700 056, West Bengal.

.. Applicant

VERSUS

I. The Union of India,
Through the Secretary,
M/o. Information & Broadcasting,
Room No. 655, A-Wing,
Shastri Bhawan,
New Delhi - 1.

II. Chairman Prasar Bharati,
Prasar Bharati House,
Copernicus Marg,
New Delhi - 1.

III. Prasar Bharati,
Through CEO,
Prasar Bharati House,
Copernicus Marg,
New Delhi - 1.

IV. The Director General,
All India Radio,
Akashbani Bhavan,
Sansad Marg,
New Delhi - 1.

V. The Additional Director General (E-EZ),
All India Radio and Doordarshan,
Eden Gardens,
Kolkata - 700 001.



VI. Aboy Kumar Mondāl,
HPT,
AIR Chinsurah,
Hooghly - 712 102.

.. Respondents

For the Applicant : In person

For the Respondents : Mr. V.G. Malagi, Dy. Director on
behalf of respondent No. IV.

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached this Tribunal in third stage litigation under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

"(a) The Speaking Order ADG(E)/Legal Cell/2019/TKS dated 01.05.2019 issued by the Dy. Director (E) on behalf of ADG(E2) cannot be sustained in the eye of law and same may be quashed.

(b) An Office Order of transfer being No. ADG(E)/Legal Cell/2019/TKS dated 07.1.2019 issued in respect of the applicant cannot be sustained in the eye of law and therefore the same may be quashed."

2. Heard applicant in person

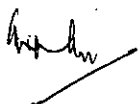
Mr. V.G. Malagi, Dy. Director Engineering, appears on behalf of respondent No. IV, namely, the Director General, All India Radio and makes his submissions. Perused documents on record and those furnished during hearing. The matter is taken up at the admission stage.

3. The applicant, in person, submits that he is 70% disabled. He had joined the respondent authorities in 1992 as an Engineering Assistant and was last working at HPT/AIR/Chinsurah. That, in his service career, he has served States such as Assam, Orissa, Jharkand and West Bengal. That, after the applicant had completed his tenure at AIR, Kolkata, he

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had been transferred to DDK Bhubaneswar in March, 2013, but the said order, considering the gravity of his physical condition, was ultimately modified to HPT, AIR Chinsurah and that a post of Engineering Assistant from AIR Sambalpur was specially shifted to accommodate him, given his disability. That, the applicant had represented in 2018 for retransfer to Kolkata, and, that, despite such representation, he was transferred to NABM, Bhubaneswar vide transfer orders dated 26.11.2018. The applicant had, thereafter, approached the Tribunal in O.A. No. 1753 of 2018, which was disposed of by directing the respondents to consider his representation and to pass a reasoned and speaking order. That, a reasoned and speaking order was thereafter issued by the respondents on 7.1.2019 rejecting his prayer. The applicant once again approached the Tribunal in O.A. No. 350/00073/2019 in which direction was issued to the respondent authorities to issue reasoned and speaking order on a comprehensive representation, if filed by the applicant, with particular reference to DOPT guidelines dated 31.3.2014 that provides certain facilities with respect to persons with disabilities for the efficient performance of their duties. That, the respondents authorities thereafter issued another reasoned and speaking order on 1.5.2019 in which his prayer was once again rejected. The applicant, has therefore approached the Tribunal challenging both speaking orders and reiterating his claim to be posted in Kolkata.

4. The official representative of the respondents, per contra, would reiterate the contents of the speaking orders dated 7.1.2019 which stated that his transfer at NABM Bhubaneswar with readily available office accommodation would provide him all the facilities as are to be accorded to an employee of PH category and that the speaking order dated 1.5.2019 categorically referred to DOP&T guidelines dated 31.3.2014. It



was further contended that the guidelines of DOPT had been duly adhered to while issuing the transfer order to the applicant.

The official representative of the respondents would also furnish certain documents as directed by the Tribunal in which it has been recorded that seven employees, who are suffering from severe ailments such as cancer, recipients of kidney transplant and victims of accident have been transferred prematurely to accommodate them on humanitarian grounds. The respondents have furnished another list of five employees with disabilities who have been transferred to other stations. It was further averred by the spokesman of the respondents that each of such employees, despite their physical disability, have complied with the transfer orders. The official representative also states at the Bar that the respondents are willing to accommodate the applicant within the State of West Bengal just as they have accommodated the other five physically handicapped employees within the same State.

5. The main issue to be adjudicated in this Original Application is whether the guidelines of DOPT dated 31.3.2014 on providing facilities with respect to persons with disabilities have been complied with in the case of the applicant while issuing the transfer order dated 26.11.2018 whereby the applicant was transferred to NABM Bhubaneswar.

6.(I). At the outset, we examine the speaking order at Annexure A-6 to the O.A. dated 7.1.2019 which was issued in compliance to directions in O.A. No. 350/01753/2018. The respondents have rejected the representation of the applicant on the following grounds:-

- (a) No government servant or employee of a public undertaking has any legal right to be posted forever in one particular place or in any place of his choice, as transfer is not only an incident but also a condition of service.

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(b) That, ever since the applicant has joined service in the year 1992, he has been allowed to serve for a maximum period in an around Kolkata, namely, for almost 24 years out of his 27 years of service.

(c) That, during the last 27 years of his service, he has acquired certain technical knowledge and experience, which, according to the respondent authorities, was expected to be put to good use at NABM Bhubaneswar.

(d) That, NABM Bhubaneswar has an acute shortage of skilled technical staff and that there is vacant residential accommodation proximate to the office premises to defray any physical stress to the applicant concerned while commuting to office.

(e) That, there is no vacant post of Engineering Assistant at Kolkata Office.

(f) That, the applicant has been allowed to work in an around his native place for almost 24 years.

(g) And, that, his transfer at NABM, Bhubaneswar takes care of the DOPT guidelines on facilities to be accorded to employees with disabilities.

(II) Next, we examine the speaking order dated 1.5.2019 issued in accordance with O.A. No. 350/00073/2019 (Annexure A-9 to the O.A.). While mostly reiterating their earlier order dated 7.1.2019, the respondents have referred to Para H of DOPT guidelines dated 31.3.2014 which states as follows:-

"H. Preference in transfer/posting

As far as possible, the persons with disabilities may be exempted from the rotational transfer policy/transfer and be allowed to continue in the same job, where they would have achieved the desired performance. Further,

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preference in place of posting at the time of transfer/promotion may be given to the persons with disability subject to the administrative constraints.

The practice of considering choice of place of posting in case of persons with disabilities may be continued. To the extent feasible, they may be retained in the same job, where their services could be optimally utilised."

According to the respondents,

- (a) In obedience to the DOPT guidelines, the applicant has been allowed to work near his native place for almost 24 years in and around Kolkata and, hence, preference in place of posting at the time of transfer had been accorded to the applicant during 24 years against 27 years of his whole service career.
- (b) That, in accordance with the said guidelines, the applicant will be provided with readily available office accommodation near the office. This will relieve him of the stress of daily travel covering 50 kilometres distance from his residence to his present posting at Chinsurah.
- (c) The respondents have also referred to the DOP&T guidelines stating that as the disabled employees are to be retained in the same job where their service could be optimally utilized, his skill and experience will be optimally utilized in Bhubaneswar, which is otherwise short of skilled staff.
- (d) Hence, the transfer order took into account the optimal utilization of his skills in the interest of administration.

The applicant has not challenged the transfer policy of the respondents or its violation thereof but has only reiterated the need to adhere to the DOPT guidelines. Given the rationale advanced in the two speaking orders, it is seen,

- (i) that the applicant was retained for the maximum possible period (24 out of 27 years) in and around his native place,

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- (ii) that his transfer was in the interest of optimal utilization of his skills, and
- (iii) that an official accommodation would be provided close to his place of work which would reduce stress and physical discomfort while commuting to work.

Hence, although the applicant has vociferously argued that his postings near his native place was for 15 years and not for 24 years as claimed by the respondents, prima facie, there appears to be no violation of the DOP&T guidelines in issue of the transfer order dated 26.11.2018 with reference to the applicant.

In **Rajendra Singh v. State of UP & ors. (2009) 15 SCC 178**, the Hon'ble Apex Court, while referring to **State of UP v. Gobardhan Lal (2004) 11 SCC 402**, **Shilpi Bose (Mrs.) & ors. v. State of Bihar & ors. 1992 SCC (L&S) 127** and **N.K. Singh v. Union of India & ors. (1994) 6 SCC 1998**, ruled that the scope of judicial review in the matters of transfer of a government servant without adverse consequence on the service or career prospect is very limited, being confined only to the grounds of mala fides or violation of any specific provisions. The same ratio has earlier held in **Union of India v. S.L. Abbas AIR 1993 SC 2444** as well as **B. Varadha Rao v. State of Karnataka AIR 1986 SC 1955** wherein the Hon'ble Apex Court has ruled that transfer is an incidence of service.

In the instant case, neither has any malafide been alleged in the transfer order nor has the applicant established any violation of any statutory rules, apart from reiteration on abidance to the DOPT guidelines dated 31.3.2014. Clearly, the work and conduct of the applicant will not be rated adversely by the authorities so as to have any impact on the service or career prospect consequent to such transfer.

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Consequently, we do not find any reason to interfere with the transfer order dated 26.11.2018 in the context of the applicant.

At the same time, however, upon perusal of documents furnished by the respondents during hearing, a tabulated sheet has been produced before us, which is reproduced as under:-

“Transfer of following subordinate Engineering official who obeyed the orders though they are also suffering from physically handicappedness

Sl. No	Name	Designation	Transferred from	Transferred to & date of joining	Transfer order dated	Annexure No.	Remarks (transfer on medical request)
8	Shri Arup Kr. Palit	Engineering Assistant	DDK Kolkata	HPT Krishnanagar	18/09/2015	8	Routine Transfer, PH/Artificial Leg
9	Smt. Samita Bhattacharya		HPT Kharagpur	DDK Shantiniketan	30/09/2016	9	Routine Transfer 60% PH
10	Shri Kaushal Kishore Prasad		DDK Jamshedpur	DDK Ranchi (10/12/2018)	26/11/2018	10 & 11	Routine Transfer, Paralyzed
11	Shri Mahendra Prasad		AIR Chaibasa	DDK Jamshedpur (13/12/2018)	26/11/2018		Routine Transfer, Physically Handicapped
12	Shri Santosh Kr. Gupta (PH)		AIR Sambalpur	AIR Rourkela (30/03/2007)		Order readily not available	Routine Transfer, Physically Handicapped

It is seen from the above tabulation that each of the listed employees suffer from disabilities despite which they have been transferred to various stations, albeit within the same State. In the case of the applicant, however, we find his transfer called for an inter State movement from West Bengal to Odisha which seems to be at variance with the decision taken with respect to other handicapped employees. In our considered view, the respondents should apply uniform norms to all employees seeking transfer on grounds of disability.

During hearing, the applicant claims that he has been discharging his duties very efficiently, particularly, in HPT Chinsurah wherein his services have been much appreciated and that he would be happy to continue with his duties as an Engineering Assistant. The official representative of the respondents disputes the applicant's claims with a

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log sheet that records the applicant's attendance as less than 70% of scheduled duty hours.

Be that as it may, with the expectation that the applicant would be able to render his duties at optimum level of his efficiency, if he is posted within the State of West Bengal, and, as the official representative of the respondents has agreed at the Bar to accommodate him within the State, we dispose of the instant Original Application by directing the respondent No. IV to take steps to modify the transfer order dated 26.11.2018 with respect to the applicant. The applicant may be transferred to any suitable Station within the State of West Bengal where the applicant can perform his duties as an Engineering Assistant.

Till such time that the transfer order is modified, operation of the order dated 26.11.2018 shall remain stayed and the applicant will not be compelled or coerced to join NABM Bhubaneswar. The interregnum will be regularized by the respondents as per rules. The entire exercise should be completed within a period of 12 weeks from the date of receipt of this order.

7. With these directions, the O.A. is disposed of. Parties will bear their own costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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