



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

OA. 350/00275/2014

Date of Order: 1.6.16

Present

:Hon'ble Ms. Bidisha Banerjee, Judicial Member

Pradip Ghosh, aged about 41 years, son of Late Monoranjan Ghosh, working for gain in the post of Assistant Accounts Officer, in the office of the Unit Accountant, Liaison Cell, Director General Border Roads, Kolkata 700053, under the Principle Controller of Defense Accounts (Border Roads) residing at Ramkrishna Lane, Post Noapara, Barasat, Pin Code- 700 125.

.....Applicant.

-versus-

1. The Union of India, service through the Secretary, Government of India, Ministry of Defense (Finance), South Block, New Delhi – 110011.
2. The Controller General of Defense Accounts, Ulan Batar Road, Palam, Delhi Cantt 110010.
3. The Principle Controller of Defense Accounts Border Roads, Seema Sarak Bhawan, Ring Road, Naraina, Delhi Cantt 110010.
4. The Controller of Defense Accounts Border Roads, Udayan Vihar, Guahati 781171.
5. Office of the Unit Accountant, Liaison Cell, Director General Boarder Roads, 128A, Block G, New Alipore Kolkata 700053 service through the Controller of Defense Accounts Border Roads Udayan Vihar, Guahati 781171.

.....Respondents.

For the Applicant

: Mr. A. Chakraborty, Counsel
Ms. P. Mondal, Counsel

For the Respondents

: Mr. S. Paul, Counsel

ORDER (Oral)

Per Ms. Bidisha Banerjee, JM:-

This matter is taken up in Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. Heard both.

3. The applicant aggrieved in regard to his transfer from Kolkata to Pune, has filed this application seeking quashing of the transfer order dated 21.02.2014.

4. The transfer order of the applicant issued to him on 09.10.2013 (Annexure A-6) was stayed by this Tribunal on 06.03.2014 on the basis of contention of the applicant that several persons were posted in and around Kolkata for longer period than the applicant as also in view of OM dated 30.09.2009 issued by Ministry of Personnel, Public Grievances and Pension (Department of Personnel & Training), Government of India that, as the spouse of the applicant was a State Government employee working in the Office of the District Inspector of Schools (SE), Govt. of West Bengal, Barrackpore, North 24 Parganas the applicant's posting should be in or around Kolkata, in view of Clause (vii) of the said circular dated 30.09.2009 which reads as under:

"(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."

The order was an ex-parte order; no application was filed seeking vacation/variation of the said interim order.

5. Today, during the course of hearing learned counsel for applicant strenuously urged that the applicant deserved retention on the following grounds:

- (i) on spouse ground in terms of circular dated 30.09.2009
- (ii) transfer policy of the respondents, para 370 whereof would read as under:

"370. Transfers of individuals serving at popular stations will be effected generally on the basis of seniority of stay at those stations, barring compassionate cases, cases where the P.C.D.A/C.D.A. considers the retention of an individual to be essential in the interests of work etc., to the extent necessary to accommodate members who have a legitimate claim to serve at such stations and those who are being repatriated, after a spell of service, at difficult stations."

- (iii) the applicant has come to Kolkata in 2010, 4 persons having station seniority above the applicant have not been disturbed and in support a communication received through RTI has been placed.

(iv) his transfer at Kolkata made on 01.02.2010 was as per his own request, as Annexure R-3 of the reply would manifest.

6. Per contra, the learned counsel for respondent would argue that the applicant on 03.06.2013 had already exercised his choice for three stations namely, Manali, Phuentshiling or Akhnoor. After having exercised his own choice for three stations the applicant is estopped by his conduct for asking his retention at Kolkata on spouse ground citing his a difficulty to be posted out of Kolkata. According to the respondents he ought not to have exercised such options.

7. Dispelling the claim, the learned counsel for applicant would argue that in consideration of the applicant's choice, on 09.10.2013 the respondents directed for his posting at Daporiju at Arunachal Pradesh. Thereafter the applicant made a representation on 14.10.2013 for cancellation of such transfer order and on 21.02.2014 it was modified to that of Pune, which was stayed by this Tribunal on 06.03.2014.

8. Learned counsel for respondents would vociferously submit that the applicant had enjoyed in staying at Kolkata from 2010 onwards against a tenure of three years. Therefore he was not entitled to any further retention at Kolkata on any ground whatsoever.

9. The materials on record were perused. It was noticed that the applicant had never sought for retention at Kolkata on spouse ground before the authorities. In order to obtain benefit of DOPT circular dated 30.09.2009 which prayer he has sought for in the present OA. Therefore, the respondents never had any occasion to consider the prayer in terms of the said circular.

10. Accordingly, in view of such lapse on the part of the applicant and upon perusal of the seniority list in respect of AAO under PCDA (Fys), Kolkata which demonstrated that several persons with station seniority had been retained at Kolkata, I would dispose of the OA with a direction upon the applicant to make a specific prayer in regard to his retention on spouse ground, before the appropriate authority within a period of one week from the date of receipt of a copy of this order.

11. Upon receipt of such representation the respondent authorities would consider the prayer of the applicant and dispose it of in accordance with law, justifying the retention of several persons in Kolkata while transferring the applicant out of Kolkata.
12. The respondent authorities shall issue an appropriate order within a period of one month from the date of receipt of a copy of the representation of the applicant.
13. Till such time the applicant, if not already released, would not be compelled to join the transferred place at Pune.
14. OA would accordingly stand disposed of. No costs.

(Bidisha Banerjee)
Member (J)

pd