

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No. OA 350/01901/2015

Date of order : 19.2.2016

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member

BIPUL KR. BISWAS

VS

UNION OF INDIA & ORS.

For the applicant : Mr.A.K.Majumdar, counsel

For the respondents : Mr.C.S.Bag, counsel

O R D E R

This matter is taken up in the 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. The applicant would be aggrieved in regard to a transfer order dated 14.8.15 whereby and whereunder he was sought to be transferred from Santragachi to Kharagpur, on the recommendations of a Placement Committee. He would also be aggrieved in regard to a speaking order issued on 19.11.15, pursuant to the directions of this Tribunal in OA 1534/15 rendered on 9.10.15, directing the competent authority to consider his representation seeking respite from transfer on the ground that he was a care giver to his son, a psychiatric patient suffering from severe psoriasis and several other diseases on which ground he had sought exemption from routine/rotational transfer in view of DOPT OM dated 6.6.14, as also due to the fact that he belonged to a Dalit community and as such he was entitled to be posted near his native place, furthermore due to the fact that he had already spent 11 years away from his native district out of a total span of 15 years of service.

3. In the speaking order the respondents have disclosed the following^p set out ad seriatim :

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- (i) That the illness of the son was not covered in the list of ailments mentioned in the cited DOPT OM.
- (ii) He was posted at Santragachi since 3.7.09. His transfer place of posting at Kharagpur was within the jurisdiction of same S.E. Railway and adjacent to his native district, 24 – Parganas (North);
- (iii) The transfer was done in the administrative interest.

4. During the course of hearing Id. Counsel for the applicant relied upon a list of ¹⁷² Accounts staff who were retained in the same place for years together. Therefore Id. Counsel for the respondents was directed to take instruction in regard to the following :

- “(i) Why the applicant would not be entitled to stay of operation of transfer order when his son is suffering from mental disability which is covered under DOPT's OM dated 6.6.2014?
- (ii) Why 172 Sr. Section Officers alike the applicant have been retained in the same station for years together?
- (iii) As an SC employee, why the applicant would not be entitled to get posting in his native district?”

5. In reply the respondents reiterated that mental ailments suffered by Shri Biswas's son did not fall within the definition of disability as per DOPT OM dated 6.6.14 and 17.11.14. Moreover, the applicant had not submitted any certificate from a Government hospital regarding any disability to merit its consideration in terms of the quoted DOPT guidelines.

At this juncture Id. Counsel for the applicant joining issue would submit that the said DOPT OM did not require a certificate from a Government hospital for establishing a disability. He further vociferously would submit that according to such circular the word “disabled” included the following, namely :

1. Blindness or low vision
2. Hearing impairment
3. Locomotor disability or cerebral palsy
4. Leprosy cured
5. Mental retardation
6. Mental Illness
7. Multiple disabilities

The condition of the son squarely fell under the category 7 i.e. “multiple disabilities”. Id. Counsel would invite my attention to OM dated 6.6.14 which specified the following :

"Upbringing and rehabilitation of disable child requires financial support. Making the government employee to choose voluntary retirement on the pretext of routine transfer/rotation transfer would have adverse impact on the rehabilitation process of the disabled child."

Ld. Counsel submitted that the son of the applicant was under a rehabilitation process which would get severely affected if he was transferred out of his comfort zone or was deprived of the care and support of his father.

6. In regard to the clarification sought for against item No.2 the respondents have not denied that 172 SSO(A)s have been retained for years together. However, they have submitted a list of 19 and a list of 8 candidates being SOA who have been transferred out of Garden Reach but in my considered opinion these lists do not countenance the fact that 172 persons have not been retained in their place of posting for years together. It therefore remains an admitted fact that at least 172 SSO(A)s have been retained at the same place for years.

7. In regard to query No.3 the respondents have explained that the applicant was transferred to an Accounts Unit Office at Santragachi which fell within the administrative control of Sr.DFM/KGP and therefore within the same Kharagpur Division. It is evident, exemplified and demonstrated that the applicant was transferred vis-a-vis one Kalyan Kr. Sarkar SSO(A) who too was an SC candidate as very surprisingly the respondents have emphatically disclosed that such intra unit transfer was issued "in view of natural justice" to another SC, since the applicant an SC candidate enjoyed a higher HRA of 30% for nearly 7 years from 12.9.08 till 14.8.15, therefore another SC category candidate i.e. Sri Sarkar SSO(A), who was posted in Dy.FA&CAO(WS) KGP's office since 2006, was allowed to get the benefit of higher HRA in lieu of the applicant.

8. Ld. Counsel for the applicant would vociferously repel the arguments put forth by the ld. Counsel for the respondents on the ground that the reason given for his transfer was clear, emphatic and openly demonstrating favouritism towards another employee, it was ordered to accommodate the said

Kalyan Kr. Sarkar to favour him with an opportunity to draw higher HRA @ 30% of the basic pay.

9. I have heard Id. Counsels for the parties and perused the materials on record.

10. A cursory glance at the medical certificates produced by the applicant in regard to his son's treatment would show that apart from skin problems (psoriasis) he has psychiatric problems as follows :

"skin problems, unable to control urge to smile, even if the situation does not demand such behaviour and scared of staying alone; fear of ghosts."

He was undergoing a counselling with Social Skill Training for his anxiety problems. Further a report of 15.7.15 would show that the said child was suffering from chronic psoriasis associated with severe rheumatoid arthritis and asthma, and would require prolong treatment. Further the fact that 172 persons have been retained at the same place and the emphatic declaration made by the respondents would go along to show that they infact wanted to favour another SC candidate to enable the said candidate earn higher HRA, despite the settled position that HRA is not to be considered as source of profit. The reason in my considered opinion was ridiculous and wholly unjustified.

11. Therefore the transfer of the applicant to Kharagpur being not in public interest rather being issued in malafide and arbitrary exercise of power in order to favour another Railway employee which is glaringly manifest from the records, is quashed and the OA is allowed.

12. No order is passed as to costs.

(BIDISHA BANERJEE)
MEMBER (J)