

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/00002/2016

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

BIKASH DEY

VS

UNION OF INDIA & ORS.

For the applicant : Mr.D.N.Maity, counsel
Mr.T.K.Dey, counsel

For the respondents : Mr.P.N.Sharma, counsel

Order on : 7/2/16

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. This is the third journey of the applicant to this Tribunal. In earlier OAs 1592/15 & 1751/15 elaborate orders were passed referring to the fact that the applicant had sought for a respite from transfer at the fag end of his service career and he was care-giver to his son who met with an accident in 2004 and was suffering from various neuro problems, as his transfer would have an adverse impact on the treatment of his son. On every occasion the respondents were directed to consider the matter with a speaking order.

In the first speaking order issued the respondents indicated that the son was married and therefore a spouse was available to take care of him and because the applicant remained posted at Kolkata since November 2004 he had to go even at the fag end of his service career. ^{It was B} They also indicated that he was transferred due to compelling circumstances in view of acute shortage of staff in the organisation to carry out governmental activities purposefully.

In the second speaking order issued on 13.11.15 the authorities referred to the decisions of the Hon'ble Apex Court in **Rajinder Singh -vs- State of U.P. [2009 (15) SCC.....]** that "a Government servant has no vested right to remain posted at the place of his choice nor can he insist that he must be posted at one place or the other." They also referred to **Shilpi Bose -vs- State of Bihar** "that the Courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide." They indicated that there was a huge shortage of staff in the various grades of the organisation including the cadre of HPO which the applicant held and under the new arrangement there was no post of HPO at RD & TDC, Kolkata where the applicant was posted.

3. During the course of hearing Id. Counsel for the applicant would place reliance on a circular issued by Govt. of India, Ministry of Textiles, Office of the Development Commissioner (Handicrafts) dated 3.6.15 (Annexure A/12) which said as follows :

"The Development Commissioner (Handicrafts) has decided to evolve a staffing structure for the O/o the DC(H) and all its field formations, a copy of which is enclosed herewith for ready reference.

All the Regional Directors/Deputy Directors/Incharge (Handicrafts) are hereby directed to adhere with the enclosed structure pertaining to their area of jurisdiction. Accordingly, they have to ensure that all the field formations are equipped in accordance to the staffing structure. In the process, if there is a need to shift the staff they are authorised to transfer the employees upto the level of Group C within their own region by arranging their deployment in nearby field formations under intimation to this office.

This exercise may be completed within 15 days' time but not later than 22.6.2015."

Citing the aforesaid the Id. Counsel would argue that the applicant had to be transferred within his own region by arranging deployment in nearby field formations as mentioned in the circular. He could not be transferred out of the region.

4. Id. Counsel would also invite my attention to the office memo dated 6.6.14, issued by the DOPT in regard to posting of Government employees who have differently abled dependents. The said OM gave the following position :

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"OFFICE MEMORANDUM

Subject: Posting of Government employees who have differently abled dependents- reg.

There has been demand that a Government employee who is a care giver of the disabled child may not have to suffer due to displacement by means of routine transfer/rotational transfers. This demand has been made on the ground that a Government employee raises a kind of support system for his/her disabled child over a period of time in the locality where he/she resides which helps them in the rehabilitation.

2. The matter has been examined. Rehabilitation is a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, and psychiatric or a social functional level. The support system comprises of preferred linguistic zone, school/academic level, administration, neighbours, tutors/special educators, friends, medical care including hospitals, therapists and doctors, etc. Thus, rehabilitation is a continuous process and creation of such support system takes years together.

3. Considering that the Government employee who has disabled child serve as the main care giver of such child, any displacement of such Government employee will have a bearing on the systemic rehabilitation of the disabled child since the new environment/set up could prove to be a hindrance for the rehabilitation process of the child. Therefore, a Government servant who is also a care giver of disabled child may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints. The word 'disabled' includes (i) blindness or low vision (ii) hearing impairment (iii) locomotor disability or Cerebral Palsy (iv) leprosy cured (v) mental retardation (vi) mental illness and (vii) multiple disabilities.

4. Upbringing and rehabilitation of disabled 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.

5. This issues with the approval of MoS(PP).

6. All the Ministries/Departments, etc. are requested to bring these instructions to the notice of all concerned under their control.

(Debabrata Das)
Under Secretary to the
Govt. of India"

Citing the aforesaid the Id. Counsel would further argue that since the son of the applicant was suffering from multiple disabilities and his rehabilitation process was on, the applicant ought to be considered by the authorities for a respite from transfer in view of the OM (supra) so that his shifting would not have any adverse impact on the rehabilitation process of his disabled son.

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5. To this Id. Counsel for the respondents would vociferously submit that the fact that the son was married and he was made to serve at an organisation would itself nullify the claim of the father that he needed care and attention of the father.

6. Dispelling such submissions Id. Counsel for the applicant would argue that engagement of the son of the employee as a trainee was a part of the on-going rehabilitation process which ultimately had to be aborted since his son could not cope up with the strain involved in discharging any job.

7. Id. Counsel for the applicant would further refer to the following decisions in support of his contention that the applicant deserved consideration :

(i) High Court of Uttarakhand at Nainital in ***Writ Petition No.(SS) of 879/11 (Pooran Singh Pangtey -vs- Chairman cum Managing Director, UCO Bank)*** where the petitioner was transferred in violation of the transfer policy of the respondents. It was decided in view of the transfer policy with a status quo order of posing of the petitioner to be maintained till such decision.

(ii) By Bombay Bench in ***OA 215/13 (S.Bharathi -vs- UOI & Ors.)*** where the Bench had interfered with a transfer of the applicant with less than 2 years of service prior to his retirement following the decision of Principal Bench in Ram Swaroop Meena's case reported in 2013 (2) CAT AISLJ 323.

8. Id. Counsel for the respondents on the contrary would rely upon a decision of Principal Bench in OA 748/13 rendered on 9.5.13, wherein a transfer on administrative ground was not interfered with.

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

10. It could be noticed that on every occasions the respondents misdirected themselves in coming to a conclusion that the son of the employee did not require any care or that he was fit enough to be left at the care of his spouse. On the contrary series of medical certificates would indicate and would

emphatically declare that the said son suffered from multiple diseases to the extent sufficient to bring the father within the ambit of OM dated 6.6.14. The condition of the son was explained in the previous orders of the Tribunal due to which on each occasion the respondents were directed to treat the applicant's case with due sympathy for his retention at the present place of posting.

That apart it could also be noticed that the applicant would attain the age of superannuation within a little above one year. Although it would be argued that no posts of HRO was available at Kolkata to accommodate the applicant no scrap of paper was used to demonstrate that the post of HRO at RD & TDC, as held by the applicant, was abolished or transferred.

The contention of the respondents in regard to non-availability of any post of HRO at Kolkata would further get nullified, the administrative exigency in transferring the applicant out of Kolkata on such ground would get diluted in view of the fact that one Sudarshan Das as would be evident from the transfer order dt. 24.9.15 (Annexure A/4) was transferred as HPO from Siliguri to ERO, Kolkata vide the same transfer order.

11. Therefore in absence of substantiation of any pressing administrative reasons in transferring the applicant out of Kolkata at the fag end of his service career, the transfer order in regard to the applicant is quashed. The OA is allowed and the respondents are directed to allow the applicant to remain posted at Kolkata till his superannuation.

12. No order is passed as to costs.

Bidisha Banerjee
(BIDISHA BANERJEE)
MEMBER (J)

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