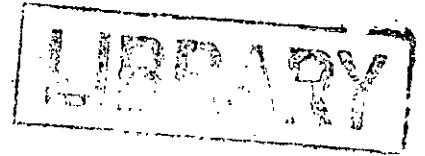


**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**



O.A. 351/00995/ 2019

Order dated: 23.07.2019

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

Subir Kumar Sil,
Son of Shri Bisweswar Prasad Sil,
aged about 55 years,
residing at Nabapally, Parui Daspara Road,
5/6, 5th Lane, Kolkata-700061
and working as Head Clerk
in the office of DRC, Kolkata
under overall control and authority
of Andaman and Nicobar Administration.

..... Applicant.

Versus

1. The Union of India,
Service through the Secretary,
Govt. of India, Ministry of Home Affairs,
North Block, UT Division,
Central Secretariat,
New Delhi-110001.
2. The Lieutenant Governor,
Andaman & Nicobar Islands,
Raj Niwas, Port Blair-744101.
3. The Chief Secretary,
Andaman & Nicobar Administration,
Secretariat Complex, Port Blair-744101.
4. The Joint Secretary & Director of Industries,
Andaman & Nicobar Administration,
Secretariat Complex, Port Blair-744101.
5. The Assistant Secretary (Personnel),
Andaman & Nicobar Administration,
Secretariat Complex, Port Blair-744101.
6. The Deputy Resident Commissioner,
DP-7, Sector-V, Salt Lake,
Kolkata-700091.

..... Respondents.

For the applicant : Mr. P.C.Das, Counsel

For the respondents : Mr. R.Halder, Counsel

ORDER (ORAL)

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached the Tribunal praying for the following relief:

"a) To quash and/or set aside the impugned office order No. 1961 dated 16th July 2019 by which your applicant was directed to report duty from the office of DRC, Kolkata to Secretariat Office, Port Blair who is a physically handicapped person and because of serious injury in leg his case was considered by the Administration way back in the year 2015 on the medical ground and he was transferred from Port Blair to Kolkata on such ground. Without considering such medical ground who is orthopedic handicapped such impugned transfer order in respect of the applicant is very harsh one and the Administration without considering such medical ground again your applicant was directed to report duty at Port Blair is absolutely arbitrary and illegal and on that ground such order of transfer dated 16th July, 2019 may be liable to be quashed and/or set aside.

b) To pass an appropriate order directing upon the respondent authority not to harass the present applicant who is a physically handicapped person by transferring/posting him from DRC office Kolkata to Secretariat, Port Blair on humanitarian ground till his retirement as per the Disability Law your applicant is entitled to get such facility which the respondent authority cannot ignore by acting in a inhuman manner.

c) To quash and/or set aside if any release order has been issued against the applicant in the meantime.

d) costs.

e) Any other relief or reliefs Your Lordship may deem fit and proper."

2. Heard Ld. Counsel for both sides, examined documents on record. Matter is taken up at the admission stage.

3. The submissions of the applicant, as articulated through his Ld. Counsel, are that he was initially appointed on 22.02.1988 in the clerical cadre of Andaman &

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Nicobar Administration, that, he continued there till August, 2010, and, that, he has served in the A&N Island for more than 22 years.

The applicant had met with a road accident in 1993 at Port Blair, consequent to which, he became orthopedically handicapped and, thereafter, was unable to move without the help of a crutch. The applicant represented to the authorities on 15.04.2010, praying for sympathetic consideration to transfer him to Kolkata and, the Respondent authorities, having considered his prayer sympathetically, transferred him as a Higher Grade Clerk from Port Blair to Kolkata on diverted capacity against the sanctioned strength of Directorate of Industries Establishment and that, he was subsequently promoted to discharge the duty of Head Clerk in the said office.

On 16.07.2019, however, the applicant has been transferred from DRC, Kolkata to Secretariat, Port Blair and the said order also notes that no representation would be entertained unless the transferee joins the Secretariat. Accordingly, the applicant, as he is incapable of travelling long distance, that he had rendered almost all his service in A&N Island, and, being aggrieved, has approached the Tribunal for relief.

The applicant would also pray for an interim relief in the form of stay of the impugned transfer order dated 16.07.2019, in respect of the applicant, till disposal of the O.A.

4. Ld. Counsel for the Respondents, on the other hand, furnishes the minutes of the meeting, chaired by Chief Secretary of A&N Island, to argue that Secretary (Shipping), Secretary (APWD), Secretary (IP&T), as well as the Deputy Secretary (Personnel) had met to resolve on the winding up of the offices and withdrawal of

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excess staff at Kolkata and Chennai, including the operation of the Guest House of IP&T Department at Kolkata.

Ld. Counsel for the applicant, however, would vociferously argue that the DoP&T had issued an O.M. on 08.10.2018 to exempt routine transfer/rotational transfer of persons with disabilities.

5. The appointment letter of the applicant has been produced before us by the Respondents. We note that in the said appointment letter the following has been incorporated as one of the conditions of service.

"8. They will have to serve in any part of the Andaman and Nicobar Island as well as on the mainland of India at whichever place on office of the Andaman and Nicobar Administration and Forest Department exists."

From the above, it is clear that the applicant is liable to serve in any part of the A&N Island as well as mainland of India. The facts remains, however, that on account of the withdrawal of the Secretariat of Industrial Establishment, to which the applicant belongs, the administration had per force decided to withdraw the employees posted in Chennai and Kolkata.

It is not disputed that the applicant had become orthopedically handicapped on account of his accident in 1993. It is also admitted that the Respondents are aware of his predicament as they had not only responded to his representation sympathetically but had also posted him as Higher Grade Clerk in DRC Office and further promoted him therein.

Hence, although the impugned order dated 16.07.2019 (Annexure-A/4 to the O.A.) does not allow employees to represent prior to joining the transferred post, we allow liberty to the applicant to prefer a comprehensive representation

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with supporting documents within a period of two weeks from the date of receipt of copy of this order. Once it is received, the competent Respondent authority shall examine the contents of the representation in accordance with law and pass a speaking and reasoned order thereupon within a further period of six weeks conveying the same to the applicant immediately thereafter. Till such representation is disposed of, the applicant may not be coerced to join the transferred place of posting. It is stated herein that we have not entered into the merits of the matter and the Respondents are at liberty to decide as per law.

6. With these directions, the O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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