

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00756/2019

DATED THIS THE 04TH DAY OF SEPTEMBER, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

P.K. Salini
W/o Sri Sujai Sukumar,
Aged about 38 years,
Asst. Master (Biology),
Rashtriya Military School (RMS),
Opp. Johnson Market,
Bangalore 560 025
Residing at: Staff Qtrs,
Rashtriya Military School (RMS),
Bangalore 560 025
..... Applicant
(By Advocate Shri K. Hanifa)

Vs.

1. Union of India
Represented by its Secretary
Ministry of Defence (MOD),
South Block,
New Delhi 110 011

2. Director MT-7 (Civil)
Government of India,
Dte. General of Military Training MT-7,
Integrated Hqr MOD (Army),
General Staff Branch,

New Delhi 110 011

3. Director General of Military Training,
MT-15, General Staff Branch,
Integrated Head Quarters of MOD (Army),
New Delhi 110 011

4. The Principal,
Rashtriya Military School (RMS),
Bangalore 560 025,Respondents

(By Shri S. Sugumaran Counsel for Respondent No.1)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J)

Apparently this matter is covered by our earlier order in OA No. 193/2013 dated 28.06.2013 which we quote:

"O R D E R (ORAL)
HON'BLE DR. K.B. SURESH, MEMBER(J)

1. *Heard both counsels in great detail and examined the medical records of the applicant's son. He is on heavy medication for chronic Bronchial Asthma. The reasons for which is not available in the medical records produced. The respondents' case is that geographical position of Bangalore because of its pollen laden atmosphere is not conducive to the treatment of asthma and Chail with its less polluted atmosphere would be better for the applicant's son. But, the fact that the pollen which is alleged to be present in Bangalore air is a cause of Asthma has not been scientifically or universally accepted while it might be true that being a Metropolis the dust level in Bangalore might be higher than anywhere else. But it appears that the applicant and her son reside in the Military School Campus which apparently should be relatively pollution free and dust free because of the large open areas and trees which abound it Even in such circumstances if he has such high Bronchial Asthma then the root cause of the asthma is not of pollen nor dust, it may be something else . The level of the medication suggests that the disease is chronic and not under control. It is submitted by the learned counsel for the applicant that therefore he needs the dual care of the mother and father together and the father is employed in another government undertaking in Bangalore until such time as he is a little*

more grown up so that he can manage himself, the mother may not be disturbed, is the case of the applicant.

2. *The applicant is proposed to be transferred to Chail in Himachal Pradesh, a little higher than Shimla where the temperature is very low which goes to minus degrees with frost and snow fall. The dust level, contrary to popular belief, in Chail is high, Himalayas being the youngest mountain range in the whole world and is not yet concertized with smallest of wind; dust storms form in Chail which is a fact known to anybody who had been to Chail. The respondents' counsel would submit that medical facilities are available at Chail also which may be correct but then it is much more in Bangalore.*

3. *The Constitution of India relies heavily on right to life with dignity and concern for children is part and parcel of Constitutional matrix . Therefore, even though the rotational transfer policy indicates that every 6 years there may be a transfer. I feel sufficient grounds have been established to give it a miss to the applicant this time. By the next term comes after 6 years she may be considered for rotational transfer as by then the child would have grown up some more and be in a position to handle things for himself and till such time in view of the specific dictates in Constitution of India regarding right of life and the care to be given to the young children. 6. Therefore, OA is allowed. Transfer orders of the applicant shall be quashed but it is made clear that she may be considered for transfer in the next rotation. No order as to costs."*

2. This was challenged by the respondents before the Hon'ble High Court of Karnataka in Writ Petition No. 3947/2015 & 3949/2015 which was dismissed vide order dated 27.04.2015 which we quote:

"THESE WRIT PETITIONS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER DATED 28.6.2013 PASSED IN O.A.NO.193/2013 BY THE C.A.T., VIDE ANNEXURE-A AND ETC.

THESE PETITIONS COMING ON FOR PRELIMINARY HEARING, THIS DAY, **SUBHRO KAMAL MUKHERJEE, J., MADE THE FOLLOWING:**

ORDER

By the impugned order, the Tribunal quashed the order of transfer.

Normally, the orders of transfers are not to be interfered with. However, in this case a strong case was made out. The petitioner is working at Bengaluru. She was transferred to Chail in the State of Himachal Pradesh. Chail is little higher than Shimla where the temperature is very low. At times, it goes to minus degree.

Petitioner stated before the Tribunal that the only son of the petitioner is suffering from chronic Bronchial Asthma and the atmosphere at Chail is not suitable for his health.

The order of transfer, we feel, is rightly set aside.

This order would not however prevent the employer to pass suitable order of transfer.

2. With that observation, the writ petition is dismissed.

No order as to costs.”

3. The respondents submits that applicant had come again seeking that she may not be transferred for one more rotation. In fact, we have said earlier that she may be considered for transfer in the next rotation.

4. But a new obligation has arisen. Applicant's father is stricken with cancer and her son who is in 7th standard now is an asthmatic patient. Therefore, without any doubt, applicant is a caregiver and after having heard both counsels at length we are of the view that applicant's transfer can be kept in abeyance for another 3 years till her son completes 10th standard as the kind of educational facilities available in Bangalore cannot be held to be available in Dholpur, Rajasthan which is a more dusty place and may be very harmful to the life and development of her son. Therefore, the OA is allowed with a rider that applicant will be transferred out after 3 years after

her son completes 10th standard even though her husband is working in the HAL.

5. The OA is allowed to this limited extent. No order as to costs.

(C.V. SANKAR)

(DR.K.B.SURESH)

MEMBER (A)

MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00756/2019

Annexure A1: Copy of the OM dated 03.04.1986

Annexure A2: Copy of the OM dated 30.09.2009

Annexure A3: Copy of the transfer policy dated 27.03.2019

Annexure A4: Copy of the posting order dated 24.06.2019

Annexure A5: Copy of the letter dated June, 2019

Annexure A6: Copy of the letter dated 04.07.2019

Annexure A7: Copy of the representation dated 07.07.2019

Annexure A8: Copy of the employment certificate dated 08.07.2019

Annexure A9: Copy of the medical certificate of applicant's husband dated 08.07.2019

Annexure A10: Copy of the medical certificate of applicant's father dated 08.07.2019

Annexure A11: Copy of the medical certificate of applicant's son dated 15.09.2017 and 08.07.2019

Annexure A12: Copy of the letter dated 08.07.2019

Annexures referred in reply statement

Annexure R1: Copy of the transfer policy dated 14.12.2005

Annexure R2: Copy of the order dated 08.03.2013

Annexure R3: Copy of the order dated 28.06.2013 in OA No. 193/2013

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