

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

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No. O.A. 1348 of 2019

Date of order: 27.9.2019

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

Shri Bipul Tikadar,
Son of Bimal Krishna Tikadar,
Aged about 44 years,
Working as Sr. Auditor post at AO,
Rifle Factory, Ishapore,
District - 24 Parganas (North),
Residing at Village - Kautuk Nagar,
P.O. - Nadia, Garapota,
District - Nadia,
Pin - 741 502, West Bengal.

.... Applicant

VERSUS -

1. Union of India,
Service through the Secretary,
Ministry of Defence (Finance),
North Block,
New Delhi - 110 011.
2. Principal Controller of Accounts (Factories),
"Ayudh Bhawan",
10A, S.K. Road,
Kolkata - 700 001.
3. Controller General of Defence Accounts,
Ulan Batar Road,
Palam,
Delhi Cantonment - 110 010.
4. Additional Controller of Finance of
Accounts (Factories),
Accounts Office,
Rifle Factory, Ischapore,
P.O. Nawabganj,
District - 24 Parganas (North),
Pin - 743 144.

.. Respondents

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For the Applicant : Mr. M.K. Bandyopadhyay, Counsel

For the Respondents : Mr. A.K. Chattopadhyay, Counsel

ORDER (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

Aggrieved with an order of transfer dated 18.4.2019 (Annexure A-1 to the O.A.), the applicant has approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985, praying for the following relief:-

- “(a) An order quashing and/or setting aside the impugned transfer order of the applicant from Kolkata to Mumbai dated 18.4.2019.
- (b) An order directing the respondents concerned to consider the representation of the applicant dated 30.4.2019.
- (c) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper.

2. Heard both Ld. Counsel, examined documents on record. The matter is taken up for disposal at the admission stage.

3. The applicant's submissions, as made through his Ld. Counsel, is that the applicant, initially appointed as Clerk on 9.12.2002, was promoted to the post of an Auditor on 3.1.2011, thereafter as Sr. Auditor on 1.4.2014 and has since been functioning in the said post.

That, on 18.4.2019, the respondent authorities issued a transfer order vide which the applicant was transferred from Kolkata to Mumbai. The applicant represented on 24.4.2019 against the said transfer order praying for posting either at Guwahati, at Tejpur or at Shillong. The respondent authorities, vide their communication dated 11.9.2019, however, informed the applicant, that the applicant along with others, who had similarly represented, should be relieved without any further delay with direction to report to their new place of postings (Annexure A-4 to the O.A.).

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Ld. Counsel for the applicant would submit that the applicant is the father of a seven month old IVF Baby, who requires regular and specialized care, that his wife is a school teacher in the State of West Bengal, that his aged father is a patient of Asthma and, hence, although, the applicant is willing to accept transfer as part of policy, he had submitted his preferred options so as to be available near his place of permanent residence.

Ld. Counsel for the applicant would further agitate that although the applicant had explained his personnel difficulties and had indicated his choice of postings, the respondent authorities had cryptically and arbitrarily directed that the applicant be relieved without deciding on his representation. Ld. Counsel for the applicant would further submit that the transfer policy dated 28-3-2014 (Annexure A-2 to the O.A.) and, particularly, para 8.2 thereof makes a special provision for posting on spouse grounds as follows:

"8.2 Where both the husband and wife are serving in the Department they shall be posted to the same station, as far as administratively possible, keeping in view the spirit of orders issued by DoPT on the subject.

Husband and wife teams when one of them is serving outside the Department, under other Central Government/Department/Public Sector Undertaking/State Government, may as far as possible and within the constraints of administrative convenience as stated above, be considered for posting at the same station or if there is no vacancy/post in that station to the State where the other spouse is posted. These shall also be governed as per the DoP&T guidelines on the subject as far as administratively feasible."

Ld. Counsel for the applicant would, therefore, pray that a direction be issued on the respondent authorities to issue a speaking and reasoned order after consideration of the applicant's representation dated 24.4.2019 (Annexure A-3 to the O.A.).

It is noted here that although mentioned in relief prayed for by the applicant, no representation dated 30.4.2019 is on record.

4. Ld. Counsel for the respondents submits that as far as transfer policy is concerned, the applicant is not entitled to the benefits of para

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8.2 of the transfer policy as the applicant's spouse neither serves in the same department nor is she posted under any other Central Government Department/Public Sector Undertaking or State Government.

Ld. Counsel for the respondents, however, does not object to disposal of the applicant's representation in accordance with law.

5. Accordingly, with the consent of the parties and, without entering into the merits of the matter, we hereby direct the competent respondent authority or respondent No. 3, who is the Controller General of Defence Accounts and the addressee of the representation, to examine the contents of the representation of the applicant, particularly in the background of the transfer policy of the respondent authorities as well as the grounds advanced by the applicant for consideration of his claim and to thereafter pass a reasoned and speaking order in accordance with law within a period of six weeks from the date of receipt of copy of this order. The decision of the respondent authorities should be communicated to the applicant forthwith thereafter.

In case the applicant has not been relieved till date, the respondents shall not relieve him until disposal of his representation. If, however, the applicant has been relieved prior to this order, the respondents will not take any coercive action against the applicant till the disposal of his representation.

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

(Dr. Nandita Chatterjee)
Administrative Member

SP

(Bidisha Banerjee)
Judicial Member