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1 O.A. 115/AN/2019 WITH M.A. 379/AN/2019

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 115/AN/2019
M.A. 379/AN/2019

Reserved on : 9.9.2019
Date of order: 20.9.2019

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

Smt. Jantara Pant,
Wife of Shri Akshay Pant,
Resident of South Point Village,
Port Blair, South Andaman,
Child Development Project Officer,
Under the respondent No. 6

... Applicant

❖ VERSUS ❖

1. Union of India,
Through the Secretary,
Ministry of Home Affairs,
Govt. of India,
Central Secretariat,
North Block,
New Delhi - 110 001.

2. The Union of India,
Through the Secretary,
Ministry of Women & Child Development,
Govt. of India,
Shastri Bhawan,
New Delhi - 110 001.

3. The A & N Administration
Through Lieutenant Governor,
(Administrator),
Andaman & Nicobar Islands,
Raj Niwas,
Port Blair - 744 101.

4. Shri Chief Secretary,
Andaman & Nicobar Administration,
Secretariat,
Port Blair - 744 101.

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5. The Commissioner-cum-Secretary
(Social Welfare),
Andaman and Nicobar Administration,
Secretariat,
Port Blair – 744 101.

6. The Director (Social Welfare),
Directorate of Social Welfare,
Andaman and Nicobar Administration,
Port Blair – 744 101.

... Respondents

For the Applicant

Mr. B.R. Das, Counsel

For the Respondents

: Mr. R. Halder, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

“(A). I. An order be passed to set aside the impugned Order No. 91 dated 18.1.2019 passed by the respondent No. 6 whereby the representation of the applicant was rejected regarding transfer order No. 1647 dated 07.12.2018 and all other order/orders/process initiated on the basis of the impugned order dated 18.1.2019.

II. An order be passed directing the respondent authorities to rescind, recall, withdraw, cancel the Order No. 1647 dated 7.12.2018 passed by the respondent No. 6 whereby once against the applicant was transfer to Car Nicobar.

III. An order be passed directing the respondent authorities particularly respondent No. 6 to act strictly in terms of the notification dated 15.6.2007 whereby guidelines for transfer and posting in respect of the employees of respondent No. 6 was issued by the respondent No. 5.

(B) An order be passed directing the respondent authorities to transmit the original records of the case before this Hon'ble Court, so that after perusing the same conscionable justice may be rendered to the applicant.

(C) Any other relief or relief's, order or orders, direction or directions as your Honour deem fit and proper.”

2. Heard both ld. Counsel, examined pleadings, documents on record as well as the reference to judicial pronouncements as cited by ld.

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Counsel in support. Written notes of arguments have been filed by both
Ld. Counsel.

3. The facts, in brief, in the instant O.A., are as follows:-

(a) That vide orders dated 7.12.2018, the applicant was transferred in the capacity of CDPO (UP) to ICDS Project, Car Nicobar upon which, she had submitted a representation shortly thereafter, and, had also approached the Tribunal in O.A. No. 351/01876/2018. The O.A. was disposed of on 17.12.2018 with the following orders:

"4. Accordingly, without entering into the merits of the matter, we hereby direct the competent respondent authority to decide on the representations of the applicant, particularly, in terms of para (ii) of the notification on guidelines for transfer of Group A, B, C and D staff of Directorate of Social Welfare dated 15.6.2007. The decision should be arrived at within a period of six weeks from the date of receipt of a copy of this order and should be conveyed in a reasoned and speaking order as per law, with particular reference to the transfer guidelines and should be communicated to the applicant forthwith.

Till such time the representation is disposed of and if the applicant has not been relieved from her present place of posting, status quo should prevail with reference to the applicant's present place of posting and her service benefits should not be withheld during this period. If, however, the applicant has already been relieved by virtue of orders of the respondent authorities, no coercive action should be taken against the applicant till the disposal of her representations."

The competent respondent authority issued thereafter a speaking order on 18.1.2019, (impugned in the present O.A.) rejecting the applicant's prayer, and, stating, inter alia, that the applicant stood relieved prior to the orders of the Tribunal granting her status quo in her earlier place of posting.

(b) That, thereafter, the third disciplinary proceedings against the applicant/charged officer was concluded with the following major penalty order dated 20/22.2.2019:-

"Now, therefore, after careful examination of the records of the inquiry and facts and circumstances of the case the undersigned is of the view that ends of justice would be met if the Charged Officer, Smti. Jantara Pant, CDPO is imposed with the major penalty of reduction to the minimum of the time-scale of pay/grade/post of 'Mukhya Sevika' in Pay Level-5 (Scale of Pay Rs. 29,200-

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93,300) with immediate effect, which shall be a bar to her promotion to the time scale of pay/grade/post of CDPO from which she was reduced. In other words, she will not regain her pay/grade/post of CDPO during the rest of her career. She is also barred from earning further increments."

(c) Consequent to the said penalty order, the applicant, without prejudice to her rights and effects, joined as Mukhya Sevika at Port Blair subject to the orders in subjudice matters related to the said proceedings and, also, subject to the appeal preferred against the penalty before the appellate authority.

(d) Although the applicant joined in the lower post as Mukhya Sevika on 27.3.2019, and, her medical leave was regularized thereafter, on 27.5.2019, she was further ordered to move as Mukhya Sevika in ICDS Project at Car Nicobar and the applicant stood released vide orders dated 30.5.2019.

Hence, in the instant O.A. read with the written notes of arguments of her Ld. Counsel, the applicant has sought for quashing of the speaking order dated 18.1.2019, as well as her transfer orders, alleging that, the two concurrent transfer orders, one in her capacity as CDPO and the other in her capacity of Mukhya Sevika has, resulted in a situation converging on absurdity; hence, both transfer orders deserve to be quashed.

The applicant has advanced the following grounds, inter alia, in support of her claim:-

(a) The transfer orders dated 7.12.2018 and 27.5.2019 were issued in defiance of the transfer policy which enjoins that the tenure for the staff posted in Nicobar (being in Zone D) should be for 2 years and, that, as far as possible, efforts should be made not to post any employee who has crossed the age of 55 years. The

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applicant being 57 years of age, was earlier posted in Car Nicobar in ICDS Project from 6.2.1992 and continued therein till 12.8.1996.

(b) The transfer order dated 27.5.2019, having been issued admittedly by way of punishment rather than being an administrative exigency deserves to be quashed as a practice deprecated by the Hon'ble Supreme Court in its decision in **(2009) 1 SCC (L&S) 411 in Somesh Tiwari v. Union of India & ors.**

(c) The transfer order dated 27.5.2019 is an evidence of malafide as even after reversion of the petitioner to the post of Mukhya Sevika, she was again transferred to the earlier station of transfer, namely, Car Nicobar, in the reverted capacity, in the absence of any vacancies and without assigning any lawful reason and/or administrative exigency thereof.

4. The respondents would argue as follows, while controverting the claim of the applicant as follows:-

(a) That, the penalty order No. 555 dated 20/22-2-2019 has already been effected as the applicant has reported for duty in the capacity as Mukhya Sevika on 27.3.2019 at Port Blair after availing of medical leave and, her joining was allowed by the competent authority. The medical leave availed by her was subsequently regularized vide Office Order No. 670 dtd. 10.4.2019.

(b) That, there is scarcity of Mukhya Sevikas at Car Nicobar, and, keeping in view the posting tenure of the applicant at Port Blair for more than 10 years, the applicant has been posted as Mukhya Sevika in ICDS Project, Car Nicobar vide order dated 27.5.2019 by issuance of a fresh transfer order and the applicant stood relieved vide orders dated 30.5.2019. The respondents have

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relied on ***State of U.P. v. Gobardhan Lal, (2004) 11 SCC 402*** and ***Shilpi Bose (Mrs.) v. State of Bihar, 1991 Supp (2) SCC 659*** to defend their claim on the limited scope of judicial review on challenge to transfer.

5. The applicant had approached this Tribunal in the instant O.A. on 24.1.2019. Her primarily target of challenge was the transfer order dated 7.12.2018 and the speaking order dated 18.1.2019 rejecting her prayer against such transfer. The applicant had not joined the transferred post of CDPO, Car Nicobar.

The subsequent developments leading to reduction of her status to that of "Mukhya Sevika" from CDPO consequent to penalty orders dated 20/22.2.2019 in the third disciplinary proceedings has rendered the earlier transfer order dated 7.12.2018 in her capacity as CDPO and speaking order justifying the same, as nonest.

Ld. Counsel for the applicant has brought forth the transfer order dated 27.5.2019 in the written notes of arguments and have prayed for quashing of the concurrent transfer orders posting the applicant to Car Nicobar in two distinct capacities of CDPO and Mukhya Sevika respectively.

Hence, the sole issue that remains for adjudication is the legality of the transfer order and relieving orders dated 27.5.2019 and 30.5.2019 respectively.

6.1. Upon a perusal of records, it transpires, that, vide letter dated 27.3.2019, the applicant had reported for duty as Mukhya Sevika at Port Blair without prejudice to her rights and effects. The joining report of the applicant is reproduced as under:-

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"To

The Director (SW),
Dte. Of Social Welfare,
A&N Admn., Goal Ghar,
Port Blair

Sub: Duty Report - Reg.

Sir,

As per Dte. Of Social Welfare Office Order No. 456 dated 25.3.2019, I am reporting for my duty in the lower post of Mukhya Sevika today on 27.3.2019 (FN). Further, my request to your goodself that, at the time of issuing of my posting/work allocation order the guidelines GI Dept. of Per. & Trg. O.M. No. 2011/2/181-Estt.(A) dated 8th April, 1987 may be strictly followed so that my duty in the post of Mukhya Sevika will be without prejudiced to my rights and effect, arising out in the entire proceeding/challenging O.A.s pending before the Hon'ble CAT and pending appeal before the Hon'ble President of India.

Thanking you,

Yours faithfully,

Place: Port Blair
Date: 27.3.2019

Sd/-

Jantara Pant, CDPO
Reporting duty
Now as Mukhya Sevika
Dte. Of Social Welfare

While discussing and adjudicating O.A. No. 5 of 2016, it came to light that the appeal of the applicant against penalty order No. 555 dated 20/22-2-2019 is pending at the level of the appellate authority and a final order is yet to be issued on the penalty imposed on the applicant/appellant. Consequently, the status of the applicant as "Mukhya Sevika" is yet to be finally decided by the respondent authorities.

6.2. The applicant has reported for duties at Port Blair in the lower post of "Mukhya Sevika" without prejudice to her rights and effects arising out of the O.A. pending before the Tribunal as well as the appeal before the appellate authority. Consequently, as her post of "Mukhya Sevika", is in a transient phase, being subject to final disposal by the appellate authority and orders in pending litigations, any further dislocation/movement of the applicant to another place of posting as "Mukhya Sevika" would appear premature at this stage. It is an admitted

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fact that the respondents allowed her to join as "Mukhya Sevika" at Port Blair and also regularized her leave vide their orders dated 10.4.2019. Accordingly, any further posting of the applicant in another location as "Mukhya Sevika" is misconceived and arbitrary ..

The Hon'ble Apex Court in **N.K. Singh vs. Union of India, (1995) 1 LLJ 854** and **Abani Kanta Ray v. State of Orissa, 1995 Supp (4) SCC 169** has ruled that arbitrary actions in transfer would be subject to judicial review.

7. Accordingly, her posting orders at Tribal Project, Car Nicobar dated 27.5.2019, and her relieving orders dated 30.5.2019, are quashed and set aside.

The respondents are directed to permit the applicant to continue to serve as Mukhya Sevika at Port Blair until the disposal of the appeal by the appellate authority. Furthermore, given that her joining report had been accepted since 27.3.2019, and, if, the applicant has continued to perform her duties in Port Blair in her status as "Mukhya Sevika", her salary and other dues as she is entitled to in her capacity of "Mukhya Sevika", should be released to her w.e.f. 27.3.2019 within 12 weeks from the date of receipt of a copy of this order.

8. With these directions, O.A. No. 115 of 2019 is disposed of.

M.A. No. 379 of 2019 arising out of O.A. 115 of 2019 praying for further orders in O.A. No. 115 of 2019 is disposed of accordingly.

There will be no orders on costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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