

(2002) 05 GAU CK 0066

In the Gauhati High Court

Case No : Writ Petition (C) No. 2151 of 2002 and Review No. 19 of 2002

Commissioner, K.V.S. and Others

APPELLANT

Vs

Tapan KR. Chakraborty

RESPONDENT

Date of Decision : 15-05-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 309

Citation : (2002) 3 GLT 639

Hon'ble Judges : I.A. Ansari, J;D. Biswas, J

Bench : Division Bench

Advocate : K.N. Choudhury, A. Baruah and N. Moral, for the Appellant; B.C. Das and S. Dutta, for the Respondent

Judgement

D. Biswas, J.—This petition under Article 226/227 of the Constitution has been filed challenging the legality and validity of the judgment and order dated 1.3.2002 passed by the learned Central Administrative Tribunal, Guwahati Bench in O.A. No. 487 of 2001.

2. Issue rule.

3. We have heard Mr. K.N. Choudhury, learned senior counsel for the writ Petitioner and also Mr. B.C. Das, learned senior counsel for the Respondent.

4. The Respondent, Sri Tapan Kr. Chakraborty working under the Kendriya Vidyalaya Sangathan and posted at Silchar has been transferred to Delhi by order dated 13.11.2000. The order of transfer to Delhi was challenged by the Respondent in O.A. No. 423/2000 since it was not his place of choice. The learned tribunal disposed of the said application with a direction to the Respondent authorities to reconsider his application for his posting at Calcutta on the basis of his representation and as per the policy guidelines.

5. A Division Bench of this Court in W.P. (C) No. 8124/2001 did not interfere with the aforesaid order and dismissed the petition. The Respondent authorities, on reconsideration, did not accede to the request of the applicant for posting at

Calcutta. The applicant again approached the learned Tribunal and the learned Tribunal by the impugned order, dated 1.3.2002 set aside the order, dated 4th December, 2001 passed by the Respondent authorities and also directed the Respondents to consider the case of the applicant for transfer to his choice posting at Calcutta as per guidelines dated 25.1.2000 and to accommodate him at Calcutta, against available vacancy.

6. We have given our anxious consideration to the arguments advanced by the respective parties with reference to the reasons recorded by the learned tribunal.

7. There cannot any dispute with regard to the application of the guidelines dated 25.1.2000 to the non-teaching staff of the establishment. In fact, para 19 of the guidelines in clear terms provides that the provisions therein shall mutatis mutandis apply to the non-teaching staff to the extent applicable. There cannot be any doubt that an employee is normally entitled to insist for a transfer to the place of his choice after completion of tenure posting in North East.

8. Mr. Choudhury, learned Senior Counsel arguing for the Sangathan, has submitted that no employee, as a matter of right, can insist for transfer to the place of his choice. Guidelines are administrative instructions within the bounce of which decisions are required to be taken for running the affairs of the establishment. The paramount consideration, while effecting transfer is the interest of the establishment and the guidelines cannot be given priority over the interest of the establishment. That apart, Mr. Choudhury, further pointed out, that the guidelines are not under Article 309 or under any provision of any Act. Therefore, the concerned employee is not entitled to insist for a posting at Calcutta. In addition, Mr. Choudhury also pointed out that the employee concerned had, in fact, served at Calcutta for more than 10 years.

9. Since the guidelines, which are being relied upon, have not been framed under any law, the provisions made thereunder cannot be enforced as a matter of right. The Supreme Court in the case of Chief General Manager (Telecom), N.E. Telecom Circle and another Vs. Rajendra Ch. Bhattacharjee and others, held as follows:

7. It is needless to emphasise that a government employee or any servant of a Public Undertaking has no legal right to insist for being posted at any particular place. It cannot be disputed that the Respondent holds a transferable post and unless specifically provided in his service conditions, he has no choice in the matter of posting. Since the Respondent has no legal or statutory right to claim his posting at Agartala, therefore, there was no justification for the Tribunal to set aside the Respondent's transfer to Dimapur.

10. The ratio available from the aforesaid decision clearly indicates that the Respondent, having served for more than 10 years at his place of choice (Calcutta), has not been considered for posting at the same place. This decision cannot be said to have been taken in violation of any legally enforceable right. It was, therefore not improper on the part of the authorities concerned to reject the

representation submitted by the Respondent.

11. Moreover, the Respondent Sri Tapan Kr. Chakraborty appears to be a resident of Kanakpur, Part II Silchar, Assam. He has claimed transfer to the place of his choice as per provisions of para 7 and 8 read with para 2(viii) of the guidelines. The word "tenure" as defined in para 2(viii) shows a stay of three years and above in North Eastern Region, Sikkim, Andaman and Nicobar Islands and other specified stations. The Petitioner was posted at Silchar, which is his hometown and, therefore, his posting, at Silchar, cannot be said to a tenure posting within the meaning of para 2(viii) of the guidelines.

12. The provision for posting at the place of choice was made in view of the all India transfer liability and, particularly, with the object, in mind, to attract talented officers to serve in the North East and other specified areas. Since the Respondent is a resident of the North East, he does not obviously, have any enforceable right under the said guidelines to be posted at his place of choice. This aspect of the matter has also been clarified by the Supreme Court in para 7 of the judgment quoted above.

13. In para 3 of the guidelines, it has been clearly mentioned that the dominant consideration in effecting transfers will be administrative exigencies/grounds, organisational reasons including the need to maintain continuity, uninterrupted academic schedule and quality of teaching and to that extent the individual interest/request shall be subservient. It has been further mentioned that the provisions are mere guidelines to facilitate the realisation of objectives and transfers cannot be claimed as a right. It is abundantly clear from para 3 of the guidelines that it was never intended to vest any right in any employee in the matter of transfer, least the transfer to a place of choice.

14. The discussions above leads to the inevitable conclusion that the order passed by the learned tribunal needs reversal. Consequently, we allow the writ petition and set aside the order dated 1.3.2002 passed by the learned Tribunal.

15.5.2002.

15. Heard Mr. B.C. Das, the learned Counsel for the review Petitioner and Mr. K.N. Choudhury, the learned Senior Counsel for the Respondents.

16. This review petition has been filed for reconsideration of an observation made in the judgment about permanent residence of the writ Petitioner. In the aforesaid judgment dated 30.4.2002 in W.P. (C) No. 2151/2002, it has been stated by this Court that the review Petitioner is a permanent resident of Kanakpur, Part-II, Silchar-788005, Assam within North-East. This observation has been recorded from the application filed by the review Petitioner before the learned tribunal, but the fact is that he is a man from Kolkata and Shri Choudhury, the learned Counsel for the Respondents fairly admits it. Therefore, the observation shall be treated as non-est.

17. It is further clarified that the judgment in the writ petition passed by this

Court will not operate as a bar on the part of the Respondent authority for consideration of his case for future transfer to the place of his choice.

The review petition accordingly stand disposed of.