
(2022) 06 CAT CK 0051

In the Central Administrative Tribunal

Case No : Original Application No. 1658 Of 2022

Parveen Kumar

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 28-06-2022

Acts Referred:

Rights Of Person With Disability Act, 2016 — Section 2(r)

Citation : (2022) 06 CAT CK 0051

Hon'ble Judges : Tarun Shridhar, Member (A)

Bench : Single Bench

Advocate : S.M. Arif, S.M. Atif, Shabnam Perween, R.K. Jain

Final Decision : Disposed Of

Judgement

Tarun Shridhar, Member (A)

1. Heard the learned counsel for the parties at admission stage itself.
2. The applicant, who is working as Asstt. Controller in the office of the Controller General of Patents in New Delhi is aggrieved by his transfer to Patent Office, Kolkata.
3. Vide the present Original Application, the applicant seeks the quashing of the transfer order dated 20.05.2022 qua him only as the said impugned order involves 21 officers.
4. Learned counsel for the applicant argues that the transfer of the applicant is contrary to the conditions set out in the DOP&T Office Memorandum No.42011/3/2014-Estt.(Res.) dated 06.06.2014 and subsequent OM dated 08.10.2018 which states as under :

"A Government employee who is care-giver of dependent son/daughter/parents/ spouse/brother /sister with Specified Disability, as certified by certifying authority as a person with benchmark disability as defined by Section 2 (r) Rights of Person with Disability Act, 2016 may be exempted from the routine exercise of

transfer/rotational transfer.”

5. Drawing attention to the peculiar circumstances of the applicant, learned counsel for the applicant submits that besides his aged and ailing mother, who is a heart patient, the applicant is also a guardian and care-giver with respect to his 32 years old brother who is mentally retarded, and to further compound his miseries, his 11 years old son is suffering from Intellectual Learning Disability.

6. Learned counsel for the applicant submits that dislocation of the applicant at this stage will severely impede his duties towards his family in view of his peculiar circumstances wherein three of his family members suffer from various ailments/disabilities, are dependent upon him.

7. Learned counsel for the applicant further submits that the aforesaid Office Memorandum of the DOP&T is categoric that a person who is care-giver of persons/family members who suffer from specific disabilities should be exempted from rotational transfers.

8. Learned counsel for the applicant submits that the applicant had submitted a comprehensive representation venting out his grievances before the competent authority. The said representation is placed at pg 37 of this OA as Annexure A-5.

9. Learned counsel for the applicant draws our attention to the Office Memorandum dated 13.06.2022 vide which said representation has been disposed of by the respondents. He points out to the specific infirmity in the said order as it does not discuss the submissions made by the applicant in his representation and decides the representation clubbing it along with the representation of several other officers who were aggrieved by the transfer.

10. Learned counsel points out that prima facie the said order is a non reasoned and non speaking order.

11. Learned counsel for the respondents vehemently opposes the prayer of interim relief and seeks appropriate time to obtain necessary instructions so that he can assist the Tribunal to adjudicate upon the said prayer.

12. However, I am of the firm view that the prima facie the OM dated 13.06.2022 vide which the representation of the applicant has been disposed of suffers from serious infirmity as it does not discuss any of the issues raised by the applicant in his representation dated 23.05.2022 wherein he has made a mention of specific facts and circumstances of his family and also drawn attention to the DOP&T OM governing the subject. Therefore, in my view the said OM dated 13.06.2022 is not sustainable. Accordingly, it would be in the interest of justice to dispose of this OA at the admission stage itself with a direction to the competent authority amongst the respondents to decide the representation of the applicant with respect to his transfer from New Delhi to Kolkata afresh in an objective and impartial manner giving due consideration to his family circumstances and guidelines set out in the DOP&T OM dated 06.06.2014.

13. Needless to say that the representation of the applicant shall be decided by way of reasoned and speaking order. It is further directed that till the competent authority amongst the respondents decides the representation of the applicant in the light of the aforesaid observations, he shall not be relieved and subsequently coerced to join at Kolkata.

14. The applicant is afforded a liberty of one week to file a supplementary representation, if he so wishes. The present OA and documents contained therein shall also be considered to be part of the representation of the applicant while taking a decision in the matter. The OA stands disposed of with the aforesaid directions. There shall be no order to costs.

Process dasti as well.