

(2020) 01 PAT CK 0189

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 16471 Of 2018

Sanjay Kumar

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 10-01-2020

Acts Referred:

Citation : (2020) 01 PAT CK 0189

Hon'ble Judges : Ashwani Kumar Singh, J; Partha Sarthy, J

Bench : Division Bench

Advocate : Munna Pd Dixit M.P. Dixit, Anil Kumar Sinha

Final Decision : Dismissed

Judgement

Heard learned counsel for the petitioner and learned counsel for the Union of India.

The petitioner has filed the present writ petition challenging the order dated 20.7.2018 passed by the Central Administrative Tribunal, Patna Bench, Patna (for short 'the Tribunal') in O.A.No.050/000495 of 2018 whereby the prayer of the petitioner for stay of transfer order dated 09.01.2018 issued by the Senior Personnel Officer (Construction), East Central Railway, Patna has been dismissed.

The contention of the petitioner is that he has 5 years old son who is physically handicapped suffering from autistic disorder. The Department of Personnel and Training (DOPT) Government of India vide OM dated 06.06.2014 have made special provisions in respect of transfer of the Government servants whose children are suffering from physical disability. The DOPT vide another OM dated 17.11.2014, have notified autistic disorder also as physical disability to which OM dated 06.06.2014 would apply. The OMs of the DOPT have been served to all the General Managers of the railways with a direction to implement the instructions containing therein. Hence the impugned transfer order of the petitioner was in gross violation of the instructions issued by the DOPT. Thus, the Tribunal ought to have set aside the transfer but erroneously it has dismissed the original

application filed by the petitioner.

Per contra, learned counsel appearing for the East Central Railway submitted that there is no illegality in the order passed by the Tribunal. The OM's issued by the DOPT do not totally exempt the Government servants whose children are physically handicapped or suffering from autistic disorder. He contended that the petitioner was posted at Danapur in the year 2008 and has been transferred after 10 years in 2018. The project for which he was posted at Danapur has been completed and no work in connection with which he was posted at Danapur is left in the said project. Since he was not required at Danapur, he was transferred in administrative exigencies. His transfer does not suffer from any infirmity. He has drawn our attention towards the averments made in the written statement filed in the original application before the Tribunal.

We have heard learned counsel for the parties and carefully perused the record.

On perusal of the DOPT OM dated 6.6.2014 we find that the Government employee who has disabled child and serve as main care-giver of such child, has been exempted from routine exercise of transfer/rotational transfer subject to administrative constraints.

It would further appear from the DOPT OM dated 17.11.2014 that autistic disorder has also been notified as physical disability to which OM dated 06.06.2014 would apply.

From the written statement of the respondents, we find that after considering the representation of the petitioner and the relevant provisions of the Railway Board, the respondents took a decision on 14.2.2018 and they did not agree with the request of the petitioner for stay of his transfer order. We further find that the petitioner who is a Junior Engineer and was posted in a Railway Over Bridge Project at Danapur has been transferred to Singrauli as the work at Danapur has been completed and a very important project is going on at Singrauli where doubling between Garrah Road to Chopan and Kariaala Road Junction to Singrauli are going on.

As seen above, the DOPT OM dated 6.6.2014 gives liberty to the Government to transfer an employee in case of administrative exigency. It exempts only routine and rotational transfer.

Since the transfer of the petitioner has been made in administrative exigency, we are of the opinion that the Tribunal has rightly rejected the original application filed by the petitioner and declined to interfere with the order of transfer.

Accordingly, the application is dismissed.