

(2020) 07 CAT CK 0048

In the Central Administrative Tribunal

Case No : Original Application No. 877 Of 2020

Sanjeev Kumar

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 31-07-2020

Acts Referred:

Citation : (2020) 07 CAT CK 0048

Hon'ble Judges : Pradeep Kumar, Member (A); R.N. Singh, Member (J)

Bench : Division Bench

Advocate : V.C. Shukla, R.K. Jain

Final Decision : Disposed Of

Judgement

Pradeep Kumar, Member (A)

1. The applicant, herein, is an Under Secretary Level Officer under Ministry of Foreign Affairs. He was posted to the Indian Embassy at Guangzhou in China in May 2014 and was working as Second Secretary (Political). The tenure there was three years. Once the tenure was completed in 2017, he gave request on 22.3.2017, for posting to an Embassy in an A-class capital of another Country. He filled the standard format also which is needed for consideration of such a request, by the designated Foreign Service Board (FSB).

In this proforma, the officer also indicated that his daughter is passing class 9th from American School at Guangzhau, China, in the year 2017 and he needs only three years more so that his daughter can complete 12th class from a corresponding school at Rome.

Since normal tenure is three years, this was accepted and he was posted to Indian Embassy at Rome, Italy, in the year 2017. He joined there on 31.7.2017.

2. However, after reaching Rome, the American School did not grant admission in class 10th to his daughter. The admission could be secured in the British School in Class 10 th (Year 11 as per British School), GCSE Curriculum. However, after

about 3 months or so, the British School came to a conclusion that there was a difference in school syllabi between American School class 9th at China and Year 11 (Class 10th) in British School at Rome, and accordingly, in the interest of her education and in consultation and with the consent of the applicant, the British school shifted his daughter to study class 9th again (Year 10 as per British school), at Rome in Dec 2017 itself. With this the GCSE course (Class 10th) was going to complete in summer of 2019, and IB Diploma programme (Class 12th) in May/June 2021.

3. The officer completed his normal three years tenure at Rome in July, 2020. However, since his daughter was not able to complete the course for class 12th (Year 13 as per British School), which needs time till June, 2021, the applicant made a request to Foreign Service Board at the end of the December, 2019 to extend his tenure in Rome by a period of 11 months more beyond July, 2020, in the interest of completion of his daughter's 12th class education from same school at Rome.

4. The Foreign Service Board considered this request but did not agree for any extension and another officer has been posted by vice him at Rome. The applicant has been transferred to Delhi and has been directed to join at the earliest (the tenure comes to a close on 31.7.2020). Thereafter he made another representation for which a reply, rejecting his request for extension, was issued to him on 11.3.2020.

The officer felt aggrieved at non-grant of such extension on schooling ground and preferred the instant OA seeking relief in the form of direction for 11 months extension of his service at Rome.

5. The applicant placed reliance on an order in another OA No. 3880/2018 in the case of Ms. Nita Bhushan vs. Union of India. The applicant pleads that the petitioner in OA No. 3880/2018 was granted extension while working at Chicago, USA, so that her daughter could complete her class 12th from there.

6. Per contra, the respondents opposed the OA. It was pleaded that the applicant had requested for foreign posting in an A class City. Before this was considered, the officer had also given certain declaration in the standard proforma for information of Foreign Service Board. The specific declaration made in this proforma in para 12 and 13 thereof, are reproduced as under :

"12. Reasons & Special considerations:

CGI Guangzhou is my forth posting at Missions/Posts abroad. All my previous and present postings are of (B) and (C*) classification. This time I am requesting A* posting keeping in view education of my daughter and also as I have never been posted to A* station. My daughter will be pursuing 10+2 pattern of schooling.

13. Does the officer intend to seek extension on educational grounds? If yes, please give details including anticipated period of extension.

I don't intend to seek extension. My daughter will be completing 9 Grade from American International School in Guangzhou and three years of schooling will be left for the next station of posting."

It was under these declarations and express consent, that he was posted from China to Rome, and another officer has been posted in his place there.

6.1. Further, it was brought out that for those officers who had completed two tenures of three years each, the practice is not to extend the tenure in foreign country.

7. Respondents have also brought out that in the case of the applicant, while he was posted at China during the period 2014 to 2017, certain actions of applicant came to be reported. In respect of these actions, a chargesheet was issued to the applicant and which is nearing finalisation. UPSC has since been consulted also and they have recommended certain punishment also namely reduction to a lower stage in time scale of pay by one stage for three years without cumulative effect and not affecting pension.

8. Respondents also brought out that the relied upon case of the OA No. 3880/2018 is not similar, as in that case the petitioner worked at Chicago from Jan 2017 to Sept 2018 and was transferred to India, i.e.in about one and a half years of tenure at USA, as against normal three years. It was under those circumstances that grant of extension was ordered by the Tribunal for one year so that the petitioner's daughter could complete class 12th from Chicago.

As against this, in the instant case, the transfer from Rome to India has been ordered on completion of full tenure of three years. The circumstances are totally different and not comparable.

9. It was pleaded that it was in view of these circumstances that the Foreign Service Board did not grant extension to the officer and he was transferred to Delhi.

Thereafter, the applicant had made a representation seeking extension of the tenure by 11 months and at that stage, complete information was again provided to the Foreign Service Board including that of the Vigilance case. It was only thereafter that transfer order has since been issued and another officer posted in his place at Rome.

Further, as per the current posting, applicant's tenure at Rome gets completed by 31.07.2020. Despite this, and despite being reminded, the applicant has not advised the details of his travel back to Delhi.

10. Keeping in view of the above, the respondents pleaded that the OA is without merit and needs to be dismissed.

11. The applicant pleaded that the Foreign Service Board had made the recommendations for his transfer from Rome to Delhi and for posting of someone else to Rome on 21.02.2020. As against this, respondents vide their own

admission, have submitted complete details in respect of vigilance case etc. on 26.02.2020 and accordingly, the Foreign Service Board may not have taken the entire circumstance into account. And accordingly, the applicant pleaded that his OA needs to be allowed.

The applicant also pleaded for grant of interim protection.

12. Matter has been heard at length. Sh. V.C. Shukla, learned counsel represented the applicant. Sh. R.K. Jain, learned counsel represented the respondents. Sh. Sanjeev Kumar, the applicant was also personally available during the hearing in the Video Conference mode.

13. The applicant, herein was transferred from China to Rome in the year 2017. At that time, his daughter had already passed class 9th from American School at China. He applied for admission to the American School as well as to the British School. The American School refused the admission and accordingly, the applicant's daughter took admission at British School, Rome, to class 10th.

14. However, after about three months of his daughter's study, because of the course difference in class 9th at American School, and class 10th at British School, Rome, the British school advised the applicant to admit his daughter again at class 9th at Rome and sought his consent. The applicant gave consent in the interest of education of his daughter. And this changeover was completed in the Dec-2017 with the consent of the applicant.

The applicant was thus, fully aware in the year 2017 itself, that the his daughter will not be able to complete her class 12th before June, 2021.

15. It is admitted that the applicant did not make any representation seeking extension at that point of time. Had such a representation been made, the respondents and the FSB, could have taken a view whether to grant one year extension beyond July 2020 or not, and in the event, this extension was not agreed to, the applicant could have taken a decision whether to come to India after his daughter completes class 10th in the year 2019 and let her complete class 11th and 12th from some school in Delhi.

The Tribunal is of the view that applicant, being a senior officer, was duty bound to advise this change to the Department in early 2018 itself, when it was evident that his declaration of not seeking extension on any ground beyond three years, which was given before his posting to Rome, is not going to be possible, if he intended his daughter to complete class 12th from Rome (Para 6.0 supra).

Applicant's plea that Embassy at Rome was well aware of this change, as they were paying the school fee for his daughter's education to British school, Rome, and therefore ought to have acted on their own for granting him extension, are of no help to him. Embassy cannot be expected to also relate as to what declaration was given by him before his posting to Rome.

It was purely for applicant alone to bring the change in circumstances to the

notice of Department. The applicant failed to advise the Department. Raising the demand for extension at a time when his tenure is coming to a close at Rome, is like presenting a fait-accompli, not expected from a senior officer. This undue delay on applicant's part, and citing the reason for his daughter's education, cannot now become a justification for extending his tenure and especially so as another officer has since been posted vice him.

16. The relied upon case of Ms. Neeta Bhushan (OA-3880/2018) is also of no help to applicant as petitioner therein was transferred much before completion of three year tenure, whereas applicant's transfer has been ordered after completion of two full tenures of three years each one at China and other being at Rome.

17. The factum of the charge sheet and punishment thereupon, for certain actions while he was posted at China, is also staring applicant in his face.

18. In view of foregoing, Tribunal is of the view that transfer is as per Rules and norms. The OA is without any merit and does not warrant any judicial intervention whatsoever at this stage.

19. However, be that as it may in regard to applicant, the issue now comes to light is in respect of education of applicant's daughter in respect of completion of her IB Diploma programme (Year 12th and 13th), which is slated to complete by summer of 2021. Applicant has pleaded that his efforts to secure admission in British school, Delhi in Year 13th, have not borne fruit. Therefore, applicant is facing a very big personal difficulty.

Tribunal is of the view that for the issues pertaining to personal difficulty, there is no place for Tribunal's intervention. Accordingly, pleas of Interim protection are also not accepted. It is for the Department alone to consider the personal difficulty and take an administrative decision, keeping relevant factors into account.

20. Therefore, in view of the given circumstances, the Tribunal disposes of the instant OA, with direction to the applicant to make a detailed representation for his difficulty to the respondents, within a period of two days from today (Friday) i.e. latest by 3.8.2020 (Monday). The respondents shall pass a reasoned and speaking order within a week thereafter i.e. by 10.8.2020, under advice to the applicant. It is also directed here that till such time the said speaking order is passed and advised, neither shall respondents take any coercive action against him, nor shall the applicant have any claim on extension or otherwise, on account of start of schooling session or on any other account whatsoever.

Since issuance of a certified copy of judgment was not possible immediately, due to COVID-19 pandemic, it was advised so and made clear to all parties including the applicant, in the video conference itself, and they all consented also, that they shall act as per the above oral directions without waiting for certified copy of this judgement. There shall be no orders as to costs.