

(2022) 07 CAT CK 0002

In the Central Administrative Tribunal

Case No : Original Application No. 260, 00276 Of 2022

Subhanarayan Nayak

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 04-07-2022

Acts Referred:

Citation : (2022) 07 CAT CK 0002

Hon'ble Judges : Swarup Kumar Mishra, Member (J)

Bench : Single Bench

Advocate : B. Mohanty, S.B. Das

Final Decision : Disposed Of

Judgement

Swarup Kumar Mishra, Member (J)

1. Heard Ld. Counsel for both the parties and perused the materials placed on record.

2. According to the Ld. Counsel for the applicant, the applicant was appointed in Southern Command in the year 2003. During 2012-13, there was reorganization of area of operation of Southern Command and Eastern Command. The applicant since 2013, time and again, submitted his willingness/option vide Annexure-A/1 series for permanent transfer to Eastern Command, which was also forwarded to Southern Command through proper channel vide Annexure-A/2 series. As requested by Chief Engineer, Southern Command (Respondent No.2), vide letter dated 06.07.2018 (Annexure-A/3) Garrison Engineer, Chilka (Respondent No.6) forwarded certain documents of four optees for Eastern Command, including the applicant, for audit/qualifying. While the matter stood thus, the applicant has been transferred vide order under A/5 dated 31.03.2022 in his present capacity as Jr. Administrative Assistant (JAA) to Lakshadweep. He submitted representation under Annexure-A/6 dated 11.04.2022 stating inter alia that he had exercised his option for his permanent transfer to Eastern Command but no decision has been taken thereon whereas he has been transferred to non-family

station Lakshadweep which would cause him immense difficulties to proceed there leaving his family consisting of a new born baby and old ailing father, who is suffering from Prostate Cancer and, accordingly, he has prayed either to cancel his transfer or to post him in any of the family station opted by him. According to the applicant, the respondents rejected his representation under annexure-A/7 dated 10.06.2022 without considering his request in its proper perspective. Hence, he has preferred this O.A. praying inter alia to direct the respondents to transfer him permanently to Eastern Command as per the option submitted by him and post him against vacancy under the Eastern Command/Respondent No.6 by quashing his order of transfer under Annexure-A/5 dated 31.03.2022 and order of rejection of his representation under Annexure-A/7 dated 10.06.2022. Further, his prayer is that till a decision is taken on his request for permanent transfer to Eastern Command, he may be posted against the places opted by him vide representation dated 11.04.2022 or in any other family station other than Lakshadweep. By way of ad interim measure, he has prayed to direct the respondents to allow him to continue at his present place of posting at INS Chilka by staying the order of rejection of his representation under Annexure-A/7 dated 10.06.2022 as, according to the applicant, in similar circumstances another employee namely Narasingha Prasad Panda had approached this Tribunal in O.A. No. 605/2018, which was disposed of on 09.01.2020 in quashing the order of transfer without deciding the fate of his option for his posting to Eastern Command.

3. On the other hand, Ld. Counsel for the respondents while praying for time to obtain instruction and file reply has opposed the grant of ad interim stay on the ground that option was called for in November, 2021 followed by reminders dated 06.12.2021 and 07.01.2022 for giving choice place of posting by the employees. But, the applicant did not submit any option. Considering the administrative interest, the applicant was posted to Lakshadweep. After expiry of date fixed for movement, the representation of the applicant was received at a belated stage, which was duly considered and as there was no vacancy available at Polgaon/Amla/Ratnagiri stations, his request was rejected and duly communicated to him. It has been submitted that the order of this Tribunal relied on by the applicant is not applicable to the present case as in the said case the applicant was promoted and posted to the place other than opted by him. The applicant declined his promotion and requested for his continuance in his former post and place as his request for his permanent transfer to Eastern Railway was under consideration whereas in the present case the transfer and posting of the applicant is in a routine manner and on administrative interest and not on his promotion. Although, opportunity was afforded, the applicant did not submit any option in due course and, only after his transfer, he has for the first time raised his grievance about illness of his father. Accordingly, Ld. Counsel for the respondents has strongly resisted for entertaining this O.A.

4. The grievance of the applicant is that he does not oppose his transfer from the present place of posting but prays for a posting to a family station in order to

take his family, consisting of new born baby and old ailing father who is suffering from Prostate Cancer and is under treatment. The record, prima facie, does not show about the decision taken on his option for his permanent transfer to Eastern Command and, if any one else has been posted at his place at Chilka. It appears that the respondents rejected the representation of the applicant on the ground that the same was submitted after expiry of the stipulated period of 21 days from the order of transfer. insofar as treatment of his father, it has been stated that the applicant did not bring the said fact of treatment of his father before the authorities earlier. It is no doubt true that in the matter of transfer the scope of interference of court/tribunal is limited. At the same time, this Tribunal also cannot brush aside its sight from the fact that while exercising the power of transfer the employer as per their own policy decision and guidelines must look into the grievance and difficulties of the employee concerned being faced in the event of transfer from one station to the another especially to a non-family station. The order of transfer only speaks about non-availability of vacancy at Polgaon/Amla/Ratnagiri stations but does not show as to whether any such vacancy is available in any other family station where the applicant can be transferred. In view of the above, this Tribunal is of the considered opinion that ends of justice would be met if the applicant is given an opportunity to make an comprehensive representation to Respondent No. 3 within a period of one week hence enclosing thereto a copy of this order. On receipt of the said representation, Respondent No.3 is directed to consider the same sympathetically and communicate the result to the applicant in a well reasoned/ speaking order, in accordance with law, within a period of three weeks from the date of receipt of such representation and the applicant shall be allowed to continue in his present place of posting at Chilka till completion of one week from the date of communication of result of the consideration of representation to him.

5. With the discussions and observations made above, the O.A. stands disposed of at the stage of admission itself leaving the parties to bear their own costs.