

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 06.11.2012

W.P.(C) 6975/2012

SHANTANU BASU

..... Petitioner

versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr A.K.Thakur and Mr R.K.Mishra.

For the Respondents : Mr Rahul Kumar for Mr Gaurang Kanth for CAG.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

BADAR DURREZ AHMED, J (ORAL)

CM 18105/2012

The exemption is allowed subject to just exceptions.

This application stands disposed of.

WP(C) 6975/2012

1. This writ petition is directed against the order dated 05.09.2012 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.1682/2012 whereby the petitioner's said OA against the transfer order transferring him from Delhi to Guwahati has been disposed of in the following matter:-

“4. In view of aforementioned facts and circumstances, while it is held that there is no legal infirmity in the impugned order of transfer dated 4.05.2012 warranting

interference by this Court and the prayer made in the Original Application is declined, liberty is granted to applicant to make a representation to CAG for his posting back to Delhi or to any other place convenient to him within 15 days. In the event of preference of such representation by applicant, CAG may consider and decide the same, keeping in view the inconvenience caused to administration and the applicant in his participation of the disciplinary proceeding pending against him and the fact that admittedly with effect from 6.10.2010, the family circumstances of the applicant, i.e. ailment of his father and son consider warranting his posting to Delhi have not changed.” (underlining added)

2. The learned counsel appearing for the CAG points out that after the passing of the said order, the petitioner had made a representation and the same has been considered by the CAG and has been rejected by an order dated 01.11.2012. A copy of the same has been handed over to the learned counsel for the petitioner.

3. On going through the said order, the learned counsel for the petitioner submits that the order is not in conformity with the direction given by the Tribunal. First of all, there is no consideration with regard to the inconvenience that may be caused to the administration as also to the petitioner in his participation in the disciplinary proceedings which is pending against him in Delhi. Secondly, the Tribunal was concerned with regard to the family circumstances (ailment of the petitioner's father and son), which have not changed at all since 06.10.2010, which was the reason

for the petitioner seeking transfer from Gorakhpur to Delhi, which was allowed by the respondent. This aspect has also not been considered by the CAG despite the clear and specific direction of the Tribunal.

4. The learned counsel for the petitioner also points out that he had submitted the representation without prejudice to his rights and contentions insofar as the other findings of the Tribunal in the impugned order are concerned.

5. We feel that in view of the fact that there has been a subsequent development which is not under challenge before us, it would be appropriate that the petitioner be given liberty to challenge the same before the Tribunal. In these circumstances, we permit the petitioner to withdraw this petition with liberty to challenge the order dated 01.11.2012 before the Tribunal. In case the petitioner is still aggrieved, we grant him liberty to file a writ petition before this court even against the present impugned order. With these observations and directions the writ petition stands disposed of.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

NOVEMBER 06, 2012
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