

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17424 of 2015

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1. Paresh Pankaj Jha S/o Late Birendra Jha resident of Mohalla - Kali Badi, Binodpur, P.O. & P.S. - Katihar, District - Katihar.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Defence (Finance), New Delhi.
2. The Controller General of Defence Accounts, Ulan Bator Road, Palam, Delhi Cant. -110010.
3. The Controller of Defence Accounts, Rajendra Path, Patna.
4. The Additional Controller of Defence Accounts (AN), Rajendra Path, Patna.
5. The Officer Incharge, Area Accounts Office, Sevoke Road, Siligudi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dharendra Kumar Jha

For the Respondent/s : Mr. Anshay Bahadur Mathur, C.G.C

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 30-11-2015

The petitioner is an Assistant Accounts Officer in the Controller of Defence Accounts and was posted as such at Siliguri. He has now been transferred and posted at Jalpahar, District-Darjeeling. He represented to the authorities against the said posting on the ground that because of certain ailment he has, cold whether is not conducive to his health. The petitioner represented against the said transfer order. That was rejected. He had moved the Central Administrative Tribunal against the said order. The Central Administrative Tribunal set aside the order and directed the Authorities to hear the petitioner and decide the matter once again. The Authority has rejected the petitioner's representation. This time,

again, on a virtually solitary issue i.e. that the ailment, as claimed by the writ petitioner, was not specified in the transfer policy is a ground germane to the matter. The petitioner, then, approached the Tribunal. This time also, the Tribunal refused to interfere.

2. We have heard the parties and with their consent, this writ petition is disposed of at this stage itself.

3. The writ petitioner while being posted at Siliguri was diagnosed with a peculiar ailment which gets aggravated in cold atmosphere, or so, it is submitted. Learned counsel for the writ petitioner submits that he has no objection of being posted anywhere in the plains, away from cold places. The Authorities rejected the same on the ground that that was not one of the diseases mentioned in the transfer policy document. Unfortunately, that does not take anywhere. The transfer policy document is not the last word. The Authorities have to find out whether the ailment of the petitioner is such that it would make difficult for him to work from the place where he is posted. If this is a genuine and bona fide reason, then whether it being transfer policy document or not, is of no consequence. It is accepted that a government job inheres in it the right to be transferred, but at the same time Courts have held that this power to transfer cannot be applied in an arbitrary or unreasonable manner. If an employee genuinely has a problem, then if a person is posted at that place, it would create difficulties for him. That would be arbitrary. Thus, it has to be decided by the Authorities on a case to case basis whether the plea taken is valid or not. There cannot be any hard and fast formula or rule for it.

4. We are, therefore, of the view that the order of the Authority as contained in Annexure-5 and the order of the Tribunal cannot be sustained. The matter has got to be remanded for fresh consideration in the light of what we have already indicated above. Till a final decision is not taken, it is expected that the authorities would not disturb the petitioner, if he has not already been disturbed.

5. The application is, accordingly, disposed of.

(Navaniti Prasad Singh, J)

B.K.Roy/-

(Nilu Agrawal, J)

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