

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition No.5593 of 2016
and
WMP Nos.4957 to 4959 of 2016

K. Elango

.. Petitioner

-versus-

1. The Secretary to Government of India
Department of Personnel and Training
North Block, New Delhi.

2. The Principal Registrar
Central Administrative Tribunal,
Principal Bench,
No.61/25, Copernicus Marg,
New Delhi.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the 2nd respondent in its order bearing No.PB/6/1/2011-JA dated 12.02.2016 and quash the same.

For petitioner : Mr.M.Sureshkumar

For Respondents : Mr.B.Rabu Manohar

O R D E R

This Writ Petition has been filed by the petitioner challenging the order of transfer dated 12.02.2016 issued by the second respondent on the ground that the second respondent has not taken into account that he is a cancer patient and secondary cancer developments have also taken place.

2. Earlier, when the writ petition was taken up for hearing on 02.03.2016, this Court while granting interim order, has extracted the written instruction of the respondent received by Mr.Rabu Mahonar, learned standing counsel, wherein it is stated that considering the health condition of the petitioner as mentioned in his letter, dated 14.01.2016, Hon'ble the Chairman has been pleased to grant him Half Pay Leave for four months which Hon'ble Member (J) may extend for another two

months as mentioned in his letter, dated 09.02.2016 and they will consider his request for transfer to Chennai, which will be available with effect from 23.08.2016. Now, the learned counsel for the petitioner states that in view of the ensuing vacancy with effect from 23.08.2016, the petitioner to be retained in Chennai so that he will continue to take medical treatment exclusively available for his ailment at Chennai.

3. The learned counsel for the petitioner submits that there are two contingencies exists in this case for retaining the petitioner at Chennai. The first is that the petitioner is suffering from Cancer for which he is taking treatment at Chennai. In view of such ailment, the petitioner was not in a position to join duty at Jodhpur to which place he was transferred by the respondents. Secondly, there will be a vacancy for the post Judicial Member at Chennai with effect from 23.08.2016 in which the petitioner can be considered taking into consideration of his ill health. In view of such change of scenario, especially when there is a vacancy for the post of Judicial Member at Chennai with effect from 23.08.2016, the learned counsel for the petitioner prayed this Court to issue appropriate direction to the second respondent to consider retaining the petitioner at Chennai.

4. The learned standing counsel appearing for the respondents submit that there is going to be a vacancy with effect from 23.08.2016. Even as per the written instructions submitted by the learned counsel for the respondents, if a request is made by the petitioner, his claim for retention at Chennai will be considered sympathetically by the Honourable Chairman of the Central Administrative Tribunal, Principal Bench, New Delhi.

5. I heard the counsel for both sides and perused the materials placed on record. Admittedly, the petitioner is suffering from Cancer for which he is taking treatment at Chennai. On careful perusal of the written instructions submitted by the learned counsel for the respondents, which was also taken note of by this Court at the time of granting interim order on 02.03.2016, it is clearly stated that the Chairman of the Central Administrative Tribunal, Principal Bench, New Delhi would not have transferred the petitioner but for the transfer order issued to other Member from Calcutta, who is retiring on 22.08.2016. Therefore, now the said contingency is over with the retirement of the learned Member on 22.08.2016 and there is no impediment for the Chairman of the Central Administrative Tribunal, Principal Bench, New Delhi to sympathetically consider the request of the petitioner for retaining him at Chennai. In fact, in the written instruction, it was stated as follows:-

"Since the post of Member (J) will be available at Chennai w.e.f. 23.08.2016 and any request is made by Hon'ble Sh.K. Elango, Member (J) for posting at Chennai will be considered sympathetically by the Honourable Chairman."

6. In view of such stand taken by the respondents at the earliest point of time and in view of the fact that the post of Member (J) will be vacant from 23.08.2016, it is but fitting that the request of the petitioner, at this stage, for retaining at Chennai, by cancelling the order of transfer dated 12.02.2016 passed against the petitioner, would be reasonable in view of the severe ailment which he suffers. Therefore, this Court can only observe by reiterating the stand taken by the respondents to sympathetically consider retaining the petitioner at Chennai by cancelling the order of transfer dated 12.02.2016, transferring the petitioner to Jodhpur, on the ground of his ill health. This Court further observes that in view of the vacancy to exist from 23.08.2016, the request of the petitioner can be considered as expeditiously as possible, preferably before filling the post of Member (J) at Chennai on the retirement of the existing Member (J) on 22.08.2016.

7. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.
arr/rsh

-s/d-

Assistant Registrar (CS-VI)

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Government of India
Department of Personnel and Training
North Block, New Delhi.

2. The Principal Registrar
Central Administrative Tribunal,
Principal Bench,
No.61/25, Copernicus Marg,
New Delhi.

+ 2 ccs to M/s.M.Suresh Kumar, Advocate SR 47029

+ 1 cc to Mr.B.Rabu Manohar, Advocate SR 47131

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