

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2929 OF 2018

Swapnil Nath	...Petitioner
Versus	
Union of India and ors.	...Respondents

Mr. Kranti L.C. a/w. Mr. Sangram Chinnappa for the Petitioner.

Mr. B.B. Sharma a/w. Mr. A.R. Gole for Respondent No.1 to 4/ UOI.

CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. & M. S. SONAK, J.

DATE : 4th MAY 2018.

ORAL JUDGMENT:

1] Heard learned counsel for the parties.

2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the judgment and order 28th February 2018 made by the Central Administrative Tribunal (CAT), Mumbai in relation to transfer order dated 23rd February 2017 issued to the

petitioner.

4] After the matter was argued for some considerable time, we suggested that the parties explore the possibility of sorting out the same taking into consideration the difficulties being experienced by both the parties.

5] We are happy to record the reasonable approach of both the parties as well as their learned counsel. It is only on the basis of such a reasonable approach that most of the issues which arise in this petition have been sorted out and therefore, we are in a position to dispose of this petition on the basis of an agreed order substantially. There is one minor issue on which learned counsel for the respondents stated that he has no instructions to make any firm commitment, except to state that the case of the petitioner for return and reposting at Mumbai will be sympathetically considered once the petitioner completes two years posting at a tenure station of his choice.

6] The main issue in this petition relates to the transfer order dated 23rd February 2017 by which the petitioner,

who is an Architect with the Military Engineering Services (MES) is transferred from Mumbai to Nagpur. The petitioner, with considerable and natural grief, contends that his presence in Mumbai is essential to take care of his third son, now aged about 10 years, since, this son has been diagnosed with Retinopathy of Prematurity (ROP) and has lost complete vision of both his eyes, since the age of 6 months. The petitioner contends that since last seven years, this son receives education and care at the Helen Keller Institute, Mumbai, Special Institution for blind children with multiple disabilities. The petitioner contends that any interruption in such care and treatment at this crucial juncture, might, render what has been achieved over the last seven years, infructuous. The petitioner relies upon O.M. dated 6th June 2014 which provides that parents of physically challenged children be permitted to continue at the posting where treatment and rehabilitation of such children is in progress.

7] On the other hand, the respondents, contend that whilst they have both sympathy and consideration towards the petitioner's plight, they have already granted the

petitioner no less than three extensions, precisely by appreciating the petitioner's predicament as well as by taking into consideration the O.M. dated 6th June 2014 to the extent the same is found to be applicable. They submit that on the basis of such three extensions, the petitioner, has been retained at Mumbai for almost seven years without any interruption. They submit that apart from administrative constraints, there are other parents who also need facilities and treatment at places like Mumbai and therefore, it will not be possible for the respondents to retain the petitioner at Mumbai, almost indefinitely.

8] As noted earlier, on account of reasonable approach of both the parties and their counsel, the contentious issues have been narrowed down to a minimum.

9] The respondents, have reiterated their offer which is reflected in the reply filed by them on 26th May 2017 before the CAT. The respondents has stated that there was an interaction between the petitioner and the Chief Engineer and the Chief Engineer, told the petitioner that he had interacted with E-in-C's Branch and the DDG (Pers) and

that the petitioner could opt for a '*tenure station posting*'. In such a scenario, the petitioner could retain the accommodation at Mumbai and keep his family there. Upon completion of a tenure posting, as per policy, the petitioner could opt for '*choice station*'. In such a case, the petitioner could have once again opted for posting to Mumbai. We find that all this is specifically reflected in paragraph 1 of the reply dated 26th May 2017, more precisely, at page 75 of the paper book in the present petition.

10] In this court as well, on basis of written instructions dated 1st May 2018, which we place on record, the aforesaid offer was substantially reiterated by the learned counsel for the respondents. The communication dated 1st May 2018 makes reference to the existing policy, under which, any officer posted to the prescribed '*tenure stations*' can retain the accommodation in his previous station. Further, the communication states that as per the existing policy, after completing service at tenure station, the officer can give three choice station for posting from various tenure stations. Considering all the three chose stations given byt eh Officer Vis-a-vis the availability of

vacancy and other technical administration requirement, the department tries its best to accommodate the officer with in their choices, however, reverting the officer back to his previous station can always not be guaranteed. In the subject case, department can assure to take sympathetic view, to consider the posting of the Officer, as per his choice of station, after completing of his tenure posting to above mentioned states at Para 2(b). The communication further states that the duration of tenure posting shall be two years, where, the service of the officer concerned is more than ten years.

11] From the aforesaid, it is clear that the respondents, stand by their offer that if the petitioner opts for a tenure posting at the specified tenure stations for two years, then, during such period, the petitioner can retain the accommodation at Mumbai so that his family members can stay there. Further, upon completion of tenure posting of two years, the petitioner, can indicate three choice stations to which he can be posted. However, the respondents are unable to guarantee reposting at Mumbai, even though, they assure that a sympathetic view will be taken in the

matter.

12] The petitioner, on his part, agrees to a transfer to the Union Territories of Andaman and Nicobar Islands or Meghalaya, both of which are tenure stations specified in the communication dated 1st May 2018. All that he now requests is that after he completes the two years tenure posting, the respondents be directed to repost him at Mumbai, taking into consideration the position of his son, who is taking treatment and being rehabilitated in the Helen Keller Institute at Mumbai.

13] This means that there is a substantive agreement between the parties on most of the issues. The only issue on which there is no complete agreement is regards the commitment on the part of the respondents to repost the petitioner at Mumbai after the petitioner completes his tenure posting of two years at either Andaman and Nicobar Islands or Meghalaya.

14] We have perused the record and we have also heard the learned counsel for the parties in extenso. This is

because we were quite anxious to the plight of the petitioner's domestic circumstances on one hand and the obvious public interest involved in the respondents being able to decide the issue of transfers and postings of their officers. It is only on account of the reasonable approach adopted by both the parties and their learned counsel that the areas of controversy have narrowed down to a minimum.

15] Taking into consideration the fact that the petitioner is opting for a tenure posting only so that he can retain his accommodation at Mumbai, without which, further treatment and rehabilitation of his son may not be easily possible, we are of the opinion that the respondents must repost the petitioner at Mumbai after he completes two years tenure posting at Andaman and Nicobar Islands or Meghalaya, as opted for by him. In our opinion, such a direction, will be consistent with the spirit of O.M. dated 6th June 2014 upon which the petitioner relies. Such a direction, to a great extent, will balance the interests of the petitioner as well as the respondents. Although, we have no doubt that even the respondents, on their own, would

have considered the case of reposting the petitioner at Mumbai sympathetically, we are of the opinion that, in the peculiar facts and circumstances of the present case, there is no point in perpetuating any uncertainty on this issue. This is because such uncertainty is bound to weigh heavily upon the petitioner's family members, i.e., his wife and his three children. Now that the petitioner, despite his circumstances, and in deference to the reasonable approach of the respondents in granting the petitioner three extensions at Mumbai, has agreed to opt for a tenure posting, there is no point in letting any uncertainty persist on the issue of his reposting at Mumbai after the conclusion of the tenure posting.

16] Accordingly, we dispose of this petition with the following order, which, as we have indicated earlier, is mostly, an agreed order:

- (a) In terms of the option now exercised by the petitioner, the respondents, in supersession of the impugned transfer order dated 23rd February 2017, are at liberty to transfer the petitioner to a tenure

posting at Andaman and Nicobar Islands or Meghalaya for period of two years;

(b) In terms of the respondents policy of transfer to tenure posting the petitioner will be permitted to retain his accommodation at Mumbai so that his family members can stay at Mumbai during the petitioner's tenure posting as aforesaid;

(c) Upon the petitioner completing the tenure posting of two years as aforesaid, the respondents are directed to repost the petitioner at Mumbai ;

(d) Rule in this petition is disposed of in the aforesaid terms;

(e) All concerned to act on the basis of authenticated copy of this order.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)