

18.09.2024
D.L.38
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 22505 of 2024

Hav (Chef Hosp) Vijay Kumar (15415152Y)
Vs.
The Union of India & Ors.

Mr. Himangshu Ghosh,
Mr. Hemanta Kumar Das,
Ms. Poushali Das

....for the petitioner.

Ms. Rashmi Bothra,
Ms. Sarda Sha

....for Union of India.

The petitioner is a Havilder (CHEFHOSP) at Eastern Command Hospital, Kolkata. The petitioner is scheduled to retire on 31st July, 2026. The petitioner says that as per the applicable rules, the petitioner for the last 2 years prior to his retirement is considered to be in the Last Tenure Posting (in short, LTP). In case of LTP, the petitioner is required to be considered for being posted on his transfer near his home station. The LTP has been defined in the rules as the tenure approximately around 1 to 2 years before the retirement. The petitioner has been transferred by virtue of a transfer order dated 7th August, 2024 from Eastern Command Hospital, Kolkata to MH Dehradun. The petitioner says that since he is within 2 years from his retirement, he

ought to have been considered for being transferred within the home station.

On behalf of the respondents, it is submitted that though the transfer order was published on 7th August, 2024, but the decision for transfer was taken sometimes prior thereto. At the time when the decision for transfer was taken, the petitioner was not within 2 years from his retirement that is under LTP.

On behalf of the respondents, it is further submitted that there is a procedure to apply for the transfer order to be reconsidered in case of LTP. The petitioner has not applied for the same and has directly filed this writ petition. In the event the petitioner applies in the particular format, the respondents say that his transfer order dated 7th August, 2024 from Eastern Command Hospital, Kolkata to MH Dehradun will be reconsidered. The respondents are willing to supply the application format, if the same is not available with the petitioner.

In response to the submissions made by the respondents, the petitioner says that the date of decision is not reflected in the transfer order, but the transfer order has been issued within 2 years prior to the date of his retirement. Moreover, the petitioner has made a representation for reconsideration of his transfer order but the same has not been considered.

After hearing the parties and considering the materials on record, I find that justice will be subserved if I direct the petitioner to apply in the prescribed format to the respondent no.9 with a prayer to reconsider his order of transfer dated 7th August, 2024 within 30th September, 2024.

In the event such application is made, the respondent no.9 as also the other respondents whoever is involved in the decision making process regarding the transfer of the petitioner shall take a sympathetic and reasonable stand to reconsider the transfer order dated 7th August, 2024 in the light of the provisions of Last Tenure Posting (LTP). The reconsideration of the petitioner's transfer order, if an application for the same as directed is made, should be disposed of as expeditiously as possible.

Considering that the petitioner is within 2 years from his retirement, it is expected that the petitioner be posted within the home zone if there is no other embargo in law, in consonance with the provisions of LTP.

It is also made clear that in the event the petitioner does not make an application within 30th September, 2024, the transfer order dated 7th August, 2024 will at once be operative and the respondents

shall be entitled to take steps for enforcement of such transfer order.

In the event an application for reconsidering the transfer order dated 7th August, 2024 is made, the respondents shall not compel the petitioner to join at the transferred post at MH Dehradun till the petitioner's application is disposed of.

The respondents should also take no penal measure against the petitioner for not joining at the transferred place in terms of the transfer order dated 7th August, 2024 till the application as directed to be made by the petitioner on being made is not disposed of.

Nothing further remains to be adjudicated in this writ petition. The same is accordingly disposed of.

Since I have not called for any affidavits, the allegations contained in the writ petition are deemed to have not been admitted by the respondents.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Arindam Mukherjee, J.)