

Item No.32
14.06.2024
Court. No. 2
GB

*CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE JURISDICTION*

WPA 1142 of 2024

Ajoy Pal
VS
The Union of India & Ors.

Mr. Deborshi Dhar

...for the Petitioner.

Mr. Sudipto Kumar Mazunder, Ld. DSGI

Mr. Ajoy Kumar Singhania

...for the Union of India.

1. This is an unfortunate situation where a primary caregiver of a child who suffers from 90% intellectual disability, has been transferred to Lucknow. The petitioner has been transferred to 04 Bn SSB Lucknow from 33 Bn Ranidanga, Siliguri.
2. The petitioner's contention is that the child is going to a special school at Jyoti Nagar, Siliguri since 2020, namely, Goodricke School For Special Education. The petitioner approached the employer for being retained at Ranidanga in view of the condition of the child so that a proper upbringing in the facts and circumstances could be given to the child, with the aid and advice of the special educators.

3. After the petitioner was transferred to 04 Bn Lucknow, the petitioner gave a representation for being transferred either to Guwahati or Kolkata, so that special education of the child could continue in the same language (Bengali). The petitioner has drawn the attention of the Court to the transfer guidelines for the SSB personnel.
4. The petitioner submits that the office memorandum dated June 6, 2014 issued by the Ministry of Personnel, Public Grievance and Pensions, Department of Personnel and Training has been completely ignored by the authorities. It is further contended that due to disability of family members, employees could seek exemption from routine transfer or rotational transfer.
5. In this case, the serious disability of the petitioner's daughter was overlooked completely by the authorities. While cases of some other persons against proposed transfer had been considered and allowed, the petitioner's prayer was turned down. There is no doubt that there is a medical document which indicates that the petitioner's daughter is intellectually disabled to the extent of 90%. It is a very serious kind of disability. It is also extremely difficult for one person to nurture and look after such a child and

the support of the man of the house is necessary at every step.

6. The Court does not find any reason as to why the petitioner's representation had been turned down. However, the rules provides for an appeal. The petitioner preferred an appeal, which has not yet been disposed of.
7. It is submitted by Mr. Mazumder, learned Deputy Solicitor General that the appeal can be considered only if the petitioner joins the transferred post.
8. Under such circumstances, the writ petition is disposed of with a direction upon the petitioner to join the transferred post as directed by the authority. Immediately thereafter, the petitioner shall file a comprehensive appeal with all documents in support of his contention which have been placed before the Court and additional documents to show the condition of the child and the nature of treatment and education which the child is used to, especially because the child is already going to a school which is familiar to her. A child with 90% intellectual disability cannot be dislodged to a unknown environment where the language is unfamiliar. These aspects are required to be brought before the appellate authority and the appellate authority is required to decide the issue taking into consideration these aspects as per

the service rules as also the office memorandum dated June 6, 2014. The appeal shall be disposed of and decided within 10 days from filing thereof.

9. Accordingly, the writ petition is disposed of.

10. However, there will be no order as to costs.

11. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)