

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

**The Hon'ble Justice Madhuresh Prasad
and
The Hon'ble Justice Ajay Kumar Gupta**

W.P.C.T 142 of 2025

**Chandramoni Pakhira
Vs.
Union of India & Ors.**

For the Petitioner : Mr. Kallol Basu,
Mr. Suman Banerjee,
Mr. Atraya Chakraborty

For the U.O.I. : Mr. Manabendranath Bandyopadhyay

Judgment on : July 11, 2025

MADHURESH PRASAD, J. :

1. The writ petitioner was the applicant before the Central Administrative Tribunal, Kolkata Bench (hereinafter referred to as the "Tribunal") in O.A. No. 357 of 2025. The Tribunal has dismissed the O.A. by a judgment dated 09.06.2025, which is the subject matter of the present writ proceedings.
2. The writ petitioner, a Senior Accounts Officer in the Defence Accounts Department was posted at Kolkata. She was transferred from Kolkata to Shillong by an order dated 29.11.2024. She represented seeking reconsideration of the transfer order, which

was rejected by the authorities on 21.01.2025. The order was put to challenge in O.A. No. 164 of 2025, wherein the transfer order was also assailed. The O.A. was disposed of by an order dated 31.01.2025 setting aside the order dated 23.01.2025 whereby and whereunder the petitioner's representation had been rejected, with a direction to the competent authority to reconsider the representation by a reasoned and speaking order. The Tribunal was pleased to allow the applicant to continue at her post in Kolkata till communication of decision on the representation.

3. In compliance of the Tribunal's order the authorities passed a reasoned and speaking order dated 04.03.2025 and the applicant was relieved from her post in Kolkata thereafter on 10.03.2025.
4. These facts and circumstances has given rise to a second original application being filed by the petitioner applicant for the relief of quashing of the speaking order dated 04.03.2025 as also the relieving order dated 10.03.2025. The applicant also sought quashing of the transfer order dated 29.11.2024. The Tribunal has considered the petitioner's grievance broadly on four grounds, as regards the transfer order:

- i. *Her husband is working as Lab Attendant in an institute affiliated to the State Government at Hooghly. His job is non-transferable.*
- ii. *She has an 8-year old daughter who is pursuing her studies in Kolkata.*

iii. *Her aged parents are dependent on her.*

iv. *Her father is suffering with certain ailments namely acute coronary syndrome, chronic kidney disease, type 2 diabetes etc.*

5. It was her case before the Tribunal that earlier also she was transferred from Kerala in 2013 and again she has been transferred from Kolkata to Shillong.
6. Other employees are continuing in Kolkata office since a long time, and much before the petitioner was transferred to Kolkata in 2017. They are being continued in Kolkata office but the petitioner has been transferred without considering the above noted hardships. She also claimed the transfer order to be in violation of the Department of Personnel and Trainings (DoPTs) O.M. dated 30.09.2009 and 24.11.2022. Though an option was invited from the petitioner and the petitioner had given three choices at Kolkata, Barrackpore and Kolkata, the authorities have ignored such option and proceeded to transfer her to the Civil Defence Accounts Office in Shillong. The applicant relied upon the O.M. dated 30.09.2009 and 24.11.2022, as well as guidelines dated 28.03.2014 to submit that the guidelines contained therein are in the nature of executive instructions which were required to be scrupulously followed.
7. Mr. Kallol Basu, learned Advocate for the applicant petitioner, has placed specific reliance on the General Guidelines/ transfer policy

communicated to the Offices under the CGDA, on 28.03.2014. He submits that the guidelines speaks of a normal tenure of 3 years, subject to discretion to reduce the normal tenure, but not below two years in exceptional cases.

8. Clause 4(ii) contemplates:

“4. Manning of vacancies at hard/tenure stations:

Selection of Staff for manning vacancies at hard/ tenure stations will be made from amongst the following:

...

(ii) Station seniors who have never served at hard/tenure stations on inter-se seniority basis determined on the basis of length of service at present station(s) beyond the minimum tenure prescribed.”

9. He has also taken us through various other provisions contained in this guideline to contend that the guideline provides the complete procedure taking into consideration the relevant circumstances and parameters requiring consideration while effecting transfers. The petitioner’s claim for exemption from transfer was also covered by Clause 8 of this guideline which contemplates consideration of the ground of child’s education and also the ground that the spouse is serving outside the department; and under such circumstances to give posting at the same station as the spouse, as far as possible. He has placed specific reliance on Clause 8.2 in this regard. Insofar as the applicant being a lady, he has placed reliance on Clause 8.6 of the guideline to submit that the same contemplates her posting at a station of her choice or at a

convenient distance from the station of present posting to the extent feasible. Clause 8.6 reads:

“ 8. Exemption from transfer/deferment:

...

8.2. Where both the husband and wife are serving in the Department, they shall be posted to the same station, as far as administratively possible, keeping in view the spirit of orders issued by DoPT on the subject.

Husband and wife teams when one of them is serving outside the Department under other Central Government Department/ Public Sector Undertakings/ State Governments, may as far as possible and within the constraints of administrative convenience as stated above, be considered for posting at the same station or if there is no vacancy/ post in that station to the State where the other spouse is posted. These shall also be governed as per the DOP&T guidelines on the subject, as far as administratively feasible.

...

8.6. Care shall be taken to post ladies at a station of their choice or at a convenient distance from the station of present posting to the extent feasible. In such cases they shall also be eligible for repatriation to their choice station upon completion of two years and priority shall be given to such cases.”

10. Mr. Basu has further submitted that the guidelines cast an obligation on the authority to accord consideration to these factors. However, petitioner's request for deferment of transfer, was rejected without according any consideration to the grounds urged for deferment. The order rejecting the petitioner's case is devoid of any reasons in support of the conclusion.

11. In support of his contention he has relied upon decision of the Apex Court in the case of **Sivanandan C.T. and Others vs. High Court of Kerala and Others** reported in **(2024) 3 SCC 799** to

submit that the petitioner had a legitimate expectation, for consideration of his representation as per the guidelines. The public authority who rejected the representation is required to objectively demonstrate that its decision was in the exigency of administration in larger public interest by placing relevant material before the Court. The rejection in the instant case, however, is an arbitrary decision which cannot withstand the test of fairness and objectivity contemplated in the report relied upon. He has also referred to decision of the Apex Court in the case of **B.S.Minhas vs. Indian Statistical Institute and Others** reported in **(1983) 4 SCC 582** in this regard.

12. According to him the Tribunal has accepted the order rejecting his claim for deferment of transfer only on a consideration of the General Principles of Law as regards transfer being an incidence of service and the undeniable propositions of law derived from various judgments of the Hon'ble Apex Court that a challenge to a transfer order should normally be eschewed and are not to be countenanced by the Courts or Tribunals as an appellate authority over the transfer order.
13. He submits that the Tribunal has erred by not considering the matter in proper perspective. There is no objective consideration of the petitioner's claim in terms of the guidelines dated 28.03.2014.
14. Learned Counsel for the Union of India on the other hand, submits that there is no infirmity in the decision of the Tribunal. The Tribunal has taken into consideration the settled legal position

that an employee has no right to continue at a particular place since transfer is an incident of service. The present petitioner has been posted at Kolkata since 2017, nearly 7 years.

15. The petitioner's service in the Defense Accounts department entails an all India transfer liability and the strength of the posted employee at Kolkata station was more than the required strength. The exemption from transfer claimed by the petitioner is not available as a matter of right.
16. The ground of posting of the applicant/ petitioner's spouse, and an 8-year old child's education is not covered by any clause/ provision in the policy relied upon by the petitioner. Even in an appropriate case where such grounds exists, the same does not confer an absolute right, and is subject to administrative feasibility and various other factors of administration which have been considered by the authority.
17. Insofar as her ailing father the authority has considered this aspect also and has recorded in the speaking order that CGHS facility is available for his treatment at Shillong.
18. The authorities have also informed the Tribunal regarding other aspects considered, duly noted in the order of the Tribunal. The authorities have stated that many of the officers with whom the petitioner is claiming *inter se* consideration, having regard to their seniority of tenure at Kolkata, have been posted at Kolkata after posting at hard tenure stations like Port Blair, Selling, Tenga Valley, Daporjio, Jagdalpur, Pinegrove and Gangtok. They have

thus been brought back to their choices station in terms of prevalent policy.

19. It is also the case of the respondents that the Office to which the petitioner has been transferred in Shillong deals with Pay and Allowances of Assam Rifles Other Ranks and if the transfer is not carried out then work will suffer heavily at the Shillong office.
20. The transfer order is not in conflict with any statutory provision, nor is there any *mala fide* or extraneous consideration established by the petitioner.
21. Insofar as the claim of the writ petitioner applicant that 50 people have been allowed exemption on the ground of spouse, the authorities have taken a stand before the Tribunal that the persons have been retained after a due examination by the Defense Accounts Placement Board (DAPB). All the exemptions are on specific grounds and are not permanent, but subject to verification in the subsequent DAPB. The exemptions have been granted on the basis of consideration of the rules and guidelines.
22. Insofar as the specific grounds urged on behalf of the applicant petitioner regarding her child's education, it has been submitted by the respondents before the Tribunal that exemption from transfer is not contemplated in the case of an employee whose 8-year old child is studying in class 3. The policy requires consideration of child's education for deferment of transfer only if the child is in class 10th/ 12th. The petitioner, therefore, cannot claim any consideration on this ground.

23. Insofar as her father's ailments, the authorities have stated that the petitioner is placing reliance on the guidelines, which contemplates consideration for exemption from transfer when the employee or member of family is suffering from other serious ailments specified/ enumerated therein, subject to the disease being certified by authorized specialist and supported by medical document, which also is not complied by the petitioner.
24. Insofar as the spouse being employed outside the department, this ground also has been explained by the authorities before the Tribunal with reference to the office memos issued by DoPT in this regard, which requires that both the spouses should be Government employees. In the case of the applicant's, her husband is employed in a Government sponsored school and cannot be considered as a Government employee. The exemption claimed on the ground of a spouse being employed outside the department, therefore, has also been shown to be irrelevant to the claim of the applicant petitioner.
25. Upon consideration of the rival submissions and the stand of the parties as well as the material on record including the affidavits filed before the Tribunal, and the order of the Tribunal we find that the four grounds urged by the applicant petitioner to claim deferment of her transfer have been adequately explained before the Tribunal as being unavailable to the petitioner to claim deferment or exemption from transfer. We are not inclined to interfere with the findings of the Tribunal in this regard.

26. This brings us to the next question based on submission of the learned Advocate for the applicant petitioner that the authorities have not adhered to the guideline requiring a consideration of seniority of tenure at a particular place at the time of transferring or at the time of considering exemption from transfer. It is submitted that 50 persons whose seniority of tenure at Kolkata is much more than the petitioners have been retained at Kolkata. If a transfer is to be effected from Kolkata, then as per the guideline one from amongst those 50 persons who are at the place of posting (Kolkata) since much prior to the petitioner ought to have been transferred. Insofar as this ground is concerned the Tribunal has taken note of the stand of the authorities in this regard that the 50 persons who have been retained at the station are after due consideration by the DAPB. Many of these persons have served a hard tenure earlier and, therefore, are entitled to continue at the station (Kolkata). Insofar as the others are concerned also they have stated that the consideration of their retention at Kolkata is founded on specific grounds available to them in terms of the guidelines. They have specifically denied the retention of 50 persons is without sufficient cause; and stated that the same is subject to a periodical review of such retention. Their retention is not forever.

27. The authorities have further taken a stand before the Tribunal that these 50 persons have not been made parties to the O.A. From the order of the Tribunal it further appears that a detailed information

regarding the reasons in respect of retention of the employees at Kolkata has been submitted to the Tribunal. It has also been specifically stated by the respondents, which stand is recorded in the order of the Tribunal that not a single exemption out of those 50 persons has been provided on spouse ground.

28. The learned Counsel for the respondent has informed us also that since consideration of these 50 persons is on various parameters specified in the transfer guidelines, which are very personal to the employee, the authorities have refrained from placing those grounds on record, when those persons have not been made party to the present proceedings before the Tribunal. We find no infirmity in such stand of the respondents before the Tribunal. It was for the petitioner applicant to implead such of the employees out of the 50 persons, who according to her has been given an undue advantage, if any. The applicant has chosen not to implead anyone and made general and omnibus allegations regarding their retention being unjustified only on the ground that they are senior to her on the ground of tenure at the present place of posting.

29. We find from the policy that seniority of tenure, *ipso facto* is not a determining factor. There are a host of other factors, some of which are apparently factors which are very personal to the employee as it concerns their mental/ medical condition, the family set up including dependency of family members etc. We, therefore, appreciate the stand of the respondents in not disclosing such reasons, behind the back of the employees.

30. Regarding the decisions relied upon by the learned Counsel for the petitioner in support of his contention that the guidelines for transfer contained in the circulars issued by the Department were required to be observed, we find from the stand of the parties recorded in the order of the Tribunal that the authorities have found the petitioner's claim to be untenable on the parameters contained in the guidelines. The authorities have also justified retention of the 50 persons as being founded on a consideration of the specific grounds available to the 50 persons with reference to the transfer policy.
31. We, therefore, find that based on the stand of the parties before the Tribunal there is no apparent deviation from the guidelines. The two judgments relied on by the learned Counsel for the petitioner lay down an undeniable proposition of law that when a legitimate expectation arises, as in the instant case claimed on the basis of the guidelines the authorities are obliged to accord consideration in terms thereof. As noticed above the authorities have demonstrated substantial compliance with the guidelines before the Tribunal.
32. Having demonstrated substantial compliance they have also pointed out with reference to the guidelines itself that the guidelines contained an explicit clause that the guidelines are an indicative guidelines and are not intended to create any entitlement.
33. In this connection we also considered it appropriate to take into consideration a decision of the Apex Court in the case of **Bank of**

India v. Jagjit Singh Mehta reported in **(1992) 1 SCC 306**.

Wherein the Apex Court was considering a guidelines requiring two spouses to be posed in one place as far as practicable. In this context the Apex Court observed:-

“5.....No doubt the guidelines require the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees.”

34. From the facts and circumstances of the case and stand of the parties taken before the Tribunal, we find there is substantial compliance with the consideration as contemplated under the scheme in terms of the decision in the case of **Jagjit Singh Mehta** (Supra). At the same time, having considered decision of the Apex Court in the case of **Jagjit Singh Mehta** (Supra), we find that the guidelines do not enable the petitioner to claim continuance at Kolkata as of right since the authorities do not consider her continuance feasible.

35. The order of the Tribunal in our opinion, therefore, has not caused any miscarriage of justice. There is no ground for interfering with the decision of the Tribunal in exercise of our limited jurisdiction of judicial review as an appellate authority over the decision of the authorities, or the Tribunal.

36. The writ petition is dismissed. Interim order, if any, stands vacated.

37. There will be no order as to costs.

38. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Ajay Kumar Gupta, J.)

A.D.