

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**



Hearing through video conferencing

O.A.61/913/2020

Order reserved on 14.10.2020
Order Pronounced on 26.10.2020

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)
HON'BLE MR. ANAND MATHUR, MEMBER (A)

Vijay Kumar Sethi, Age 59 plus years, S/o Sh. Jai Gopal Sethi, R/o H.No.77, Vikas Lane No.3, Talab Tillo, Jammu 180002.

.....Applicant
(Advocate: Mr. Abhinav Sharma)

Versus

1. Union Territory of J&K, Through Principal Secretary to Govt., Public Works (R&B) Department, Civil Secretariat, Srinagar.
2. (Shailendra Kumar), IAS Principal Secretary to Govt., Public Works (R&B) Department, Civil Secretariat, Srinagar.
3. Manzoor Hussain, Chief Engineer, PMGSY JKRRDA Jammu.
4. Joginder Pal Saraf, The then Executive Engineer PMGSY Division Billawar.

.....Respondents
(Advocate: Mr. Amit Gupta)

O R D E R

Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member (J): -

Applicant, Vijay Kumar Sethi, aggrieved by impugned order dated 29.09.2020 whereby his request for being retained as AEE, PMGSY, Billawar has been rejected and he has been directed to report as AEE, PMGSY Kishtwar has challenged the said order in the present O.A.



2. The case of the applicant is that vide order dated 21.08.2020 whereby he was transferred as Incharge, AEE, Kishtwar was challenged by filing O.A. No. 563/2020 in this Tribunal and keeping in view that the applicant is going to retire in few months and also taking note of the order passed by Division Bench of Hon'ble High Court of J&K dated 15.05.2018 in LPA No.25/2018, this Tribunal vide order dated 27.08.2020 directed the respondents to allow the applicant to continue on his present place of posting i.e. Billawar.

3. Despite knowledge of the order dated 27.08.2020, the controlling officer of the applicant did not allow him to discharge his duty at Billawar and the said controlling officer informed the applicant by way of e-mail that he should relieve on 31.08.2020. It was the case of the applicant that he could not have been relieved on 31.08.2020 keeping in view order dated 27.08.2020. The O.A. was listed before the Tribunal on 11.09.2020 and the Tribunal taking note of the action of the controlling officer directed the respondents to place the applicant back to his original place of posting at Billawar. However, the order dated 11.09.2020 was not conveyed by the D.A.G. to the respondents and respondent No.3 vide order dated 17.09.2020 addressed to the respondent No.1 informed him that applicant despite his transfer to Kishtwar has not joined till date. Based upon this communication dated 17.09.2020, respondent No.2 passed order dated 18.09.2020 whereby the applicant was placed under suspension, pending enquiry.



4. Aggrieved by the order of suspension dated 18.09.2020, the applicant filed O.A. No. 845/20250 and the case was posted for 26.09.2020 when Mr. Amit Gupta, learned counsel for respondents assured the Tribunal about the withdrawal of the order of suspension and accordingly vide order dated 25.09.2020, the order of suspension of the applicant was rescinded.

5. It is the case of applicant that despite revocation of the order of suspension dated 25.09.2020, respondents started preparing grounds for transferring the applicant on one grounds to other inasmuch as respondent No. 3 vide letter dated 26.09.2020 addressed to respondent No.1 conveyed that the applicant was unable to achieve the target of sub division, Billawar for the year 2019-20 and 2020-21. Thereafter, respondent No.2 passed the impugned order dated 29.09.2020 whereby his request for being retained as AEE, Billawar was rejected on account of poor performance and transferred him to Kishtwar once again. The applicant has challenged the impugned order on number of grounds that his previous transfer order was challenged by him on the ground that he had few months service left for superannuation and accordingly, the Tribunal by way of interim order dated 27.09.2020, directed the respondents to allow the applicant to discharge his duty at Billawar. It has been argued by the learned counsel for the applicant that the respondents with malafide intention have cooked up the case of poor performance as an excuse to transfer him to Kishtwar. It has been further argued by the learned counsel for the applicant that the statement of target of achievement based on record would show that applicant at Billawar had



achieved target of 10% whereas target of 1.59% and 18.63% was achieved by the Engineer at Basohil and Kathua respectively. It has been argued by the learned counsel for the applicant that despite knowing the fact that applicant is going to retire in few months and that the Tribunal had restrained the respondents from transferring him to Kishtwar, the respondents in a punitive manner with an intention to impose punishment upon him for approaching the Tribunal has taken this step of passing the impugned order transferring him from Billawar to Kishtwar which is highly arbitrary and perverse in nature. More so when the respondents previously order of transfer was stayed on the ground that applicant has few months to superannuation.

6. It has been further stated by the learned counsel for the applicant that the plea of poor performance raised by the respondents to justify the transfer of applicant from Billawar to Kishtwar is a blatant misuse of the administrative power by the respondents. In fact, there would be number of cases where the Government offices have poor performance and this plea of poor performance cannot be used as justification to transfer the applicant from one place to another. More so, when the respondents would be at liberty to proceed against him under CCS (CCA) Rule for poor performance. Therefore, learned counsel for applicant submits that the operation of impugned order be stayed and applicant be permitted to work at Billawar. Learned counsel for applicant has also referred to the Annexure-11 wherein the target achieved by the sub division Billawar Basohil and



Kathua have been reflected. He has argued that looking to the chart (Annexure-11), it would clearly show that sub division Basohil has achieved a target of 1.59% which is much below target achieved by the Billawar, but no action has been taken by the respondents regarding Incharge sub division Basohil and this also reflects the malafide nature of the transfer order and has been made a tool of punishment for approaching the Tribunal against his transfer. It was submitted by the learned counsel for applicant that if the poor performance of the applicant is the sole reason for his transfer, he could have been adjusted at Basohil or some nearby station since the applicant is going to retire in a short while.

7. On the other hand, learned Addl. A.G. submitted that the impugned order has been passed on the ground of poor performance of the applicant and there is no malafide intention on the part of respondents to transfer the applicant to Kishtwar. It was also argued by the learned A.A.G. that citing of poor performance by other engineers/officers cannot be used to turn this O.A. into a Public Interest Litigation, as such, applicant has not been able to make out a *prima facie* case in his favour for staying the transfer order.

8. We have heard and considered the arguments of learned counsel for the applicant and learned Addl. A.G. for State and gone through the material on record. We would not like to enter into the merits of the case at this stage. The facts have been argued by both the learned counsel for

applicant and learned Addl. A.G. for the State. The facts speak for themselves.



9. Looking to the pleadings of the applicant, we would have been inclined to stay the transfer order of the applicant, but it has been brought to our notice that the applicant stands relieved from his place of posting at Billawar. We only observe that the respondents should reconsider the entire issue of the applicant since it is a duty of the administration to look after its employees fairly.

10. The matter requires a quick disposal. Therefore, learned A.A.G. would ensure that the counter affidavit is filed within a period of two weeks.

11. Put up file for further order on 02.11.2020.

(ANAND MATHUR.)
MEMBER (A)

sk/s-

(RAKESH SAGAR JAIN)
MEMBER (J)