

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH.

No. O.A. 1145 of 1996.

Present : Hon'ble Dr. B. C. Sarma, Member (A)

Hon'ble Mr. D. Purkayastha, Member (J)

ABANI BHUSAN BISWAS

Vs.

1. Union of India, through the Secretary, Min. of Water Resources, Shram Shakti Bhawan, Rafi Marg, New Delhi.

2. The Chairman, Cetnral Ground Water Board, New CGO Complex, Faridabad, Haryana.

3. The Chief Engineer & Member, Central Ground Water Board, New CGO Complex, Faridabad, Haryana.

4. The Director (Admn.), C.G.W.B, New CGO Complex, Faridabad, Haryana.

5. The Scientist D (Director), Eastern Region, C.G.W.B., 24, Parrk Street, Calcutta - 16.

... Respondents.

For applicant : Mr. P. Chatterjee, counsel.

For respodnents : Ms. K. Banerjee, counsel.

herd on : 15.9.97 :: ordered on : 15.9.97.

O R D E R

B.C.Sarma, AM

The dispute raised in this application is about the impugned order of transfer of the applicant from Calcutta to Bhubaneswar which was passed by the respondents on 20.5.96.

2. The applicant is a Senior Surveyor and he was initially joined as a Junior Surveyor under the Central Ground Water Board in the year 1970. He was transferred as a Senior Surveyor from Calcutta to Ranchi and ,thereafter, he was transferred to Cuttack to Bhubaneswar. He was again brought back to Calcutta in June, 1985 and since then he has been continuing as such. The applicant has been given promotion

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along with others and on promotion he has been transferred in the post of Senior Technical Assistant (Surveyor) (Non-gazetted) from Calcutta to Bhubaneswar by the impugned order, as set out in annexure A2 to the application. The applicant contends that his name is at serial No.3 of the impugned order whereas, one Shri S.P.Chaudhary, is at serial No.7. By the same order he has been transferred to Bhubaneswar while said Shri S.P.Chaudhary was ^{Sent to Grubalati} working. The representation filed by Shri S.P.Chaudhuri was considered and he has been accommodated in Calcutta whereas the applicant has been transferred to Bhubaneswar and his representation was rejected. The applicant also contends that, he being senior to said Shri S.P.Chaudhury, he has a right to get the accommodation and, accordingly, the impugned order of transfer should be modified to accommodate him. It is also his contention that the impugned order is against the principle of equity and being aggrieved thereby, the instant application has been filed with the prayer that a direction be issued on the respondents to modify the transfer order by allowing the applicant to continue in Calcutta on promotion.

3. The case has been opposed by the respondents by filing a reply which we have perused.

4. A rejoinder has been filed by the applicant stating therein that he has been debarred from promotion by the order dated 4.3.97 and that order has been annexed to the rejoinder.

5. We have heard the submissions of the 1d. counsel for both the parties, perused records and considered the facts and circumstances of the case. Mr. P.Chatterjee, 1d. counsel for the applicant, submits that as per the decision of the Hon'ble Supreme Court in the case of Chief General Manager, Telecom, NE Circle & Anr. Vs. Rajendra Ch. Bhattacharjee, reported in 1995 (2) SCC 532 it is a fit case where the Tribunal should interfere with the impugned order. However, Ms. K.Banerjee, 1d. counsel for the respondents, cited a catena of decisions of



the Hon'ble Supreme Court in support of her submission that since the transfer order is not mala fide the Tribunal has no jurisdiction to interfere with it.

6. We note that the applicant has been functioning in Calcutta as Senior Surveyor since 1981, that is more than 16 years at a stretch. We have been given to understand that Shri S.P.Chaudhury is also functioning in ^a ~~similar~~ ^{similar} post and he has been in Calcutta for a lesser tenure. Whatever that may be, we would like to observe that a right of a government servant rises not from comparison but from specific laws and rules made ~~therein~~ ^{therein} ~~not referred~~. The applicant has not been able to show before us any guideline or instruction to the effect that a senior person despite of his longer period of service at a particular place will have to be retained in the same place on promotion. WE note that there is no specific allegation of mala fide in this case and, as we have already discussed, the applicant has failed to show that the impugned order has been repugnant to any provision of instruction, rule or guideline. The Tribunal in a judicial review does not sit as a super-appellate authority, but it only scrutinise~~s~~ the manner of ^{arising at} ~~arising of~~ a particular decision and whether that decision is ^{reasonably} ~~correct~~ and has been taken according to law. We, therefore, find that the impugned order has been passed by the authorities on certain administrative considerations and on such consideration the authorities concerned have ordered that the applicant should be transferred to Bhubaneswar. Mr. Chatterjee submits that the post in Bhubaneswar was subsequently transferred to Delhi. However, we note that on the date on which the impugned order was passed, the post was there and, therefore, we cannot say that the impugned order was passed without any application of mind. Since the applicant did not join at Bhubaneswar for a long period, in public interest the post was transferred from Bhubaneswar to Delhi. It is also not the contention of the applicant that for want of post he could not join at Bhubaneswar. Ms. Banerjee, 1d. counsel for the respondents,

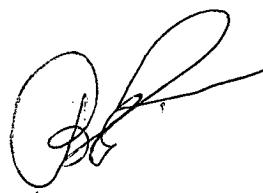


gives us to understand that if the applicant intends to go ~~at~~ to Bhubaneswar, before that, the post should be transferred. We are, therefore, of the view that the impugned order has not committed any infraction of any statutory rule or circular. In fact, there is no infirmity in the impugned order and, therefore, the application is liable to be dismissed.

7. In view of the above, the application is dismissed without passing any order as regards costs.

8. We, however, note that the respondents have issued an order dated 4.3.97 debarring the applicant from promotion for a period of one year. Ms. Banerjee, 1d. counsel, submits that since the applicant did not join the transferred post at Bhubaneswar, he is automatically debarred from getting promotion for a period of one year. No such order should have been passed by the respondents after the application was admitted for hearing on 11.10.96. Since that debarment order has not been assailed by the applicant, we are not inclined to go into the ¹⁵ legality or otherwise. But we note that the said order debarring the applicant from getting promotion has violated the provisions of Section 19 of the A.T. Act, 1985. The said section provides that after admission of an application for hearing all proceedings thereon shall be abated. If the respondents thought it necessary to debar the applicant before the admission of the application, they could have done so; but, after the application was admitted, they have no right to take ^{further} any proceeding. Accordingly, we direct the registry to issue a contempt notice to Shri K.S. Bhaskar, Administrative Officer, Ministry of Water Resources, Central Ground Water Board, NH-IV, Faridabad, Haryana, to show cause as to why contempt of court proceeding should not be drawn up against him. Since this case has been disposed of, a separate file on CP(C) may be opened. The CP(C) is fixed for orders on 27.10.97.


(D. Purkayastha)
MEMBER (J)


(B. C. Sarma)
MEMBER (A)