

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

LUCKNOW

ORIGINAL APPLICATION No. 668/92

Virendra Swarup Bhatnagar

Applicant

versus

Union of India & others

Respondents.

HON. MR. S.N. PRASAD, JUDICIAL MEMBER.

The applicant has approached this Tribunal for restraining the respondents from making and enforcing the relieving order dated 16.12.92 on the basis of previous order dated 27.10.92 which is "non-est", and for further directing the respondents to post the applicant with promotion to the next higher grade, in case the applicant is asked to proceed on transfer; and as per seniority list of UDC's the applicant stands at serial No.3.

2. Succinctly, the facts of the case, interalia, are that the applicant has been posted and working as ^{Upper Division} Clerk under respondent No. 4(Director, Northern Region, Central Ground Water Board, Mahanager, Lucknow). Prior to that the applicant was posted at Hyderabad, Nagpur and various other places. The applicant has good service record. It has further been stated that the applicant had filed a petition under Article 226 of the Constitution of India before High Court, as the Secretary General of CEC was violating the provisions of constitution of All India Central Ground Water Board Employees Association and that was disposed of by the High Court with the

observations in favour of the applicant vide Annexure 2, but that has infuriated the office bearers of the above Association; and the impugned transfer order was passed in violation of policy guidelines and rules and provisions arbitrarily with a view to harm and harass the applicant. It has further been stated that the directions passed by this Tribunal as per judgment and order dated 25.11.92 in previous O.A. No. 596/92 which was filed by the applicant, were not followed by the respondents in proper perspective and representation of the applicant was arbitrarily rejected by the respondents as per order dated 7.12.92, which is Annexure 7. It has further been stated that though the above order dated 27.10.92 does not exist after disposal of the above O.A.No. 596/92, the respondents have illegally and arbitrarily relieved the applicant on the basis of that order and as such the applicant has approached this Tribunal for the relief sought for as indicated above.

3. The respondents have resisted the claim of the applicant with the contentions, inter alia, that the ^{~impugned~} transfer order dated 27.10.92 in O.A. No. 596/92 was carefully considered by this Tribunal and after considering all view points direction was issued to the respondents to decide the representation of the applicant by reasoned and speaking order in accordance with extant rules and regulations within a period of two months; and that has been done by the respondents and the representation of the applicant has been rejected rightly after considering all the view points as

mentioned in his representation, and thereafter the applicant has been relieved as per order dated 16.12.92. It has further been contended that the aforesaid previous transfer order dated 27.10.92 still exists as that was not cancelled by this Tribunal by the aforesaid judgment and order dated 25.11.92. It has further been contended that since the applicant has been relieved there is no merit at all ⁱⁿ this case and in view of the above circumstances, the application of the applicant is liable to be dismissed.

4. I have heard the learned counsel for the parties and have thoroughly gone through the record of the case.

5. The learned counsel for the applicant while drawing my attention to the contents of the application and the papers annexed thereto has argued that the respondents have not considered all the view points as mentioned in the representation of the applicant; and has further argued that the relieving order passed by the respondents, as referred to above, is not valid and legal order, in as much as the above transfer order dated 27.10.92 does not exist after disposal of O.A. No. 596/92; and has further argued that the impugned transfer order is colourable exercise of power and has been passed at the behest of the office bearers of the Association as referred to above; and as such the relieving order be quashed and the relief sought for be granted.

6. The learned counsel for the respondents while drawing my attention to the pleadings of the parties and to the order dated 7.12.92, whereby the representation of the applicant has been

rejected; and has argued that all the view points as set out in the representation of the applicant were carefully considered by the respondents and after pondering over all aspects of the matter the respondents rejected the ^{representation} ~~application~~ of the applicant and thereafter the applicant was relieved rightly and properly by the respondents ; and has further argued that a careful perusal of the judgment and order passed by this Tribunal in the aforesaid O.A. No. 596/92 dated 25.11.92 nowhere shows that the above transfer order dated 27.10.92 was cancelled and as such the application of the applicant be dismissed.

7. This is worthwhile making mention that the fact that a careful perusal of the order dated 7.12.92 passed by the respondents shows that the respondents had carefully considered all the problems and all the view points as set out in the application of the applicant ; and after considering all the view points and aspects of the matter the representation of the applicant was rejected.

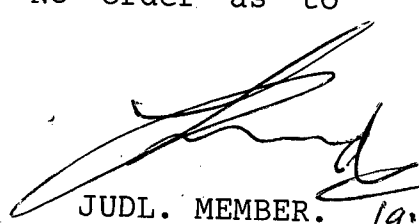
8. This fact should also not be lost sight of that from the perusal of the record and from the perusal of judgment and order dated 25.11.92 passed by this Tribunal in previous O.A. No. 596/92 it is apparent that the above transfer order dated 27.10.92 was not cancelled but was stayed till decision of the above representation of the applicant by the respondents. Thus, from the scrutiny of the entire material on record it is

2

-5-

apparent that the above transfer order dated 27.10.92 was not cancelled but was stayed and as such the argument of learned counsel for the applicant to the effect that the above transfer order is "non-est" and does not exist and on the basis of the above, ^{~ order dated 27.10.92 ~ the impugned} ~~the~~ relieving order dated ~~27.10.92~~ ^{16.12.92} is illegal and invalid, does not appear to be sound and tenable.

9. Having considered all the view points and keeping in view all aspects of the matter, I find that the application of the applicant is devoid of merit and is hereby dismissed. No order as to costs.


JUDL. MEMBER.

19.7.93

LUCKNOW: DATED 19.7.93

Shakeel/