

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO.291/00726/2014

Date of Order: 28.4.2015

CORAM

Hon'ble Mr. Justice Harun-Ui-Rashid, Judicial Member

Diwakar Goyal son of Suresh Chandra Goyal, aged around 48 years, resident of 121/III, C.P.W.D. Colony, Nirman Vihar-I, Sector-2, Vidyadhar Nagar, Jaipur. Presently working as Officer Surveyor, Survey of India, Jaipur.

.....Applicant

(By Advocate Mr. Amit Mathur)

VERSUS

1. The Union of India, through its Secretary, Ministry of Science and Technology, Department of Science & Technology, Technology Bhawan, New Mehroli Road, New Delhi.
2. The Surveyor General of India, Survey of India, Block No.8, Hati Bar Kala Estate, Dehradoon (Uttrakhand)

.....Respondents

(By Advocate Mr. Mukesh Agarwal)

ORDER

The applicant has challenged the Annexure A/1, A/2 and A/3 dated 28.10.2014, 29.10.2014 and 27.11.2014 respectively to quash and set aside the same and to issue directions to respondents to allow the applicant to continue at his place of posting i.e. as Officer Surveyor, Jaipur. The applicant has been transferred to Gujarat, Daman and Deev, GDC, Gandhi Nagar from RGDC, Jaipur vide Annexure A/1 order dated 28.10.2014. The applicant moved this Tribunal through OA No.291/00599/2014. The Tribunal passed the

order dated 5.11.2014 directing the respondents to decide the representation of the applicant with a reasoned and speaking order. The order passed by the competent authority in compliance of the order of Tribunal, Jaipur Bench is Annexure A/3 dated 27.11.2014.

2. The learned counsel for applicant submitted that transfer of the applicant vide Ann.A/1 order is not for administrative exigency. Annexure A/1 order, a copy has been sent to Vigilance Cell for information of the transfer of the applicant. It is also pointed out that the respondents have relied on Annexure A/5 order dated 1.4.2009 for transferring the applicant. The applicant's criminal case is pending at Jaipur Court and the challan has been filed and many witnesses have already been examined. It is said that the transfer order has been passed on the recommendation of review committee. The recommendation cannot be applied after five years.

3. The Ld. Senior Central Government Standing counsel Mr. Mukesh Agarwal submitted that as per the directions of this Tribunal dated 5.11.2014 passed in OA No.291/00599/2014 filed by the applicant, the competent authority considered the representation of the applicant and decided the issue by a reasoned and speaking order. Moreover the applicant has been transferred in the public interest as per the recommendation of the Review Committee. A copy of the recommendations of the Review committee is marked as Ann.A/5. Relevant extract of the same was reproduced in Ann. R/1. In the written statement the instructions issued which reads as follows:

 " that the suspension of Shri Goyal may be revoked with immediate effect with full wages. It is however, directed that he may be posted in some other office of the SOI."

4. In the reply, it is further stated that the competent authority as per the directions of review committee, considered the fact that the applicant has been exonerated in the disciplinary proceedings, that the same is subject to outcome of the CBI case which is still pending and that the charges in the CBI case against the applicant are serious passed Annexure A/1 order of transfer.

5. Annexure A/5 is the order to revoke the suspension of the applicant. From the material produced by the applicant and respondents it is clear that the CBI registered the case vide No.RCJAI/2008/A 2007 against Shri Goyal for demanding of commission /bribe as reward. Another case was also registered by the CBI against Shri Diwakar Goyal on 16.6.2008 vide their case No.RC JAI 2008 A 2009 regarding acquisition of disproportionate assets by him. The applicant was placed under suspension vide order dated 30.6.2008 as per Rule 10(1) of CCS(CCA) Rules, 1965. The suspension was reviewed from time to time and on the basis of recommendation of the Review Committee the suspension was revoked vide letter dated 1.4.2009 marked as Annexure A/5. The Review Committee in Ann.A/5 letter dated 1.4.2009 ordered that

"the Suspension of Shri Goyal may be revoked with immediate effect with full wages. It is however, directed that he may be posted in some other office of the SOI."

Taking into consideration the recommendation of the Review Committee he was transferred after a period of 5 years vide Annexure A/1. Subsequently the CAT Jaipur vide order dated 5.11.2014 in OA No.291/00599/2014 directed the competent authority to consider the representation of the applicant.

6. Pursuant to representation submitted by the applicant, the competent authority considered all grounds sympathetically but the request of the applicant was not acceded to and transfer order was passed on the recommendation of the Review Committee as that was one of the condition of revocation from suspension vide order dated 27.11.2014 marked as Annexure A/3.

7. The disciplinary proceedings initiated against the applicant were terminated during July, 2012 as he was not found guilty of the charge. The only reason for the transfer as per the Annexure A/3 is because of the recommendation of the Review Committee. It is stated in Annexure-A/3 that the transfer of the applicant has been made on the recommendation of the Review Committee, hence cancellation of the transfer order does not arise. The Review Committee recommended the transfer by revoking the suspension order passed on 1.4.2009. The competent authority stood by the recommendation of the Review Committee. The transfer was made after 5 years vide Ann.A/1 dated 28.10.2014 followed by Annexure A/3 dated 27.11.2014. If the transfer was made on the basis of the recommendation of the Review Committee, such a transfer has no legal stand. The recommendation was made at the time of registering the case by CBI and the disciplinary proceedings were pending. There is no justification for passing an order of transfer after a period of 5 years later. The Review Committee considered the circumstances during 2009 and recommended to post the applicant in some other office of SOI. Subsequent events took place during the period of 5 years and the change of circumstances were totally ignored while passing A/1 and A/3 orders.

8. In the facts and circumstances I am of the view that the transfer order passed on the recommendation of Review Committee is illegal.

Consequently, the Annexure A/1, A/2 and A/3 are set aside. From the proceedings it is seen that the Tribunal has passed the Interim orders stating therein that not to implement the transfer order dated 28.10.2014 which continued till date. The OA is, therefore, allowed with no order as to costs. It is made clear that the competent authority is always at liberty to pass an appropriate order in accordance with the provisions of law of the transfer of the applicant in case of administrative exigency.



(JUSTICE HARUN-UL-RASHID)
JUDICIAL MEMBER

Adm/