

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

Reserved on : 29.10.2015

Jaipur, the 24th day of November, 2015

ORIGINAL APPLICATION No. 291/00569/2015

CORAM :

HON'BLE MS. MEENAKSHI HOOJA, ADMINISTRATIVE MEMBER

Arun Uresar s/o Shri B.P.Singh aged about 50 years, resident of B-31, Roopvihar Bhagwan Marg, New Sanganer Road, Jaipur. Presently working as AAO, Urban Development, Jaipur

... Applicant

(By Advocate: Mr. Anupam Agarwal)

Versus

1. Union of India through the Secretary, Ministry of Finance, Department of Expenditure, North Block, New Delhi.
2. Controller General of Accounts, Lok Nayak Bhawan, Khan Market, New Delhi.
3. The Joint Controller General of Accounts, Lok Nayak Bhawan, Khan Market, New Delhi.
4. The Assistant Controller of Accounts, Office of Controller General of Accounts, Lok Nayak Bhawan, Khan Market, New Delhi.
5. Executive Engineer, Central Division (Civil)-II, G.S.I. Office Complex, Jhalana Doongari, Jaipur
6. Shri Jai Kishan Meena, AAO, Central Division (Civil)-II, G.S.I. Office Complex, Jhalana Doongari, Jaipur

... Respondents

(By Advocate: Mr. N.C.Goyal for resp. No. 1 to 5)

Respondent No.6 present in person

ORDER

This OA has been filed for seeking the following reliefs:-

"It is therefore prayed that the impugned orders dt. 15.6.2015 & 12/13.8.2015 may kindly be quashed and set-aside. Respondents should be directed to allow the applicant to join his duties and thus work at Jaipur in compliance of order dated 30.4.2015. They should further be directed to pay salary and other benefits since his relieving vide order dt. 01.06.2015 till date and continued to do so. Any other order, direction or relief may be passed in favour of the applicant, which may be deemed fit, just and proper under the facts and circumstances of the case."

2. Ld. Counsel for the applicant referring to the points raised in the OA submitted that as per Ann.A/3 dated 12th July, 2013, the applicant was transferred from Ministry of Science and Technology, Jaipur to Ministry of Urban Development, Ajmer. Thereafter vide Ann.A/4 dated 26.11.2014, the applicant was relieved from the Ministry of Urban Development, Ajmer to report for duty to Ministry of Science and Technology, New Delhi. Thereafter, the applicant joined in the Ministry of Science and Technology at New Delhi. After joining at New Delhi, the applicant submitted, through proper channel, a representation dated 12.01.2015 (Ann.A/5) to Controller General of Accounts, Department of Revenue, Ministry of Finance to consider his transfer from Ministry of Science and Technology, New Delhi to Ministry of Urban Development, Jaipur. Vide Ann.A/6 dated 30th April, 2015 orders were issued by the Controller General of Accounts, Department of Expenditure, Ministry of Finance transferring the applicant and posting him at Ministry of Urban

Development, Jaipur against the vacancy caused due to transfer of Shri Jai Kishan Meena, AAO. In pursuance of this order, the Ministry of Science and Technology, New Delhi vide office order dated 26.05.2015 (Ann.A/7) relieved him w.e.f. 26.05.2015 with the direction to report for duty in the same capacity to Ministry of Urban Development, Jaipur. It was submitted that the applicant, as may be seen from second page of Ann.A/7, gave his joining report on the next day itself i.e. on 27.05.2015 to the Executive Engineer (Civil), Jaipur Central Division-II, Jaipur, but the same was returned in original (R.I.O) with the following remarks:-

"O.S. Pl. discuss.

M/o UD order is not attached. Hence joining can not be done without the order issued by CCA, M/o UD. Therefore, joining will be considered only after receiving the order from CCA, M/o UD, GOI, Hence R.I.O.

Sd/-

27/05/2015"

Thereafter vide order dated 15.06.2015 (Ann.A/1) passed by the Assistant Controller of Accounts, O/o the Controller General of Accounts, Department of Expenditure, Ministry of Finance, transfer of the applicant was cancelled with reference to representation dated 28.05.2015 received from Shri Jai Kishan Meena, AAO, UD, Jaipur. It was stated that Shri Meena had pointed out that he has not completed his tenure in UD, Jaipur. The facts have been verified and therefore the transfer of Shri Arun Ureshar from the Science and Technology, New Delhi is

cancelled. Shri Meena shall continue in UD, Jaipur till completion of his tenure".

Counsel for the applicant further submitted that thereafter the applicant filed OA which was registered as OA No.291/00397/2015 and disposed of by order dated 09.07.2015 (Ann.A/8) with the following directions:-

"The applicant is therefore, directed to file his representation stating the aforementioned averments made by him during the course of hearing. The respondents will decide the matter by a reasoned and speaking order in a month's time.

The order at Ann.A/4 transferring the applicant back to New Delhi is accordingly stayed till the applicant submits his representation and the same is decided by the respondents. Respondents are directed to dispose of the representation within one month's time. The OA is disposed of with a liberty to the applicant to file a fresh OA if he is not satisfied by the action of respondents."

Counsel for the applicant submitted that representation dated 15.07.2015 (Ann.A/9) submitted in pursuance of the direction of the Tribunal has been rejected vide order dated 12th/13th August, 2015 (Ann.A/2). In this context, it was contended that the applicant is being unnecessarily harassed and in the note of the Executive Engineer (Civil) Jaipur Central Division-II dated 27.05.2015 (Ann.A/7), his joining was not accepted only on the ground that he had not submitted order of M/o Urban Development while it is clear from the order dated

30th April, 2015 (Ann.A/6) that the competent authority has transferred him to the Ministry of Urban Development, Jaipur against the vacancy caused due to transfer of Shri Jai Kishan Meena, AAO and the relieving order dated 26.05.2015 (Ann.A/7) was also issued in pursuance of Ann.A/6 orders and he reported for joining on the very next day i.e. 27.05.2015. There was no basis to refuse him allowing joining or to return his joining report in original considering that he had reported for duty to the Executive Engineer (Civil), Jaipur Central Division-II where the incumbent Shri Jai Kishan Meena was working and vice whose vacancy, the applicant had been transferred and posted. He further submitted that the applicant in his representation dated 15.07.2015 (Ann.A/9) had brought out all the points regarding his being posted out of his home town and the fact that the Executive Engineer (Civil), Jaipur Central Division-II, Jaipur of the Ministry of Urban Development has no authority to deny compliance of the lawful order. It was also mentioned in the representation that Shri Jai Kishan Meena has been transferred and posted in another office in Jaipur itself and further that once the order of transfer has been complied with subsequent cancellation of transfer is illegal and referred to the decision of the Hon'ble High Court in Kalu Singh vs. The State of Rajasthan and ors. [WLC (Raj.) 2003 (1) 674]. However, his representation was rejected vide Ann.A/2 on the ground that the working incumbent was transferred before completion of tenure and,

therefore, cancellation is justified and this reasoning is itself quite arbitrary. The applicant himself has been transferred from one place to another before completion of tenure and several others as bought out in Para 4(iv) of the OA have been transferred prior to completion of tenure, therefore, rejecting the representation on that ground has no rational justification. He also referred to the OM dated 25th November, 2014, wherein Controller General of Accounts, Department of Expenditure, Ministry of Finance has been authorized to transfer an employee before completion of tenure. Counsel for the applicant further submitted that this order Ann.A/2 rejecting his representation has been passed by the Joint Controller of Accounts who is not the competent authority to decide and cancel his transfer order, because the competent authority in this regard is only the Controller General of Accounts, Department of Expenditure, Ministry of Finance and Joint Controller was not even a respondent in the earlier OA No.291/00397/2015. He thus prayed for setting aside the order dated 15th June, 2015 (Ann.A/1) and 12th /13th August, 2015 (Ann.A/2) and to direct the respondents to allow the applicant to join his duties and work in Jaipur in compliance of order dated 30.04.2015 (Ann.A/6) and relieving order dated 26.05.2015 (Ann.A/7) and provide all consequential reliefs including salary and other benefits from his relieving.

3. Per contra, counsel for the respondents submitted that this OA is barred by the principle of res-judicata because the

documents which have now been annexed with this OA were considered in earlier OA No.291/00397/2015 on the basis of which order dated 09.07.2015 (Ann.A/8) was passed. He further submitted that with reference to page 20 of the OA i.e. 2nd page of Ann.A/7 that the applicant only submitted orders dated 30.04.2015 of the Controller General of Accounts, Department of Expenditure, Ministry of Finance (Ann.A/6) and relieving order of Ministry of Science and Technology dated 26.05.2015 (Ann.A/7), but no order of the Ministry of Urban Development was submitted, therefore, the application was rightly returned in original and applicant should have submitted the order of the CCA, Ministry of Urban Development before being allowed to join as this is a required order as per procedure. He further submitted that cancellation of the transfer vide order dated 15th June, 2015 (Ann.A/1) was correctly made because a representation was received from Shri Jai Kishan Meena as he was transferred without completion of his tenure. With regard to Ann.A/2 dated 12th/13th August, 2015, the Ld. Counsel for the respondents submitted that this is a reasoned order passed in pursuance of the direction of this Tribunal in earlier OA No.291/00397/2015 and it being a reasoned and speaking order warrants no interference by this Tribunal and the applicant did not even resume his duties in the Ministry of Science and Technology, though he was ordered to do so. Counsel for the respondents also referred to the fact that the OA has been filed by

concealment of fact that the applicant has filed a Contempt Petition No.50/2015 on 16.9.2015 with reference to the earlier OA No.291/00397/2015, which is prior to filing of this OA and on this ground also the present OA is liable to be dismissed. The Ld. Counsel also referred to a catena of judgment of the Hon'ble Apex Court where it has been held that Courts and Tribunals should not ordinarily interfere in transfer matters unless there is element of mala-fide or the order has been passed by an authority not competent to do so or is in violation of statutory rules and as this is not so in the present case, he prayed for dismissal of the OA.

4. Carefully considered the submissions and contentions made by the learned counsels and perused the record including that of earlier OA No. 291/00397/2015 and CP No.291/00050/2015.

As far as the contention of the counsel for the respondent that the case is hit by the principle of res-judicata because the same annexures were also filed and Ann.A/1 was also challenged in earlier OA No. 291/00397/2015, the same does not appear tenable, because the applicant has filed this OA challenging the order passed by the respondents i.e. of 12th/13th August, 2015 (Ann.A/2) after the order in the earlier OA dated 09.07.2015 (Ann.A/8) passed by this Tribunal which itself gives liberty to the applicant to file a fresh OA, if he is not satisfied by the action of the respondents.

One of the main issues raised by the counsel for the applicant during the hearing was that the applicant was denied joining on 27.06.2015 and the Ann.A/7 noting of the Executive Engineer (Civil), CPWD, Jaipur Central Division-II is arbitrary and no order from CCA, Ministry of Urban Development is required as orders were already issued for the applicant's transfer and relieving as per Ann.A/6 and A/7 and he had reported for joining in pursuance of those orders. Moreover, in the order dated 12th/13th August, 2015 (Ann.A/2) this point has not been addressed, though it was specifically mentioned in the representation. Per contra, counsel for the respondents had contended that as brought out in the reply, that orders of Ministry of Urban Development are required. In this regard, it is seen that the applicant had attached orders Ann.A/6 and A/7 with the joining report and if the Executive Engineer in the Jaipur Central Division-II had any problem with the joining report, in normal administrative procedure, he would have referred the matter to the higher authorities, rather than returning the joining report in original (R.I.O.) to the applicant. In this context, it is noted that this issue, though referred to in the representation dated 15.07.2015 (Ann.A/9) by the applicant, but the same has not been addressed or specifically decided vide order dated 12th/13th August, 2015, in the absence of which it cannot be said whether Executive Engineer, Central Division Civil-II, Jaipur (respondent No.5 in the present OA) followed the correct

procedure and whether the order of CCA, Ministry of Urban Development is/was required as per procedure.

As far as the question of tenure is concerned it is noted from the pleadings that transfer of a number of officials in the AAO category have been made prior to completion of tenure earlier also, including that of the applicant himself and the Controller General of Accounts has also been authorised for the same order dated 25th November, 2014, placed before the Tribunal by the counsel for applicant during hearing. On the basis of the above, non-completion of tenure cannot be the sole ground for cancelling a transfer.

A discrepancy has also been noted that while in order dated 15th June, 2015 (Ann.A/1) the date of representation of Shri Jai Kishan Meena has been mentioned as 28.05.2015, while in the reply, in para-3 of the Brief Facts the date of representation has been mentioned as 08.05.2015.

It is also noted that the applicant has filed CP No.291/00050/2015 on 16.09.2015 in the context of OA No.291/00397/2015 filed earlier and this has not been mentioned in the present OA. The next date of hearing in the CP is 01.12.2015.

As far as the issue of competent authority is concerned, it is noted that the representation of the applicant dated 15.07.2015 (Ann.A/9) has been decided by the Joint Controller General of

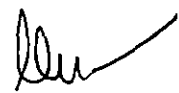
Accounts vide order dated 12th/13th August, 2015 (Ann.A/2) who was not a respondent in the OA No. 291/00397/2015 and the directions were given to the respondents to decide the case. In that OA No.291/00397/2015, apart from Union of India, Controller General of Accounts and Assistant Controller General of Accounts, office of the CGA were the other respondents. Further, as seen from Schedule-I of Indian Civil Accounts Service (Group-A) Recruitment Rules, 2006, submitted by the counsel for the respondents, the Joint Controller General of Accounts is an authority below the Controller General of Accounts and in a lower grade and pay scale. Thus, it cannot be categorically said that the order dated 12th/13th August, 2015 (Ann.A/2) deciding the representation of the applicant has been passed by a competent authority.

It is a settled principle of law as held by the Hon'ble Apex Court in a catena of judgments that Courts and Tribunal should not normally interfere in orders of transfer and posting unless there is a gross violation of statutory rules, proven malafide or the order has not been issued by the competent authority.

5. In view of the above analysis and facts and circumstances of the case and especially as it is not clear whether the order dated 12th/13th August, 2015 (Ann.A/2) has been issued by the competent authority, it is proposed to dispose of this OA with certain directions:-

It is directed that the representation dated 15.07.2015 (Ann.A/9) of the applicant shall be reconsidered and decided by the Controller General of Accounts i.e. respondent No.2 in this OA, after giving an opportunity of hearing to the applicant, within a month from the date of receipt of a copy of this order. Further, respondent No.2 is also directed to consider and decide the matter regarding payment of salary etc. to the applicant from the month of June, 2015 onwards. Till then order dated 12th /13th August, 2015 (Ann.A/2) shall remain in abeyance.

The OA stands disposed of as above with no order as to costs.


(MEENAKSHI HOOJA)
Administrative Member

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