

Central Administrative Tribunal, Jabalpur Bench, Jabalpur

Original Application No. 450 of 2004

Bilaspur this the 24th day of November, 2004

**Hon'ble Shri M.P.Singh, Vice Chairman
Hon'ble Shri A.K.Bhatnagar Judicial Member**

Shri Dinesh Kumar Tiwari
S/o Late Shri Har Prasad Tiwari
Aged 55 years
R/o EM 351 Nehru Nagar
Bhopal(M.P.)

Applicant

(By Advocate – Smt. S.Menon)

Versus

1. Government of India
Central Water Commission
Planning Circle
1065-68, Type V, NH IV,
faridabad – 121 001
Through : Its Superintending Engineer
2. Executive Engineer
Central Water Commission
Govt of India
Narmada Division
Paryavas Bhawan, Block No.1
Ground Floor, Jail Road
Bhopal(M.P.)
3. Manoj Tiwari
Executive Engineer
Paryavas Bhawan, Block No.1
Ground Floor, Jail Road
Bhopal(M.P.)

Respondents

(By Advocate – Shri Om Namdeo)



ORDER

By M.P.Singh, Vice Chairman –

By filing this OA, the applicant has sought the following main reliefs :-

“ I to quash the impugned order dt. 7.5.2004 (Annexure A-5), transferring the applicant from Bhopal to Vadadora(Gujrat).

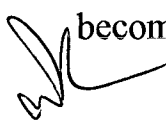
II. to grant any other relief which this Hon'ble Tribunal deems fit fit and proper may kindly be granted to the petitioners.”

2. The brief facts of the case are that the apphcant has been functioning on the post of Barkandaz at Bhopal under the control of respondents 2 & 3. He has been transferred from his present posting at Narmada Division, Central Water Commission, Bhopal to Central Water Commission, Vadodara, Gujarat, in public interest. According to the applicant, respondents 2 & 3 issued a memorandum dated 3.3.2004 calling for an explanation of the applicant for not signing the attendance register. On receipt of the memorandum a detailed representation was submitted by the applicant to the Chairman, Central Water Commission with a copy endorsed to several other authorities, including the Chairman, Human Rights Commission, New Delhi pointing out several irregularities committed by respondents 2 & 3, particularly by favouring one Shri S.K.Nag. On receipt of the said representation, the respondent no.2 became annoyed with the applicant and threatened him with dire consequences including transfer from the State of Madhya Pradesh. Accordingly, on the recommendations made by respondents 2 & 3, respondent no.1 issued the office order dated 7.5.2004 (Annexure-A-5) transferring the services of the applicant in the same capacity



from Bhopal to Vadodara. The applicant submitted a representation against his transfer explaining his difficulties and has requested for canceling the transfer order. The representation submitted by the applicant has not been decided by the authorities. Hence this O.A.

3. The respondents in their reply have stated that the applicant joined Bhopal Gauging Division (subsequently renamed as Narmada Division) CWC Bhopal on 30.3.1976 on transfer from Planning Division, CWC Faridabad. One Shri Ram Avtar Kewat, Barkandaz was posted to Narmada Division, CWC, Bhopal and he joined his duties on 26.7.1993. Since there was only one sanctioned post of Barkandaz at Bhopal, the applicant was to be relieved from Narmada Division as soon as said Shri Ram Avtar Kewat joined duties. However, in view of the fact that some posts in Group-D were lying vacant in the Narmada Division, CWC, Bhopal, the applicant was adjusted against such posts from time to time. 69 posts of Group-D were abolished in the various subordinate offices of CWC vide Min. of Water Resources OM dated 11.9.2002 and this decision of abolishing of posts was conveyed to the Superintending Engineer, Planning Circle, CWC, Faridabad (who is the cadre controlling authority in respect of Group-D posts in subordinate offices of CWC) vide order dated 24.10.2002. Subsequently, another 12 posts in Group-D in subordinate offices of CWC were abolished vide letter dated 10.10.2003. Thus, a total of 81 Group-D posts were abolished in the subordinate offices of CWC. In the process of readjustment of Group-D posts in various subordinate offices of CWC, the post of Peon against which the applicant had hitherto been working was abolished and it was, therefore, not possible to adjust him at Bhopal any more. In this background it has become necessary to transfer him from Bhopal in public




interest.

4. Heard the learned counsel of both parties.

5. The learned counsel for the apphcant has submitted that the applicant has been working as Barkandaz since 1976. One Ram Avtar Kewat has joined as Barkandaz in 1993 has also been working against the post of Barkandaz. As per the statement made by the respondents that two persons have been working against one post of Barkandaz. She has pointed out that in this case the applicant being senior should remain at Bhopal and the other person, who is junior to the applicant, should move out as the principle of last come first go is to be made applicable in the present case. She has also submitted that the respondents have made a statement that the applicant has been working against the post of Peon, which is wrong. According to her, the applicant has all along been working against the post of Barkandaz. She has submitted that the respondents have not submitted any documents whereby it could be established that the applicant has all along not been working against the post of Barkandaz and is being adjusted against the post of Peon – a Group-D post. On the other hand, she has submitted that the transfer order issued in respect of the apphcant by respondent no.1 is mala fide and since the apphcant has submitted a representation against respondents 2 & 3 pointing out certain irregularities, they have been annoyed and have recommended his transfer from Bhopal. Since the transfer order is mala-fide it deserves to be quashed and set aside.

6. On the other hand, the learned counsel for the respondents has submitted that there is only one post of Barkandaz and the apphcant has all along been working against the post of a



Group-D employee and one Ram Avtar Kewat, who has joined the office at Bhopal in 1993 has been working against one post of Barkandaz and since the applicant had a long stay at Bhopal, he was required to be transferred out of Bhopal. As he has all India transfer liability he should have no complaint against his transfer from Bhopal to Vadodara.

7. On our specific query to the learned counsel for the respondents as to whether they could show us any paper whereby it could be established that the applicant has not been working against the post of Barkandaz and is being adjusted against a Group-D post, the respondents have failed to establish to show us any documentary evidence to this effect. However, they assured us that they will produce some documents in this regard to establish this fact ^{that he was not} working against the post of Barkandaz but was working against a Group-D post since his appointment at Bhopal. The respondents have now submitted a few copies of quarterly returns submitted to Superintending Engineer, Bhopal. We have perused these documents and we find that in all the statements produced by the respondents relating to quarter 31st March, 2003 to 30th June, 2004 only one post of Barkandaz was available against which two persons namely the applicant and Ram Avtar Kewat have been working.

8. We have carefully considered the arguments of both the counsel and we find that the applicant has been working all along in Bhopal since 1976. According to the statement of the respondents 81 posts have been abolished in subordinate offices of CWC and the transfer of the applicant has been made because of abolition of certain posts and further since there is only one post of Barkandaz in Group-D post and two persons are working against that post, one person is required to be

transferred. Now, the question for consideration is who should be transferred out of these two persons. It is an admitted fact that the applicant is working at Bhopal since 1976 and said Ram Avtar Kewat has only been appointed in 1993. Since as per the policy of the Government issued by the Department of Personnel and Training in the case of redeployment of surplus staff the junior most person is required to be shifted to a place where the vacancies are available. The respondents have not shown us the guidelines under which the senior-most person is required to be declared surplus and required to be redeployed elsewhere at the place where the vacancies are available. We have also carefully perused the documents produced by the respondents but we find that these documents also do not establish that the applicant has been adjusted against the post of Peon since 1976 as per the statement made by the learned counsel for the respondents during the course of arguments. Thus, we find that the transfer order passed by the respondents is against the policy of the Government. In view of the aforesaid facts and circumstances of the case, we are of the considered view that the impugned order of transfer is not sustainable in the eye of law and is liable to be quashed.

9. In the result, the O.A. is allowed. The impugned order of transfer is quashed and set aside. No costs.

(A.K.Bhatnagar)
Judicila Member

(M.P.Singh)
Vice Chairman

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....

प्रतिनिधि वाले हैं:-

- (1) सचिव, उच्च न्यायालय का प्रोसेसिंग, जबलपुर
- (2) अतिरिक्त सचिव, उच्च न्यायालय के कार्यालय
- (3) प्रवक्ता जी/डी के कार्यालय
- (4) बंगला का प्रभार, उच्च न्यायालय के कार्यालय

राज्य एवं राज्यपाल के कार्यालय

उप सचिव

Issued
On 3.12.04
BS

Dr. P. Menon Adv.
Mr. Ramdeo Adv.
OBD