

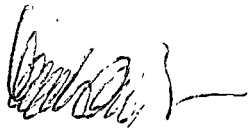
11.4.08

GA 264/2007 with MA 264/2007

Mr. P.P. Mathur, Counsel for Applicant.
Mr. Kanta Bhatia, proxy Counsel for
Mr. Kunal Rawat, Counsel for respondents.

Heard learned Counsel for the
parties.

For the reasons dictated
separately, the GA as well as MA stand
disposed of by a separate order.


(M.L. Chaudhary)
m (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 11th day of April, 2008

ORIGINAL APPLICATION No.264/2007
with MA No.264/2007

CORAM:

HON'BLE MR. M.L.CHAUHAN, JUDICIAL MEMBER

D.K.Rai
s/o Shri Balram,
aged about 51 years,
r/o 1135, Rani Sati Nagar,
Gopalpura Byepass,
Jaipur.

.. Applicant

(By Advocate: Shri P.P.Mathur)

Versus

1. Union of India
through Secretary,
Ministry of Mines,
Shastri Bhawan,
New Delhi.
2. Director General,
Geological Survey of India,
27 J.L.N. Road,
Calcutta.
3. Deputy Director General,
Geological Survey of India,
Western Region,
Jhalana Doongri,
Jaipur.

.. Respondents

(By Advocate: Ms. Kavita Bhati, proxy counsel for Mr.
Kunal Rawat)

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O R D E R (ORAL)

The applicant has filed this OA thereby praying for quashing and setting aside the impugned order dated 17.7.2007 (Ann.A1) issued by respondents, qua the applicant.

2. In sum and substance, case of the applicant is that he was promoted to the post of Director (G) on 6.7.2007 and posted at Jaipur alongwith three other Directors. Consequent upon such promotion, Dy. Director General, Western Region, posted the applicant to project B.M.III.Op., Rajasthan vide order dated 16.7.2007 (Ann.A7). Accordingly, the applicant joined B.M.III project on 17.7.2007. The grievance of the applicant is that suddenly on the same date, the applicant has been transferred from Jaipur to GSITI, Raipur without any administrative exigency. According to the applicant, the impugned order of transfer issued by the respondents is illegal and bad in law, as the applicant on promotion was posted as Director (G), Jaipur being his choice posting in lieu of the services rendered by him in North-Eastern Region. It is further stated that at the time of promotion from Senior Geologist to Director (G), the respondents invited option from the applicant and he accordingly submitted his option and it was only thereafter that the applicant on promotion was given posting in Western Region, Jaipur. The applicant has also

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submitted representation dated 19.7.2007 (Ann.A9) against the impugned order of transfer to the Director General, Geological Survey of India, Kolkata (Respondent No.2), but the same has not been decided so far.

3. When the matter was listed on 31.7.2007, this Tribunal while taking into account the aforesaid facts and also that there are in all 22 posts of Director (G) in W.R. Jaipur against which 20 officers are working presently and also that nobody has been posted to relieve the applicant and the applicant has to be relieved w.e.f. 1.8.2007, granted the ex-parte stay thereby staying operation of the impugned transfer order dated 17.7.2007 (Ann.A1) till the next date. The said stay has been continued from time to time.

4. The respondents have filed reply. The fact that the applicant was serving in North Eastern Region, Gangtok is not disputed. It is stated that on account of serving in North Eastern Region, the applicant was accommodated at Jaipur on considering his option in the year 2003. According to the respondents, the present transfer order has been issued so that the programme of the department is executed most efficiently to obtain best possible results. The respondents have also stated that representation of

the applicant has not been considered by the competent authority as the matter is sub-judice.

5. The applicant has also filed rejoinder. In the rejoinder, the applicant has specifically pleaded that he does not possess the expertise of the subjects which are taught in the GSITI. The GSITI offers three type of courses viz. basic course on drilling techniques, refresher course on material management for store personnel and thirdly OCG : Geomorphology, quaternary geology and environmental geology. It is further stated that the applicant has no work experience in any of these subjects. He has worked on exploration of base metal for last 20 years and his current posting was in fact suited the need of the department. It is further stated that posting as faculty is always made on the recommendation and advice of the TIAC which is the expert body. The applicant has also placed on record minutes of 42nd meeting of the TIAC wherein also the posting as faculties have been advised. Thus, according to the applicant, the impugned order of transfer is arbitrary and colorable exercise of power and deserves to be quashed.

6. I have heard the learned counsel for the parties and gone through the material placed on record.

7. The only reason given by the respondents for transfer of the applicant is that he has been transferred on the basis of functional need to GSITI, Raipur. The applicant has categorically stated in the rejoinder that he does not possess the work experience in respect of three courses regarding which training is to be imparted and posting in that institution is always made on the basis of recommendations and advice of the TIAC, which is expert body. Thus, in view of the specific averment made by the applicant in the rejoinder, which remains uncontroverted, I am of the view that the matter is required to be examined by the appropriate authority.

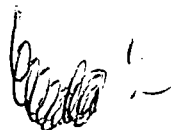
8. From the material placed on record, it is also evident that the applicant has made a representation regarding his transfer to respondent No.2 and the said representation has not been examined due to the fact that matter is pending before this Tribunal.

9. Thus, keeping in view the facts and circumstances of the case as noticed above, I am of the view that it will be in the interest of justice if direction is given to respondent No.2 to decide representation of the applicant by passing a reasoned and speaking order, taking note of the fact that posting of the applicant at GSITI, Raipur will not be in the public interest in view of the fact that applicant has no

work experience in respect of courses offered at GSITI, as alleged by the applicant. It may also be stated that it will also be permissible for the applicant to file a fresh representation within 15 days from today alongwith copy of this order and in case such representation is filed by the applicant within 15 days from today, the same shall be entertained by respondent No.2, who shall pass appropriate reasoned and speaking order thereby disposing of representation of the applicant. Till the representation of the applicant is not decided by respondent No.2, the interim stay granted on 31.7.2007 and continued from time to time shall continue. It is further clarified that this Tribunal has not made any observation on the merit of the case.

10. With these observations, the OA shall stand disposed of with no order as to costs. Needless to add that in case the applicant is still aggrieved, it will be open for him to file substantive OA for the same cause of action.

11. In view of disposal of the OA, no order is required to be passed in MA No.264/2007 moved by the respondents for vacation of stay, which shall also stands disposed of accordingly.


(M.L. CHAUHAN)
Judl. Member

R/