

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 22nd day October, 2010

ORIGINAL APPLICATION No.175/2010

CORAM:

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

Rakesh Gupta
s/o Shri Ram Narain Gupta
r/ AB-529 Kings Road,
Nirman Nagar, Jaipur
at present posted as ME(Sr.),
GSI WR, Jaipur

.. Applicant

(By Advocate: Shri S.K.Jain)

Versus

1. The Director General,
Geological Survey of India,
27, Jawahar Lal Nehru Road,
Kolkatta.
2. Dy. Director General,
GSI, WR,
Jaipur

.. Respondents

(By Advocate: Shri Mukesh Agarwal)

ORDER

This is second round of litigation. Earlier the applicant has filed OA No.41/2009 before this Tribunal against the impugned order dated 5.1.2009 (Ann.A/1) whereby the applicant was transferred from WR, Jaipur to CR, Nagpur w.e.f. 1.2.2009. This Tribunal disposed

of the above matter finally on 5.1.2010 with direction to the respondents to consider representation of the applicant within a period of one month from the date of receipt of the order. It was further ordered that the interim stay already granted vide order dated 29.1.2009 shall continue to operate even after a lapse of 15 days from the date of decision on applicant's representation by respondent No.2 and liberty was also reserved to the applicant to approach this Tribunal in case his request is not acceded to. The representation of the applicant was rejected vide order dated 16.3.2010 (Ann.A/2). It is this order dated 16.3.2010 and the original order of transfer dated 5.1.2009 which have been challenged by the applicant in this OA.

When the matter was taken up before the learned Single Member on 30.3.2010, request was made by the learned counsel for the applicant to transfer the case to the Division Bench alongwith record of earlier OA No.41/2009. On the request so made by the learned counsel for the applicant, the matter was placed before the Division Bench on 31.3.2010. The Division Bench issued notices returnable within three weeks and the matter was ordered to be listed on 26.4.2010. Thereafter further time was granted to the respondents to file reply. However, no interim stay in the matter was granted. Subsequently, the applicant filed MA No.272/2010 for grant of interim stay. The said MA was taken up by the Bench on 12.10.2010 on which date, this MA was ordered to be listed alongwith the OA which was fixed for 19.10.2010. One of the grounds taken by the applicant for granting stay was that the

applicant has not been relieved by the department so far and as the respondents are going to relieve the applicant, as such, interim stay may be granted. As already stated above, this Tribunal instead of granting interim order proceeded to decide the matter finally on the next date i.e. on 19.10.2010. As such, the matter was taken up for hearing alongwith MA No.272/2010.

3. The respondents have also filed reply and additional affidavit thereby explaining under what circumstances the applicant has not been relieved even though there was no stay order granted by this Tribunal. In the additional affidavit filed by the respondents on 15.10.2010, it has been stated that the applicant could not be relieved pursuant to the order dated 5.1.2009 as the ex-parte interim relief was granted by this Tribunal on 29.1.2009 in earlier OA No.41/2009. The aforesaid OA was finally decided on 5.1.2010 and the stay was made operative not only till the representation of the applicant is decided but even after 15 days from the date of decision. It is also explained in the additional affidavit that in compliance of the order dated 5.1.2010 of this Tribunal passed in earlier OA, representation of the applicant was rejected on 16.3.2010 and the stay remained operative for 15 days after the rejection of his representation. It is further explained that against the order dated 16.3.2010 and transfer order dated 5.1.2009, the applicant has filed this OA in which notices were issued on 31.3.2010 returnable 26.4.2010. In Para-5 of the additional affidavit, the respondents have categorically stated that the applicant has also filed D.B. Civil Writ Petition No.4937/2010 before the Hon'ble

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Rajasthan High Court, Jaipur against the order dated 16.3.2010 and 5.1.2009 and also against the order dated 31.3.2010 whereby while issuing notices to the respondents, this Tribunal has not granted any stay. It is further stated that the Hon'ble High Court issued notices for 31.7.2010. Under these circumstances, the applicant could not be relieved.

4. Arguments on merit were heard at length, but when this fact was brought to the notice of the Bench by the learned counsel for the respondents, the only explanation for not disclosing this material fact before this Tribunal and as to how the applicant can pursue parallel remedy for the same cause of action based on same facts, the learned counsel for the applicant submits that no doubt, challenge of the original order of transfer dated 5.1.2009 and subsequent rejection of representation vide order dated 16.3.2010 are subject matter before this Tribunal as well as before Hon'ble High Court, but the OA was filed before this Tribunal at an earlier date and at the most the Writ Petition filed by the applicant challenging the same order before the High Court with additional prayer of challenging the order passed by this Tribunal whereby only notices were issued can be dismissed by the Hon'ble High Court being not maintainable.

5. I have given due consideration to the submissions made by the learned counsel for the applicant. I am of the view that this OA can be dismissed at the threshold without going into merit of the case. This is a case where the applicant has challenged the original order of transfer dated 5.1.2009 from WR, Jaipur to CR, Nagpur in

the earlier OA and the applicant has obtained stay order from this Tribunal. By virtue of stay granted by this Tribunal which remained operative for a period of about 15 months, the applicant continued to serve at Jaipur. When the representation of the applicant was rejected pursuant to order passed in earlier OA, the present OA was filed thereby challenging the original order of transfer dated 5.1.2009 and also subsequent order of rejection of his representation dated 16.3.2010 and when the stay was not granted by this Tribunal, he has filed Writ Petition thereby challenging both these orders with additional prayer that the order of this Tribunal dated 31.3.2010 to the extent stay was not granted may also be quashed and set aside. At this stage, I wish to reproduce the prayer by the applicant in the D.B. Civil Writ Petition No. 1937/2010, which thus reads:-

- (i) By issue of an appropriate writ, order or direction, the order dated 18.03.2010 and 05.01.2009 issued by the Director (HRD) for Director General, GSI, Kolkata may kindly be declared arbitrary and illegal and same may kindly be quashed and set aside and the respondents may kindly be directed to allow the petitioner to continue his work at WR, Jaipur on the post of Executive Engineer earlier known as M.E. Senior. In the alternative, the petitioner may be given choice posting at Delhi, which is home State of the petitioner.
- (ii) By issue of an appropriate writ, order or direction, order dated 31.3.2010 passed by the Central Administrative Tribunal, Jaipur in OA No.175/2010, to the extent to which it related to not granting stay to the petitioner over the transfer order, may kindly be held illegal and same may kindly be quashed and set aside.
- (iii) Any other order which this Hon'ble Court deemed just and proper in the facts and circumstances of the case may also be passed in favour of the petitioner."

It may be stated here that in fact the date of the order dated 18.3.2010 has wrongly been mentioned it should have been 16.3.2010. At this stage, it will be useful to quote prayer made by the applicant in the present OA, which thus reads:-

- (i) The transfer order dated 5.1.2009 Ann.A1 be quashed and set aside.
- (ii) The order dated 16.3.2010 passed by the respondent No.1 vide Ann.A2 be quashed and set aside. And the applicant be allowed to complete his tenure of 8 years at Jaipur.
- (iii) Any other relief this Hon'ble Tribunal deems fit may also be passed."

6. Thus, from the relief clause, as reproduced above, it is evident that in this OA as well as in the Writ Petition filed before the Hon'ble High Court, the grievance of the applicant was regarding his transfer from WR, Jaipur to CR, Nagpur and rejection of his representation vide order dated 16.3.2010. The applicant has not mentioned to this Tribunal regarding filing of writ petition thereby challenging the aforesaid order till the matter was finally heard by this Tribunal. It was only when this fact was brought by the learned counsel for the respondents during the course of arguments, the factum of filing of Writ Petition on same set of facts for same cause of action came to the notice of this Tribunal. Thus, looking into conduct of the applicant and the fact that the applicant has resorted to avail same remedy before two forums i.e. before this Tribunal and simultaneously before the Hon'ble High Court, I am of the view that the present OA can be dismissed on account of suppression of material fact without going into merit of the case.

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7. Law on this point is no longer res-integra. In Prestige Lights Ltd. Vs. State Bank of India, JT 2007 (10) SC 218, the Hon'ble Apex Court held that in exercise of power under Article 226 of the Constitution of India the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under Article 226 of the Constitution, is duty bound to place all the facts before the court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain petition filed under Article 226 of the Constitution.

8. In Sunil Poddar and ors. Vs. Union Bank of India, JT 2008 (1) SC 308, the Apex Court held that while exercising discretionary and equitable jurisdiction under Article 136 of the Constitution, the facts and circumstances of the case should be seen in their entirety to find out if there is miscarriage of justice. If the appellant has not come forward with clean hands, has not candidly disclosed all the facts that he is aware of and he intends to delay the proceedings, then the Court will non-suit him on the ground of contumacious conduct.

9. In K.D.Sharma vs. Steel Authority of India Ltd. and ors., JT 2008 (8) SC 57, the Apex Court held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the Writ Court must

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come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek on appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. The same rule was reiterated in G.Jayashree and others vs. Bhagwandas S.Patel and others, JT 2009 (2) SC 71.

10. Thus, in view of what has been stated above, the present OA is required to be dismissed at the threshold without considering the averments of the applicant on merit. It may be mentioned that the applicant has enjoyed the benefit of the stay granted by this Tribunal in earlier OA practically for 15 months whereas the said discretionary power should not be exercised in favour of such person who has not come with clear hands and suppressed the material fact.

11. That apart, on the principle of judicial propriety, I am of the view that once similar matter on similar facts and for same cause of action is under consideration before the Hon'ble High Court, this Tribunal should refrain from giving findings on merit, although in view of the law laid down by the Apex Court in the case of Rajiv Kumar and Anr. vs. Hemraj Singh Chauhan and Ors. (2010) 2 SCC (L&S) 119 the applicant could not have approached the Hon'ble High Court directly in respect of the matter covered under the Administrative Tribunals Act, 1985 which decision is based upon the Constitution Bench decision of the Apex Court in the case of L. Chandra vs.

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Union of India, 1997 SCC (L&S) 577. Thus action of the applicant for filing two separate cases in two different forums for same cause of action also amount of abuse of the process of court, besides such a course may give rise to two conflicting judgments on same set of facts for same cause of action.

12. For the foregoing reasons, the OA is dismissed with no order as to costs.



(M.L. CHAUHAN)
Judl. Member

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