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**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

30.09.2011

MA 280/2011 (OA No. 400/2011)

Mr. C.B. Sharma, Counsel for applicant.
Mr. Amit Mathur, Proxy counsel for
Mr. D.C. Sharma, Counsel for respondents.

Reply to the MA has been filed. Put up on
13.10.2011.

IR to continue till the next date.

Anil Kumar

(Anil Kumar)
Member (A)

K.S. Rathore

(Justice K.S. Rathore)
Member (J)

ahq

13/10/2011

OA No. 400/2011 with MA No. 280/2011

Mr. C.B. Sharma, Counsel for applicant.
Mr. Amit Mathur, ^{proxy} Counsel for
Mr. D.C. Sharma, Counsel for respondents.

Heard.

The O.A. and M.A. are disposed
of by a separate order on the
separate sheets for the reasons
recorded therein.

K.S. Rathore
[Justice K.S. Rathore]
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 400/2011
with
MISC. APPLICATION NO. 280/2011

DATE OF ORDER: 13.10.2011

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER

Dr. M.N. Khan S/o Shri Nihal Ahmed Khan, aged about 51 years, R/o 37, Kidwai Nagar, Imli Phatak, Tonk Road, Jaipur, and presently holding the post of Scientist 'D', Central Ground Water Board (W.R.) Jaipur under transfer as Officer Incharge of State Unit Office, Allahabad.

...Applicant

Mr. C.B. Sharma, counsel for applicant.

VERSUS

1. Union of India through Secretary to the Ministry of Water Resources, Government of India, Shram Shakti Bhawan, Rafi Marg, New Delhi.
2. Dr. S.C. Dhiman, Chairman, Central Ground Water Board, Government of India, CHQ, New CGO Complex, NH-IV, Faridabad.
3. Shri Manoj Shrivastava, Regional Director (Western Region), Central Ground Water Board, 6-A, Jhalana Institutional Area, Jaipur.

...Respondents

Mr. Amit Mathur, proxy counsel for
Mr. D.C. Sharma, counsel for respondents.

ORDER (ORAL)

The present Original Application is directed against the order dated 13.06.2011 (Annex. A/1) and order dated 16.06.2011 (Annex. A/2).

2. The brief facts of the case are that the applicant was appointed on the post of Assistant Hydro Geologist in the year 1983, and promoted to the post of Scientist 'B' w.e.f. 01.01.1988, and further promoted as Scientist 'C' and



Scientist 'D' (Senior Hydro Geologist) in the year 2005. In fact the applicant is working at Jaipur since 1983 when he was entered in the service. He was only transferred for a short period of about 03 months and again joined back at Jaipur.

3. The case of the applicant is that he is holding the post of General Secretary of All India Central Ground Water Board Officers' Association and having amenities for transfer from one place to another and time to time put up grievances of the officers, who are members of the Association, before the respondents. It is also stated that the election of the Association became due in the year 2010 and notified by the Association after taking decision in General Meeting in which respondent no. 3 contesting election to the post of President, whereas the applicant contesting to the post of Secretary and as per letter dated 13.08.2010 (Annex. A/5), the election was scheduled to be held in the month of September / October, 2010, but the same was kept in abeyance, against which Association approached the Hon'ble Rajasthan High Court at Jaipur Bench by filing S.B. Civil Writ Petition No. 640/2011, and the matter is sub-judice before the Hon'ble Rajasthan High Court at Jaipur Bench.

4. It is alleged by the applicant that due to filing the said Writ Petition, the respondents became annoyed and started to harass the applicant, and he has been transferred vide order dated 13.06.2011 (Annex. A/1) from CGWB, WR, Jaipur to CGWB, SUO, Allahabad. The applicant has been relieved vide



order dated 16.06.2011 (Annex. A/2) from Central Ground Water Board, Western Region, Jaipur, w.e.f. 17.06.2011 (AN).

5. The applicant has raised malafide allegations also against the respondents as he is a member of Association, the transfer order has been passed with ulterior motive, and there is hostile discrimination also as the longest stayee Dr. S.K. Gupta, Shri I.K. Sharma and Shri Waseem Ahamad have not been disturbed from Jaipur, who are having more stay at Jaipur in comparison to the applicant, whereas the applicant has been disturbed.

6. At the time of admission, the respondents appeared as Caveator and accepted the notices, but looking to the situation, vide order dated 01.09.2011, this Tribunal stayed the effect and operation of the impugned order dated 13.06.2011 (Annex. A/1) qua the applicant.

7. The respondents have filed Misc. Application for vacation of the stay order dated 01.09.2011. In the Misc. Application, the respondents have stated that since 1983, the applicant is continuing at Jaipur. He was transferred from Jaipur to Nagpur on 17.01.2005 but again joined his duties on 25.03.2005 at Jaipur. It is also stated by the respondents that as per F.R. & S.R. Part-II, there is a clear provision in Rule No. SR 114 GIO (2) that the period of transfer less than 180 days is treated as temporary transfer / tour of an employee, and as such claim of the applicant that he joined



his duties in the year 2005 and his order of transfer is against the transfer norms and policy is totally untenable.

8. It is also stated by the respondents that the transfer of the applicant is purely in the public interest and as well as on administrative grounds and pursuant to the transfer order dated 13.06.2011, the applicant was relieved w.e.f. 17.06.2001. It is also stated by the respondents that the interim order granted by the Tribunal may be vacated as the applicant has concealed the material fact from the Tribunal. The transfer order was issued long back on 13.06.2011 and the applicant was relieved from the office w.e.f. 17.06.2011 but in spite of relieving order, the applicant disobeyed the order of transfer and not joined the duties at the place of transfer at Allahabad and when his application was dismissed by the Hon'ble High Court and the stay was not granted to him, again he approached this Tribunal on 28.08.2011 by filing the present Original Application and the fact of dismissal of the application before Hon'ble High Court has been concealed deliberately to get the order of stay.

9. The applicant has filed reply to the Misc. Application filed by the respondents for vacation of interim order, and along with the reply the applicant has placed certain documents to show that the case of Dr. S.K. Gupta, Scientist 'D' (Hydrogeology) has been considered vide letter dated 18.01.2011 and it was decided by the competent authority to keep in abeyance the transfer order of Dr. S.K. Gupta, Scientist 'D' (Hydrogeology) from Jaipur to Raipur issued vide



order dated 25.10.2010 till the matter is finally reviewed by the committee, and the learned counsel appearing for the applicant prayed that in the light of the above, the case of the applicant may be considered as has been considered in the case of Dr. S.K. Gupta, Scientist 'D' (Hydrogeology).

10. The learned counsel appearing for the applicant placed reliance on the judgment rendered by the Central Administrative Tribunal, Madras Bench in O.A. No. 671/2011, wherein the Tribunal has observed as under: -

"14. The applicant has urged before us that his wife is suffering from Sponilitis and is undergoing treatment at Chennai. If the applicant has any grievance, he is at liberty to submit his representation to the competent authority within a period of 15 days from the date of receipt of a copy of this order. If such a representation is received, the competent authority may take a pragmatic view and decide the representation in their administrative side and pass a speaking and reasoned order within a period of one month from the date of receipt of such representation. The interim order which was granted by this Tribunal on 25.5.2011 will continue till the decision on the representation is communicated to the applicant. If no such representation is received from the applicant, the respondents authority may implement the impugned order of transfer "

11. Per contra, in support of his contention, the learned counsel appearing for the respondents placed reliance on the judgment rendered by the Hon'ble Apex Court in the case of State of U.P. and Ors. vs. Gobardhan Lal, reported in (2004) 11 SCC 402, wherein the Hon'ble Supreme Court has held that the



transfer is prerogative of the authorities concerned and court should not normally interfere therewith, except when (i) transfer order shown to be vitiated by mala fides, or (ii) in violation of any statutory provision, or (iii) having been passed by an authority not competent to pass such an order. It is also observed by the Hon'ble Supreme Court that allegations of mala fides must be based on concrete material and must inspire confidence of the court, and where in the writ petition challenging order of transfer disputed questions of facts raised, it is held that High Court erred in making sweeping observations on the basis of its own assessment and laying down general guidelines regarding transfers.

12. Applying the said ratio decided by the Hon'ble Supreme Court, it is no doubt that the applicant has raised allegations of mala fides against the respondents as he being office bearer of All India Central Ground Water Board Officers Association and it is only submitted that he redresses the grievances of the members of the Association before the respondents, therefore, the respondents are always annoyed and just to get rid of from him, the impugned transfer order has been passed. Mere assertion of allegations does not serve the purpose as held by the Hon'ble Supreme Court in the case of State of U.P. and Ors. vs. Gobardhan Lal (supra) as the allegations of mala fides must be on concrete material. In the present case, the allegations of mala fides is not based on concrete material and whatever material and submission made in the present case does not inspire confidence of the Tribunal.

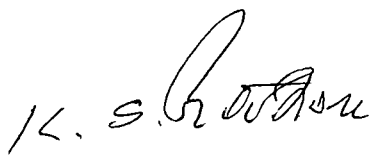


13. Having considered the ratio decided by the Hon'ble Supreme Court in the case of State of U.P. and Ors. vs. Gobardhan Lal, I am of the view that the transfer order in favour of the applicant, which has been passed by the respondents on 13.06.2011 (Annex. A/1), and the relieving order dated 16.06.2011 (Annex. A/2) requires no interference by this Tribunal. Further, the applicant has not come with clean hand before this Tribunal as he has concealed the fact of filing the S.B. Civil Misc. Application (in S.B. Civil Writ Petition No. 640/2011) before the Hon'ble Rajasthan High Court at Jaipur Bench for staying the same transfer order dated 13.06.2011 and since the Hon'ble High Court refused to grant any stay order, therefore, this Original Application has been filed. In the column where the applicant has to furnish the details with regard to 'matter not previously filed or pending with any other court', the applicant has declared that he had not previously filed any applications, writ petition or suit regarding the matter in respect of which this application is made before any other court or authority or any other Bench of the Tribunal and nor any such application, writ petition or suit is pending before any of them. This declaration is contrary to the fact as the material placed by the respondents that the applicant has preferred misc. application against the same transfer order and this fact has been concealed by the applicant and as per the settled preposition of law, no relief can be granted to any person who does not come with clean hand. As such, in this Original Application, not only on the ground that he has already been relieved pursuant to the transfer order but also he has failed to establish any specific mala fide allegations as alleged by him, in view of the Hon'ble Supreme Court in the



case of State of U.P. and Ors. vs. Gobardhan Lal (supra), I find no merit and the impugned transfer order requires no interference by this Tribunal.

14.. In the result, the Original Application is hereby dismissed being bereft of any merit. The Misc. Application is also disposed of. Consequently, the interim order dated 01.09.2011 passed by this Bench of the Tribunal is hereby vacated forthwith. There shall be no order as to costs.


(JUSTICE K.S. RATHORE)
MEMBER (J)

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