

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

(11)

ORDERS OF THE BENCH

Date of Order: 09.02.2012

OA No. 546/2011 with MA No. 384/2011

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

As a last chance, two weeks' time is granted the respondents to file reply, as the respondents' counsel undertakes that immediately after vetting of the reply, the same shall be filed. Put up the matter on 01.03.2012. IR to continue till the next date.

K.S. Rathore

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

Kumawat

01/03/2012

OA No. 546/2011 WITH MA No. 384/2011

Mr. C.B. Sharma, Counsel for applicant.
Mr. D.C. Sharma, Counsel for respondents.

Heard

OA and M.A. are disposed of by a separate order in the separate-sheets for the reasons recorded therein.

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

Reply ~~book~~
Filed on
27/2/12

Reorder ~~book~~
Filed on
28/2/12

by

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 1st day of March, 2012

Original Application No.546/2011

CORAM:

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

Dr. Manish Shrivastava
s/o L.K.Shrivastava,
r/o 42/56/10, Mansarovar,
Jaipur and presently working as
Junior Hydro-geologist in
Central Ground Water Board (WR),
Jaipur

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

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

4. Shri S.C.Dhiman,
Chairman,
Central Ground Water Board,
Government of India,
CHQ, New CGO Complex,
NH-IV, Faridabad.
5. Shri Manoj Shrivastava,
Regional Director (Western Region),
Central Ground Water Board,
6-A, Jhalana Institutional Area,
Jaipur.

.. Respondents

(By Advocate: Shri D.C.Sharma)

ORDER (ORAL)

The present OA is directed against the transfer of the applicant from CGWB, WR, Jaipur to CGWB, SR, Hyderabad vide order dated 3.11.2011 and order dated 4.11.2011 by which the applicant has been relieved to join the transferred place (Ann.A/1 and A/2 respectively).

2. The impugned transfer order has been challenged by the applicant on the ground of malice and mala-fide intention, therefore, respondent No. 4 and 5 are impleaded as party-respondents by name against whom the applicant has raised mala-fide allegation.

3. Earlier, the applicant filed OA No. 404/2010 which was decided on 2nd September, 2010 whereby the applicant has challenged the transfer order dated 13th August, 2010. In the



aforesaid OA this Tribunal granted liberty to the applicant to represent before respondent No.1 i.e. Secretary, Ministry of Water Resources with direction that respondent No.1 shall consider the same and pass reasoned and speaking order. Pursuant to the direction issued by this Tribunal, the applicant represented before respondents and ultimately the transfer order was cancelled vide letter dated 8.10.2010 with direction to undertake a review of all Group A and Group B officers posted at different stations, constitute a Committee to consider their transfer as per transfer policy and to recommend transfers as per transfer policy and action taken report in this regard be sent to the Ministry at the earliest.

4. By challenging the impugned transfer order Ann.A/1, the applicant has raised mala-fide allegation against respondent No.4 and 5, but no reply has been filed on their behalf, although notices were issued and served. Thus, the applicant's allegation of mala-fide against respondent No.4 and 5 remain uncontroverted and sustained. The official respondents have also not been able to answer the queries raised on the point of mala-fide. On the contrary, the applicant has been able to demonstrate that the mala-fide allegation levelled against respondent No. 4 and 5 are well established by the respondents themselves as is evident by Ann.A/26, the enquiry report submitted by Shri M.K.Sinha, Chief Engineer.



5. The respondents have strongly controverted this fact and relied upon the judgment of this Tribunal dated 13.10.2011 passed in OA No. 400/2011, Dr. M.N.Khan vs. UOI and Ors. which was rendered after having considered the ratio decided by the Hon'ble Supreme Court in the case of State of UP 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 therein except when (i) transfer order shown to be vitiated by malafide or (ii) in violation of any statutory provisions 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.

6. Having considered the ratio decided by the Hon'ble Supreme Court in the case of State of UP vs. Gobardhan Lal (supra) and having considered the judgment rendered by this Tribunal in OA No.400/2011 vide order dated 13.10.2011, as discussed hereinabove, the applicant has alleged specific mala-fides against respondent No.4 and 5 which have been established by the enquiry conducted by Shri M..K.Sinha, CE, YBO. Thus it is established that action of the respondent No.4 and 5 suffers from mala-fide and the impugned transfer order has been passed mala-fidely.



7. This Tribunal while issuing notices to the respondents on 22.11.2011 did not grant any interim relief as the applicant has been relieved, and in such circumstances, the Tribunal was not inclined to grant ex-parte interim order, but after filing reply and hearing the respondents deemed it proper to direct the respondents not to fill up the vacancy created on account of transfer of the applicant and till date this post is lying vacant.

8. I have also considered the submissions made on behalf of official respondents that it is prerogative of the official respondents to transfer the applicant. No doubt, it is prerogative of the official respondents to transfer the employee in administrative exigency and it is also alleged that the transfer order under challenge is passed absolutely on the ground of administrative exigency. It is submitted on behalf of the official respondents that transfer is an incidence of service and after a person joins service he is bound to serve within his cadre at all places where the offices/units of the employer might be. It is further stated that decision to transfer the applicant is taken in the light of the complaints of gross indiscipline, insubordination and dereliction of duty and acting in a manner which is highly unbecoming of an officer.

9. Be that as it may, since the applicant has been able to make out a case of mala-fide against respondent No.4 and 5, which is proved during the enquiry and respondent No. 4 and 5 have not chosen to controvert the allegations leveled against them, therefore,



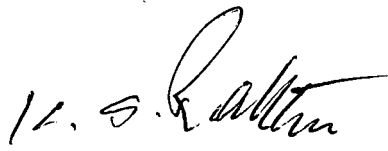
the applicant has been able to make out a case that the transfer order dated 3.11.2010 is passed with malafide intention.

10. Consequently, I deem it proper to allow the Original Application and quash and set-aside the impugned order dated 3.11.2011 (Ann.A/1). However, it is made clear that respondents can use their prerogative by passing fresh transfer order in administrative exigency and can hold enquiry regarding complaints of gross indiscipline, insubordination and dereliction of duty and acting in a manner which is highly unbecoming of an officer, if they so desire.

11. With these observations, the OA stands disposed of with no order as to costs.

12. Interim direction issued on 5.1.2012 shall stand vacated.

13. In view of disposal of the OA, no order is required to be passed in MA No.384/2011, which shall stand disposed of accordingly.


(JUSTICE K.S.RATHORE)
Judl. Member

R/