

9

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

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ORDER SHEET

ORDERS OF THE TRIBUNAL

22.11.2012

OA No 496/2012

While dictating the order and after perusing the material placed on record, it reveals that the present matter pertains to Division Bench but was wrongly listed before the Single Bench. Hence, the same be listed before the Division Bench on 26.11.2012 and the parties may be informed accordingly.

The Registry is directed to be cautious in future for listing such matters.

  
(JUSTICE K.S.RATHORE)  
Judl. Member


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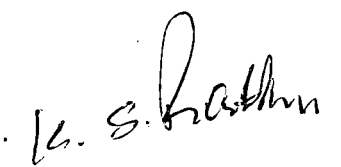
26-11-2012

Mr. V.D. Sharma - Counsel for applicant -  
Mr. D.C. Sharma - Counsel for respondents

Heard the learned counsel for the parties.

The OA stands disposed of by a separate order for the reasons elicited therein.

  
(Anil Kumar)  
Member (A)

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 26<sup>th</sup> day of November, 2012

OA No. 496/2012

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)  
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Dr. M.N.Khan  
s/o Shri Nihal Ahmed Khan,  
r/o 37 Kidwai Nagar, Imli Phatak,  
Tonk Road, Jaipur and presently holding the post of  
Scientist 'D', Central Ground Water Board (WR),  
Jaipur under transfer as officer incharge of  
State Unit Office, Allahabad.

.. Applicant

(By Advocate : Shri V.D.Sharma )

Versus

1. Union of India through Secretary to the Ministry of Water Resouces, Government of India, Shram Shakti Bhawan, Rafi Marg, New Delhi.
2. Mr. S.C.Dhiman,, Chairman, Central Ground water Board, Government of India, CHQ, New CGO Complex, NH-IV, Faridabad.
3. The Director (Admn.), Central Ground Water Board, Central Head Quarter (CHQ) NH-4, Faridabad.
4. The Regional Director (Western Region), Central Ground Water Board, 6-A, Jhalana Institutional Area, Jaipur.

.. Respondents

(By Advocate : Shri D.C.Sharma)

O R D E R (ORAL)

The present OA is directed against the Office Memorandum dated 27.6.2012 (Ann.A/1), order dated 18.5.2012 (Ann.A/2) and letter dated 8.6.2012 (Ann.A/3).

2. Earlier, the applicant filed OA No. 400/2011 before this Tribunal and the same was disposed of vide order dated 13.10.2011. In the aforesaid OA, it was alleged that the applicant was 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 was 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 was contesting election to the post of President, whereas the applicant was contesting to the post of Secretary. As per letter dated 13.8.2010, 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 at that time the matter was



sub-judice before the Hon'ble Rajasthan High Court at Jaipur Bench.

3. It was also alleged 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 13.6.2011 from Central Ground Water Board (CGWB), WR, Jaipur to CGWB, SUO, Allahabad and pursuant to the transfer order he was relieved on 16.6.2011 from Central Ground Water Board, Western Region, Jaipur w.e.f. 17.6.2011 (A/N).

4. In the aforesaid OA, the applicant has also raised malafide allegations against the respondents. After considering the rival submissions of the respective parties and having considered the ratio decided by the Hon'ble Supreme court in the case of State of U.P. and Ors. Vs. Gobardhan Lal, (2004) 11 SCC 402 and since the malafide allegations are not proved and the Hon'ble High Court has refused to stay the transfer order dated 13.6.2011, therefore, the aforesaid OA was dismissed being devoid of merit and interim direction granted by the Tribunal dated 1.9.2011 was also vacated vide order dated 13.10.2011.

5. Again, the present OA is filed not only against the Office Memorandum dated 27.6.2012 but also against letter dated



18.5.2012 and 8.6.2012. Vide letter dated 8.6.2012 having considered the representation filed by Smt. Mehrunissa Khan, wife of the applicant and having considered the fact that the applicant has been relieved from CGWB, WR, Jaipur w.e.f. 17.6.2011 but he has not joined the duty at CGWB, SUO, Allahabad in spite of instruction, the respondents have made it clear that once the applicant joins the duty at Allahabad, then only regularization of his absence and release of salary will be decided. Again main challenge to the letter dated 18.5.2012 and 8.6.2012 is on the ground of malafide and it is stated that the order has been passed without jurisdiction.

6. On the contrary, the learned counsel appearing for the respondents has raised preliminary objection stating that the present OA is not maintainable on the ground of same cause of action and stated that in the garb of show-cause notice dated 27.6.2012, the applicant is interested to retain the post by hook and crook and not interested to go on the transfer post and this being clear abuse of the process of the court. Also stated that the applicant does not come in the court with clean hands and has suppressed the material fact. It is also stated that in earlier round of litigation, the applicant moved an M.A. in S.B. Civil Writ Petition No. 640/2011 before the Hon'ble High Court, Jaipur

14

Bench, which was dismissed vide order dated 3.8.2011. Thereafter, he moved OA No.400/2011 before this Tribunal that too was rejected by this Tribunal vide order dated 13.10.2011, against which he preferred D.B. Writ Petition No.18158/2011 that too was dismissed by the Hon'ble Division Bench of the High Court. Again he moved M.A. in S.B. Civil Writ Petition No.640/2011 which was again dismissed by the Hon'ble High Court vide its order dated 9.7.2012. As such, the present OA is barred by the principles of res-judicata as the same cause of action has already been availed by the applicant up to the Division Bench of the High Court and the OA as well as the Writ Petition filed by the applicant has been dismissed.

7. The learned counsel for the applicant through rejoinder to reply given much emphasis on the Last Pay Certificate (LPC) issued by the respondents wherein place of posting has been mention as Central Ground Water Board, Dehradun in spite of Allahabad and referred certain information made available to the applicant under the RTI Act. It is also alleged that fresh relieving order has not been passed to join at SUO, Allahabad.

8. In response to the submissions made on behalf of the applicant, the learned counsel appearing for the respondents

19

submitted that Office Order dated 16.10.2012 has been issued pursuant to letter dated 9.10.2012 whereby fresh reliving order has been passed and the applicant has been relived from CGWB, WR, Jaipur w.e.f. 16.10.2012 (AN) to join duties at CGWB, SUO, Allahabad. The respondents further submit that they are also issuing fresh LPC by mentioning the correct posting place. Not only this, the respondents have referred to letter dated 17.2.2012 written by Smt. Mehrunissa Khan wife of the applicant as Ann.R/12 mentioning the wording of the letter that "Now, I am finding that he is losing his mental balance and faith in himself, as he is not giving any money to us for the last few months and often tells me that if government does not listen to his grievances then he might join a terrorist group to take revenge from the Secretary, Chairman and the Director, who are responsible for his present condition."

9. The letter written by wife of the applicant is unwarranted and it is for the respondents to take action against the applicant as per the provisions of law. We do not wish to comment on such derogative letter as, according to the wife of the applicant, if the grievances of the applicant are not redressed according to his wishes, the applicant might join the terrorist group to take revenge from Secretary, Chairman and Director. The applicant



has controverted the aforesaid letter by way of filing another letter 24.8.2012 (Ann.A/19).

10. We have thoroughly considered earlier OA and the Writ Petitions filed by the applicant and the order passed by the Hon'ble High Court in the Writ Petitions. Since the OA as well as Writ Petitions challenging the transfer have already been dismissed on merit, it appears that in the pretext of challenging the Office Memorandum dated 27.6.2012 the applicant again wants to challenge the transfer order, that too in such a situation when request of the applicant has been accepted by the respondents and fresh relieving order has been passed and they undertake to issue corrected LPC and it is made clear that case of regularization will only be considered after joining duty at Allahabad, in such a situation, the present OA is not maintainable. So far as challenge to the OM dated 27.6.2012 is concerned, it is a show-cause notice issued to the applicant by which the applicant was called upon to submit his reply. The applicant has every right to redress his grievance and submit his reply to this OM and this action of the respondents does not require any interference at this stage.


11. In view of the observations made hereinabove, the present OA deserves to be dismissed being devoid of merit and the

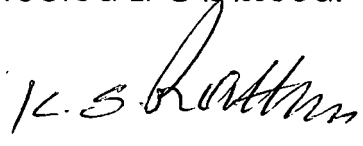
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same is dismissed with no order as to costs. The ex-parte interim order granted by this Tribunal on 26.7.2012 is vacated, but since the respondents have not issued corrected LPC, in these circumstances, the respondents are directed that the relieving order may not be made effective till the corrected LPC is issued.

  
(ANIL KUMAR)  
Admv. Member

  
(JUSTICE K.S.RATHORE)  
Judl. Member

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