

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 1519/2017

Reserved on: 3.05.2017
Pronounced on: 11.05.2017

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)**

(Through Shri Ashok Agarwal with Shri Tenzing T. Lepcha,
Advocates)

Versus

1. The National Small Industries Corporation Ltd.
Through the Chairman-cum-Managing Director
(A Govt. of India Enterprise)
N.S.I.C. Bhawam
Okhla Industrial Estate
New Delhi-110020

2. The National Small Industries Corporation Ltd.
Through the General Manager-SG (HR)
(A Govt. of India Enterprise)
N.S.I.C. Bhawan
Okhla Industrial Estate
New Delhi-110020

3. The National Small Industries Corporation Ltd.
Through Senior Branch Manager
(A Govt. of India Enterprise)
Sahibabad Branch
Mahaluxmi Metro Tower
First Floor, C-I, C-2, Vaishali, Sector-4
Ghaziabad-201002 (UP)Respondents

ORDERMr. P.K. Basu, Member (A)

The applicant joined as Deputy Manager (Business Development) in the National Small Industries Corporation Limited (NSIC) on 28.06.2010 at Ahmedabad. On 3.06.2011, he was transferred from Ahmedabad to Faridabad. On 14.05.2015, he was transferred from Faridabad to Modi Nagar. Modi Nagar branch was later shifted to Ghaziabad and Ghaziabad later merged in Sahibabad Branch. On 1.06.2016, the applicant was given additional charge of Sub-Branch Office, Meerut.

2. The applicant is aggrieved by order dated 26.04.2017 whereby he has been transferred from Sub Branch Meerut to Branch Office Bangalore and order dated 28.04.2017 by which he has been relieved from his duties from Sub Office Meerut with instructions to report to SBM B.O. Bangalore. He has prayed as follows:

- (i) Set aside the impugned Office Order dated 26.04.2017(Transfer Order) as well as impugned order dated 28.04.2017 (Relieving Order) issued by the respondents to the Applicant;
- (ii). Direct the respondents to ensure that no punitive action, including transfer of service, is taken against the applicant on account of the disclosure made by the applicant vide letter dated 03.04.2017, 15.04.2017 and 17.04.2017 pertaining to the fake bank guarantee of worth Rs. 5 Crores;
- (iii). Direct the respondents to take appropriate action against the concerned Officers in terms of the complaints dated 03.04.2017, 15.04.2017 and 17.04.2017 as made by the applicant;
- (iv). Allow the present Application with costs in favour of

the applicant; and

(v). Issue any other appropriate order or direction as this Tribunal may deem fit and proper in the interest of justice and in the favour of the applicant.

3. The applicant has also prayed for interim relief to stay the operation of the impugned orders dated 26.04.2017 and 28.04.2017.

4. The applicant's case is that on 29.06.2016 a circular was issued by NSIC to the Branch Offices of NSIC to verify the bank guarantees given by the parties under RMA scheme of the Corporation. The applicant was instructed by Senior Branch Manager, Ghaziabad to verify the bank guarantees pertaining to the Sub Branch Office, Meerut. The applicant wrote to the Branch Manager, Bank of Baroda, Meerut Branch to verify the bank guarantees/securities in terms of the Circular dated 29.06.2016. Thereafter, on 18.07.2016, the applicant visited Bank of Baroda, Meerut branch in order to verify the bank guarantees given by M/s Space Time and Research (P) Ltd, Meerut. The applicant detected that the said bank guarantees worth Rs.5 Crores were forged and fabricated. He reported the matter to Senior Branch Manager, Ghaziabad and in terms of the said information provided by the applicant, a CBI inquiry was initiated and two NSIC employees were suspended. It is stated that the CBI vigilance inquiry is pending against the said employees. It is stated that on 31.10.2016, the applicant initiated the process of recovery of Rs.5 crores from the defaulting parties along with the then Senior Branch Manager

(SBM) Shri Virender Kumar. It is alleged that the management of NSIC was not happy with the initiatives of the applicant and the then SBM Shri Virender Kumar and in an attempt to derail the investigation and the recovery process, they started pressurising both of them in the garb of their official capacity. It is further stated that when the application for investigation was finally submitted to the CBI, the CMD, NSIC took a stern and vindictive action against the then SBM Shri Virender Kumar and demoted him and also tarnished his service record by making a negative entry in the ACR of Shri Virender Kumar for the financial year 2015-16 by awarding him the grading 'fair'.

5. It is submitted that vide letter dated 3.04.2017, the applicant wrote to the Chairman-cum-Managing Director (CMD) of the NSIC, alleging that the main reason for such kind of forged bank guarantees in Meerut and Kolkata is only due to incapability and inefficiency of the CMD, NSIC. It is stated that the applicant received Show Cause Notice (SCN) dated 12.04.2017 wherein it was alleged by the Zonal General Manager (North-I) that the applicant has committed gross misconduct by writing a letter dated 3.04.2017 leveling allegations against the CMD, NSIC. The applicant thereafter sent an e-mail dated 17.04.2017, denying all the charges leveled against him and requested that an appropriate action be taken on his complaint dated 3.04.2017. The applicant followed this up with another letter dated 17.04.2017. It is alleged that during this intermittent period, the applicant was coerced/

harassed to take back his letters dated 3.04.2017, 15.04.2017 and 17.04.2017.

6. It is stated that the applicant intimated/ apprised the Secretary, Ministry of Micro, Small and Medium Enterprises about the situation vide letter dated 26.04.2017. Further, vide letter dated 27.04.2017, he again sought reply to his earlier letters from the CMD, NSIC and apprised the President, NSIC Officers Association of the entire situation. It is further stated that on 26.04.2017, the applicant informed the Senior Branch Manager, Sahibabad through e-mail about hospitalization of his daughter and vide another e-mail sent on 28.04.2017, he requested the Senior Branch Manager, Sahibabad to grant him 30 days earned leave on the ground of health problem of his daughter and also owing to health issues of his wife who was also hospitalized on 28.04.2017.

7. The applicant alleges that in order to satisfy the vindictive design and malafide of the CMD, NSIC, the impugned order dated 26.04.2017 was issued whereby he has been transferred to the Branch Office Bangalore. The grounds on which the applicant has challenged this order are primarily the following:

- (i) The transfer of the applicant is a counter blast to the letters dated 3.04.2017, 15.04.2017 and 17.04.2017 written by him making complaints against the CMD, NSIC;
- (ii) The transfer is a revengeful act to victimize the applicant for disclosing the scam of Rupees 5

crores and also for pointing out the inefficiencies of the CMD, NSIC;

(iii) The transfer of the applicant amounts to unfair labour practice and has been done in colourable exercise of power;

(iv) The applicant is a whistle blower and is entitled to the protection of Whistle Blowers Protection Act, 2014. Section 11 of the aforesaid Act reads as follows:

"11. Safeguards against victimization ; (1) The Central Government shall ensure that no person or a public servant who has made a disclosure under this Act is victimised by initiation of any proceedings or otherwise merely on the ground that such person or a public servant had made a disclosure or rendered assistance in inquiry under this Act.

(2) If any person is being victimised or likely to be victimised on the ground that he had filed a complaint or made disclosure or rendered assistance in inquiry under this Act, he may file an application before the Competent Authority seeking redress in the matter, and such authority shall take such action, as deemed fit and may give suitable directions to the concerned public servant or the public authority, as the case may be, to protect such person from being victimised or avoid his victimisation:

Provided that the Competent Authority shall, before giving any such direction to the public authority or public servant, give an opportunity of hearing to the complainant and the public authority or public servant, as the case may be:

Provided further that in any such hearing, the burden of proof that the alleged action on the part of the public authority is not victimisation, shall lie on the public authority.

(3) Every direction given under sub-section (2) by the Competent Authority shall be binding upon the public servant or the public authority against whom the allegation of victimisation has been proved.

(4) Notwithstanding anything contained in any other law for the time being in force, the power to give directions under sub-section (2), in relation to a public servant, shall include the power to direct the restoration of the public servant making the disclosure, to the status quo ante.

(5) Any person who wilfully does not comply with the direction of the Competent Authority under sub-section (2), shall be liable to a penalty which may extend up to thirty thousand rupees.”

It is stated that as per Section 11 of the Whistle Blowers Protection Act, 2014, no action can be taken against the applicant, including the action of the transfer, which is an act of victimization of the applicant on account of his disclosures.

(v) The applicant is squarely covered by the law settled by the Tribunal in OA 4081/2015,

Parveen Vs. The Secretary, Union Ministry of Environment, Forests and Climate Change and Chairman Board of Governors of Indian Council of Forestry Research and Education

as well as in OA 1894/2014, **S.M. Matloob Vs. The Director General, ICCR;**

(vi) The applicant has not completed even one year of service at his current place of posting i.e. SBO Meerut Branch and that it is a customary practice

not to transfer an employee before completing a period of 3 to 4 years at a particular place of posting. It is thus alleged that transfer is illegal and marred with malafide;

- (vii) Since the respondents have issued a SCN dated 12.04.2017, the applicant would not be in a position to participate in the inquiry proceedings against him in the same manner, if he is posted at the Bangalore Branch, as all the records which would be needed by him to defend himself in the inquiry is available at the Meerut Branch;
- (viii) There are only three officers at SBO, Sahibabad in the Business Development Division and to further harass the applicant, the SBM under instructions of the CMD, NSIC has relieved all the three officers on 28.04.2017, which will affect the business development as the transfers have been made without the joining of any other officers in lieu of transferees.

8. We have perused the letter dated 3.04.2017, which the applicant has addressed to the Managing Director, NSIC. The applicant has made the following allegations against the CMD in this letter:

- (i) On the one hand, the Corporation is being projected in a profitable position on paper whereas, on the other hand, the Corporation has

failed in providing assistance in terms of the objectives of the Corporation;

- (ii) That under the CMD's control, the Corporation has reached a low point in providing assistance to entrepreneurs;
- (iii) Due to dictatorial approach of the CMD, the department of Director Planning and Marketing has been rendered ineffective on the one hand and on the other, the Corporation is badly infested with corruption;
- (iv) The CMD has suspended some of the low level officers due to cases of fake and forged bank guarantees in Kolkata and Meerut whereas, ethically, it was due to him and his faulty policies and he should take responsibility of the same and resign from his post immediately;
- (v) If the CMD had allowed all the officers and employees of the department of Director Planning and Marketing to perform their duties as per service conditions of their jobs, then neither the condition of the Corporation might have been in such dilapidated state as it is now, nor would have the Corporation been infested with corruption;

- (vi) The CMD is adamant in destroying the dream of the Prime Minister of India of Make in India/ Made in India;
- (vii) The CMD is responsible for the deplorable condition of the Corporation and he has failed in exercising his duties and responsibilities towards the Corporation;
- (viii) The CMD has simply been transferring the employees of the Corporation to mask his inefficiency;
- (ix) The CMD should analyze the entire situation and resign from his post in the interest of the Corporation; and
- (x) The CMD would not appreciate the applicant's contention and as retaliation would transfer him to some other branch of the Corporation.

9. We have heard the learned counsel and gone through the pleadings available on record.

10. The applicant calls himself a whistle blower. It is his contention that because he and one Shri Virender Kumar detected forged and fabricated bank guarantees worth Rupees 5 crores, firstly he was pressurized and harassed and asked to withdraw letters that he had written and, when he refused to do so, he was transferred to Bangalore.

11. As would be seen from his letter dated 3.04.2017 addressed to the Managing Director, which we have summarized above, the applicant has made allegations against the Managing Director that under his control, the Corporation has reached at a low point level and infested with corruption; the CMD has failed in exercising his duties and responsibilities and tried to hide cases of corruption such as forged and fake bank guarantees at Kolkata and Meerut, by transferring employees of the Corporation. However, we find that these are vague and general allegations. There are no specifics. In fact, for his misdemeanor in writing such a letter, the applicant has already been issued a SCN. In case the applicant is concerned about the bad performance of NSIC and rising corruption in the organization, the proper course for him would have been to cite specific examples before the CMD or his immediate superior officer instead of making unsubstantiated allegations, as has been done by him. Such actions by the applicant will only breed indiscipline in the organization as just he has written against the CMD, his subordinates may also start making such unsubstantiated allegations against him and the disease will spread. This would affect the functioning of the whole organization. Even as a whistle blower, he has to bring specific cases of corruption to the knowledge of his superiors or in case he doubts his superior's integrity as well, the higher authorities. Merely by making wild allegations that so and so is inefficient or corrupt, cannot be said to be a good practice. In fact, the language, tone and tenor of the letters written by the applicant are highly objectionable and

can only be categorized as wile calumny. The applicant's allegation that he has been transferred due to detection of fraud by him is a mere conjecture. His action lends itself to him being categorized more aptly as a 'trumpeter', rather than a 'whistle blower'.

12. The applicant has been in the Northern Region since 2011, first at Faridabad/ Sahibabad and then at Meerut, always in and around Delhi. After six years, he has been shifted to the South at Bangalore, which cannot be said to be a difficult posting. If at all, Bangalore is a bigger city than Meerut with better civic amenities. Moreover, the Hon'ble Supreme Court in **S.C. Saxena Vs. Union of India & Ors.**, 2006 SCC (L&S) 1890 has settled the law as follows :

"6. We have perused the record with the help of the learned counsel and heard the learned counsel very patiently. We find that no case for our interference whatsoever has been made out. In the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed."

13. We, therefore, find no cause for interference in this case and the OA is, therefore, dismissed in limine. We impose a cost of Rs.10,000/- on the applicant payable to Delhi Legal Services Authority, within 2 weeks.

(P.K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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