

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**OA-1873/2016
MA-4656/2018**

New Delhi, this the 12th day of November, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A.K. Bishnoi, Member (A)**

Vishnu Shankar Prasad (Aged about 54 years),
(Chief Engineer)
s/o late Sh. J.P. Sharma
Ministry of Road Transport Highways,
D-47, Saket New Delhi-110017. ... Applicant

(through Sh. Vinay Kumar Jain)

Versus

1. Union of India
(Through Secretary)
Ministry of Road Transport & Highways,
Transport Bhawan,
New Delhi.
 2. Sh. Harkesh Meena (Director)
Ministry of Road Transport & Highways,
Transport Bhawan,
New Delhi.
 3. Sh. H.R. Meena (Under Secretary)
Ministry of Road Transport & Highways,
Transport Bhawan,
New Delhi. ... Respondents
- (through Sh. Hanu Bhaskar)

ORDER(ORAL)**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman**

The applicant is an officer of the Indian Engineering Service of the 1985 batch. He joined the service as Assistant Engineer and as of now, he is holding the post of Chief Engineer. Through order dated 27.03.2015, the Cadre Controlling Authority transferred him from Delhi to Silchar. The applicant filed OA No. 1223/2015 challenging the order of transfer. He contended that there is no post of Chief Engineer at Silchar and even the Cabinet note in relation to the North Eastern States does not indicate the existence of such a post. It was also his contention that the necessary financial sanction was not accorded and the order was passed only with a view to shift him from Delhi because of his attempts to expose corruption in the department. The OA was disposed of on 08.02.2016 leaving it open to the applicant to file a representation and directing the Ministry of Road Transport and Highways to consider the same.

2. The applicant submitted a detailed representation and on consideration of the same, the Secretary passed an order dated 14.03.2016. It was mentioned that the

Government intends to extend the road connectivity in the North Eastern States and a post of Chief Engineer was sanctioned for Silchar and the services of the applicant are needed for that purpose. At the end, it was mentioned that the applicant can either report to duty as Chief Engineer at Silchar and set up PMU for the Ministry or can express his willingness to be posted in any other stations, as may be decided by the competent authority.

3. In response to that, the applicant submitted a representation on 28.03.2016. He stated that his case has been cleared by ACC for the post of Additional Director Chief of CPWD and that he cannot be transferred to any other place as per the standard directions of the Government till the implementation of ACC directions. He stated that the order of transfer dated 27.03.2015 is illegal and unlawful. However, at the end, he stated that he can be considered for being posted at Bhopal provided that all the dues and financial arrears are released to him and the details of names of all the field officers at the level of CEs are furnished so as to enable him to exercise and confirm the option of field posting. He further stated that Ministry should prove its bonafides, impartiality and non-discrimination towards him.

4. Acting on this, the competent authority passed an order dated 16.05.2016 stating that the option exercised by the applicant with such conditionalities cannot be considered and directed the applicant to join Silchar with immediate effect and to set up a Project Management Unit(PMU) for the Ministry. This OA is filed challenging the office memorandum dated 16.05.2016.

5. The applicant contends that he became due for promotion as ADC so much so, that the ACC has also cleared it and with a view to deny him that promotion, the order of transfer dated 27.03.2015 was passed. He further contends that the impugned order is arbitrary in nature and did not deal with any of the valid points raised in various representations.

6. The respondents filed counter affidavit. According to them, the applicant did not move out of Delhi in his 32 years of service and when an attempt is made to shift him to Silchar for the purpose of establishing a Project Management Unit in North Eastern States, he raised all sorts of objections. It is stated that the averments made by the applicant in his representation dated 28.03.2016

are highly objectionable and even disciplinary proceedings are initiated by issuing a charge sheet.

7. We heard Sh. Vinay Kumar Jain, learned counsel for the applicant and Sh. Hanu Bhaskar, learned counsel for the respondents.

8. Time and again, Hon'ble Supreme Court held that transfer is an incidence of service. It is only when an order of transfer is found to be patently opposed to certain important guidelines issued for the purpose, or when it is tainted with malafides that an occasion may exist for the Court or Tribunal to interfere with the same. The grounds on which mostly the orders of transfer are interfered with are where the transfer is ordered in the middle of the academic session or before completion of the ordinary tenure. Even these grounds are not available, if the transfer is on administrative grounds or if the employee is holding a senior administrative position. No such conditions are advanced in this case. The applicant is a fairly senior officer in the Ministry.

9. In the recent past, the Government has decided to extend the road connectivity in the North-Eastern states and several measures have been taken in that behalf. An

independent office of ADG was sanctioned with three Chief Engineers at Itanagar, Guwahati and Silchar. The Cabinet note which is procured by the applicant, indicates that a PMU is to be established at Silchar and for that purpose, the services of a senior officer are needed. The respondents have placed before us, the proceedings through which the sanction was accorded to meet the requirements for establishment of such an office. The applicant has however exhibited his complete negativity and opposition to the order of transfer.

10. When he approached this Tribunal by filing OA No. 1223/2015 it was disposed of by permitting him to make a representation and a direction was issued to Secretary to pass an order on the representation. In compliance with the same, the applicant submitted his representation which ran into several pages raising several issues, virtually contrasting the department. After giving a detailed consideration to various issues raised by the applicant, the competent authority passed the following order:

“21. And whereas Hon'ble CAT has directed that “Secretary (RTH) would take a magnanimous view in the matter looking into all the issues” and hence, the Competent Authority, after taking into consideration the Seniority of officers, his posting profile and the sensitivity of North East, has approved the two options, which are ordinarily not offered to other

officers for the transfer posing, to Sh. Prasad. These options are namely:-

(a) The officer joins Silchar and sets up PMU for the Ministry;

Or

(b) The officer shows willingness to be posted in any other field postings, as may be decided by the Competent Authority. The officer may indicate the option within two weeks of this order to enable this office to post him accordingly.

22. With the above directions, the representation of Shri V.S. Prasad, CE is disposed of accordingly."

11. This was a golden opportunity for the applicant to choose a place of his choice to get posted. However, the rebel in the applicant did not subside even in the context of exercising the option given to him, which is almost in the form of a blank cheque. The applicant exhibited his rebellious attitude. The following paragraphs of the letter dated 26.03.2016 submitted in the name of choosing an option reflected his attitude:

"22. The insidiousness of action pertaining to my illegal, vindictive & malafide transfer to Silchar is itself evident from the fact that the letter No.A-22016/04/2016-E.II dated 14th March 2016 under which seeking & calling willingness for posting of Chief Engineers to 8 Regional Offices at Bhopal, Bangalore, Chandigarh, Jaipur, Lucknow, Mumbai, Patna and Kolkata but does not contain the office at Silchar. Therefore, my illegal transfer order to Silchar reflects the highest degree of arbitrariness &

abuse of power displayed by the then Secretary Shri Chhibber and the oblique purposes gets manifested further through aforesaid letter No.A-22016/04/2-16-E.II dated 14th March 2016.

23. The Applicant in the past during his long unblemished & outstanding career of over 30 years had never expresses unwillingness to offer of posting/place/post. The offer as now made in para 21 of the letter dated 14-03-2016 does not state the stations as which the field postings of the Ministry at the level of Chief Engineers Exists to enable the Applicant to exercise the option. This letter dated 14-03-2016 also fails to state any reference to Ministry's Letter No. A-22016/04/2016-E.II dated 14th March 2016. Therefore, without prejudice to my right to express willingness for field posting in accordance to the offer made vide letter dated 14-03-2016 and without prejudice to seek legal recourse as is warranted on account of not addressing all the issues raised by the Applicant elaborately brought out in aforesaid paras, it is requested to kindly state the "names of all Stations of Field Postings" at which the Ministry's field Officers at the level of Chief Engineers Exist so as to enable the Applicant to exercise & express the willingness option as offered vide para No.21 of letter No.C-18011/02/2015-E.II (Pt.II) dated 14th March 2016. Till the above is informed & intimated, the Applicant's preference will be 'Bhopal' which will be confirmed after the Ministry display its bonfides, impartiality & non-discrimination towards Applicant. It is expected that to display the above, the Ministry will henceforth release all the dues & financial arrears & provide all the entitlements to Applicant (denied & deprived illegally so far) and give the above details/names of all the field offices at the level of CEs so as to enable the Applicant to exercise & confirm the option of field posting, follow the Transfer policy & directions of DOPT & CVC on transfers, and Chief Engineers senior/ having more length of service are also posted out without any iota of favouritism.

24. In view of the infirmities and inconsistencies brought above in the Ministry's order issued vide letter No. : C-18011/02/2015-E.II (Pt. II) dated 14th March 2016 under the signature of Shri H.R. Meena, Under Secretary despatched through speed post on 15/03/2016 (received on 17/03/2016) with respect to the directives of the Hon'ble CAT, Hon'ble Secretary RTH is requested to "pass a detailed, reasoned and

speaking order commenting upon all the points raised by the applicant" in accordance with Hon'ble CAT directions contained in Order dated 08-02-2016."

12. We are of the clear view that no Government worth its name, anywhere in the world can afford to accommodate an officer of this attitude and approach. The applicant crossed all limits of propriety, decency and discipline. Instead of being a role model to his subordinates, he became a source of indiscipline and inconvenience to the entire department. On account of his irresponsible attitude, the department had to devote its limited time and energy to deal with him than to focus on other important issues. Left with no alternative, the competent authority passed the impugned order directing the applicant to report to duty at Silchar. Disciplinary proceedings are also said to be pending. His firm determination appears to be to dictate his terms to the entire department and to remain at Delhi, at any cost. The fact that he preferred to be without salary for the past several years, than to work and discharge his duties is indicative of his attitude.

13. We do not find any basis to interfere with the impugned order. Therefore, we dismiss the OA. There shall be no order as to costs.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/ns/