

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

No. O.A. 1795 OF 2017

Date of order: 21.02.2018

**Present: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

**Raj Kumar Das,
Aged about 52 years,
Son of late Durga Pada Das,
Working to the post of Electrician (Group-C)
In the 6E Sub-Division, KCED-IV, CPWD,
Kolkata in the office of the Executive Engineer (EI),
CPWD, Nizam Palace, Kolkata - 20,
And residing at P-19, Southern Avenue,
Block No. 6, Flat No. 88, Kolkata - 700 029.**

.. Applicants

Vs.

- 1. Union of India,
Service through the Secretary,
Government of India,
Ministry of Urban Development & Employment,
Nirman Bhawan,
New Delhi - 110 108.**
- 2. The Director General,
Central Public Works Department,
A-Wing,
Room No. 101, Nirman Bhawan,
New Delhi - 110108.**
- 3. The Chief Engineer, EZ-III,
Central Public Works Department,
1st MSO Building, 6th Floor, Nizam Palace,
234/4, AJC Bose Road,
Kolkata - 700 020.**
- 4. The Additional Director General, ER-1,
Central Public Works Department,
1st MSO Building, 6th Floor, Nizam Palace,
234/4, AJC Bose Road,
Kolkata - 700 020.**
- 5. The Executive Engineer,
CPWD, KCED-IV,
Central Public Works Department,
1st MSO Building, 6th Floor, Nizam Palace,
234/4, AJC Bose Road,
Kolkata - 700 020.**
- 6. The Executive Engineer (EI),
CPWD, KCED-IV,
Central Public Works Department,**

**1st MSO Building, 6th Floor, Nizam Palace,
234/4, AJC Bose Road,
Kolkata - 700 020.**

.. Respondents

For the Applicant : Mr. P.C. Das, Counsel
Ms. T. Maity, Counsel

For the Respondents : Mr. B.P. Manna, Counsel

ORDER

Dr. Nandita Chatterjee, Administrative Member:

An application has been filed under Section 19 of the Administrative Tribunal Act, 1985 seeking the following relief:-

“(a) To quash and/or set aside the impugned speaking order No. 10(1)/WC/CAT Court Case/KCED-IV/2017/1533 dated 17.11.2017 issued by the Executive Engineer (EI), Central Public Works Department, Kolkata Central Electrical Division, Kolkata - 20 whereby and whereunder the grievances of the applicant has been rejected on the ground which is not at all sustainable in the eyes of law and on the basis of Union's interference the aforesaid impugned order has been which is otherwise arbitrary, illegal and bad in law being Annexure A-9 to this original application.

(b) To quash and/or set aside the impugned office order No. 10(1)/KCED-IV/CPWD/2017/369(H) dated 5.7.2017 whereby and whereunder the Executive Engineer (EI), Central Public Works Department, Kolkata Central Electrical Division, Kolkata - 20 has cancelled the office order of transfer of the applicant being No. 10(1)/KCED-IV/CPWD/2017/351(H) dated 1.7.2017 without giving any opportunity to the applicant since your applicant has already joined duty as per the said order dated 1.7.2017 and submitted a joining report on 3.7.2017 which the respondent authority accepted and subsequently by the pressure of the Union beyond the interest of the public as well as administrative interest such transfer order has been cancelled by the colourable exercise of administrative power without giving any opportunity to the present applicant being Annexure A-5 to this original application.

(c) To declare that the impugned office order dated 5.7.2017 issued by the Executive Engineer (EI) on the pressure of the Union against the interest of the public interest and against the interest of the administration is otherwise bad in law and illegal and liable to be set aside and/or quashed in the eyes of law.

(d) To pass an appropriate order directing upon the respondent authority that on the basis of the joining report submitted by your applicant dated 3.7.2017 against the order of the transfer dated 1.7.2017 the applicant should be allowed to continue the duty and responsibility to the post of Electrician in the office of IE, Sub-Division, KCED-IV, CPWD, Kolkata - 20 and also restore the office of transfer being No. 10(1)/KCED-IV/CPWD/2017/351(H) dated 01.07.2017 in respect of the applicant by which your applicant has submitted joining report to the transfer post.

(e) Costs.

(f) *Any other appropriate relief or reliefs as Your Lordships may deem fit and proper.”*

2. Heard Ld. Counsel for both sides and perused documents as annexed with the instant application.

3. This matter is being heard at the admission stage and on 10.1.2018 when the matter was called out, the Ld. Counsel for the respondents wanted to submit on record as to the reasons for cancellation of the order dated 1.7.2017 (which was cancelled on 5.7.2017) by the respondent authorities. The documents explaining the reasons for cancellation of the order dated 1.7.2017 is taken on record.

4. Written notes of submission, although volunteered to be filed by Ld. Counsel for the applicant, has not been filed within the stipulated period as granted by the Tribunal. Ld. Counsel for respondents has filed written notes of arguments.

5. This matter has come up in the second stage of litigation. An earlier O.A. No. 1017 of 2017 had been filed by the applicant which was disposed of on 27.10.2017 with the following orders:-

“6. Therefore, we dispose of this O.A. by directing the respondent No. 5 that, if any, such representation as claimed by the applicant has been preferred on 7.7.2017 and the same is still pending consideration, then the same may be considered and disposed of within a period of four weeks from the date of receipt of this order.

7. Though we have not entered into the merits of the case still then we hope and trust that after such consideration if the applicant's grievance is found to be genuine then expeditious steps may be taken by the concerned respondent No. 5 within a further period of 4 weeks from the date of such consideration to extend the benefits to the applicant. However, if in the meantime the said representation stated to have been preferred on 7.7.2017 has already been disposed of then the result thereof be communicated to the applicant within a period of 2 weeks from the date of receipt of a copy of this order.

8. With the aforesaid observation and direction, the O.A. is disposed of.

9. As prayed for by Mr. Das, Ld. Counsel a copy of this order along with paper book be transmitted to the respondent No. 5 by speed post for which Mr. Das undertakes to deposit necessary cost in the Registry by the next week.

10. Though we have not entered into the merits of the matter still then while the representation is considered and disposed of status quo as on

date in so far as the applicants continuance in the present place of posting be maintained.”

6. In compliance with the same, the respondent authorities have conveyed their decision to the applicant vide their communication dated 17.11.2017.

7. Aggrieved with the speaking order dated 17.11.2017, the instant application has been filed.

ISSUE

8. The issue which requires to be decided upon in the context of the instant application is whether the cancellation order dated 5.7.2017 of the transfer order dated 1.7.2017 and also whether the speaking order so impugned in the instant application bearing No. 10(1)/WC/CAT Court Case/KCED-IV/2017/1533 dated 17.11.2017 are arbitrary, illegal and bad in law.

FINDINGS

9. Upon a detailed examination on the documents made available with the application and also from the submissions of Ld. Counsel for the applicant, the following is inferred:-

- (i) That, on 1.7.2017 (Annexure A-3 to the O.A.) vide No. 10(1)/KCED-IV/CPWD/2017/351(H) dated 1.7.2017) the applicant was transferred from 6E Sub Division, KCED-IV, CPWD, Kolkata-20 to 1E-Sub Division KCED-IV, CPWD, Kolkata-20.
- (ii) That, on 3.7.2017 the applicant submitted a joining report to the authorities of the transferred place of posting.
- (iii) That, vide Office Order dated 5.7.2017 (Annexure A-5 to the O.A.) the said order dated 1.7.2017 was further cancelled.
- (iv) That, on 7.7.2017 the applicant represented against the cancellation order dated 5.7.2017 to respondent No. 6 (Annexure A-6 to the O.A.)

(v) That, vide Order No. 10(1)/WC/CAT Court Case/KCED- IV/2017/ 1533 dated 17.11.2017 (Annexure "A-9" to the O.A.) the respondent authorities informed the applicant as follows:-

(a) That, no representation as claimed by the applicant on 7.7.2017 had been communicated to the concerned respondent authority.

(b) That, the cancellation order issued by the respondent authorities dated 5.7.2017 is legal as the Head of Office is the authority to decide on transfer and posting of WC Staff in consideration of the prevailing situation.

(c) Moreover, both the Sub-Divisions (1-E & 6-E) are within same office campus situated in Nizam Palace compound. There is no reason as to how the interest of the applicant was hampered in any way by retaining him in his original place of posting.

Vide their order dated 17.11.2017, the respondent authorities had therefore complied with the order of the Tribunal dated 27.10.2017.

The point of law which requires to be settled at this point is as to whether judicial review is warranted in the context of the instant application. As held in **Union of India v. S.L. Abbas (1993) 4 SCC 357** unless the order of transfer is vitiated by malafides or is made in obedience of any statutory provisions, the Court cannot interfere with it.

The Hon'ble Apex Court in **Rajendra Singh v. State of Uttar Pradesh & ors.** Reported in **2009 (INSC) Page No. 1351** hadheld that the order of transfer is amicable for judicial review on limited grounds namely, (i) it is contrary to rules, (ii) it has been passed by an incompetent authority or (iii) is a result of malafide.

In **State of Haryana vs. Kashmir Singh 2010 (7) Supreme 306**, the Hon'ble Apex Court stated as follows:-

Further, in **Bank of India v. Jagjit Singh Mehta (1992) 1 SCC 306**, the Apex Court did not agree to uphold the contention that if a transfer order is questioned in a Court or Tribunal, the authority is obliged to justify the transfer by adducing reasons therefor.

In this case, however, it is not the transfer order which is being challenged; rather it is the cancellation of the transfer order that has been challenged in the instant application implying thereby that the applicant is keen to join the post of his transfer vide order dated 1.7.2017 which has been cancelled by the respondents citing administrative reasons.

10. Service jurisprudence demands that, upon receipt of a transfer order, the applicant has to first obtain a relieving order from the office from which he has been transferred. It is also a settled practice of governance that the joining report to the transferred place of posting has to be accepted by the authorities to whose office an incumbent has been transferred.

11. During hearing the Ld. Counsel for the respondents furnishes before us a communication dated 10.1.2018 from the respondent authorities to the Ld. Counsel for the respondents, wherein the following has been noted:-

“
 XXX
 XXX
 XXX
 XXX

3. As per the Office Order dated 1.7.2017 the Petitioner has submitted a joining report to 1-E Sub-Division, KCED-IV, CPWD, Kolkata which was not accepted as there was no Relieve Order from 6-E Sub Division, KCED-IV, CPWD, Kolkata. The Petitioner neither submitted appeal for his relieve from 6-E Sub Division nor he was relieved from 6-E Sub Division. So, one official can't be posted in two offices at a time.

4. The transfer order dated 1.7.2017 was cancelled by an Order dated 5.7.2017 due to “administrative reason”.

5. The Advocate of the Petitioner submitted an application dated 11.7.2017 enclosing above mentioned O.A. i.e. a representation dated 7.7.2017 wherein the Petitioner stated that he joined in the transferred post on 3.7.2017 which was accepted by the authority - it is not correct,

it is only the acknowledgement.”

12. It is obvious therefore that the applicant was not at liberty to join his transferred place of posting as because his parent office had not relieved him for such purpose. Hence, his joining report as vociferously highlighted upon by the applicant's Counsel, is void ab-initio. Also the applicant cannot justifiably claim that the stamp of receipt on his joining report, which is only on acknowledgement is actually a record of acceptance by authorities of the office to which he has been transferred.

13. Hence, this matter not having established malafide, violation of statutory provisions nor violation of the fundamental or legal right of the applicant, does not call for judicial intervention. Hence, we refrain from interfering in the matter and accord the respondent authorities liberty to decide on the posting of the applicant as required on administrative grounds.

14. In passing, it is also noted that while disposing of O.A. No. 1017 of 2017 dated 27.10.2017 the Tribunal had directed as follows:-

“10. Though we have not entered into the merits of the matter still then while the representation is considered and disposed of status quo as on date in so far as the applicants continuance in the present place of posting be maintained.”

15. Hence, when the Tribunal had directed that status quo as on date, in so far as the applicant's continuance in the present place of posting is to be maintained, since it is a fact that as he was not relieved, the applicant's present place of posting on the date of the Tribunal's order was in the 6E Sub-Division and, accordingly, hence by virtue of the Tribunal's order (not challenged in any forum) status quo should continue in this regard.

16. The O.A. is hence dismissed on merit. The parties are to bear their own costs.

(Dr. Nandita Chatterjee)
(Manjula Das)
Administrative Member

Judicial Member

SP

