

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. O.A. 351/00328/2017

Date of order : 10.3.2017

LIBRARY

Present : Hon'ble Mr. A.K. Patnaik, Judicial Member

Markanday Tiwari,
Aged about 49 years,
Son of A.K. Tiwari,
Residing at Prothrapur,
Post Office – Prothrapur,
District – South Andaman,
Port Blair – 744 101 and
Working as Assistant Engineer under
Andaman Public Works Department,
Port Blair – 744 101.

.. Applicant

- V E R S U S -

1. Union of India,
Service through the Secretary,
Ministry of Home Affairs,
Jaisalmer House,
26, Man Singh Road,
New Delhi – 110 011.
2. The Chief Secretary,
Andaman & Nicobar Administration,
Secretariat,
Port Blair – 744 101.
3. The Joint Secretary (PWD),
Andaman & Nicobar Administration,
Secretariat, Port Blair – 744 101.
4. The Chief Engineer,
Andaman Public Works Department,
Port Blair – 744 101.
5. The Executive Engineer,
Construction Division-II,
Andaman Public Works Department,
Prathrapur,
Port Blair – 744 101.

.. Respondents

For the Applicant : Mr. P.C. Das, Counsel

For the Respondents : Mr. S.K. Ghosh, Counsel

[Signature]

ORDER (Oral)

On being mentioned during mention hour by Mr. P.C. Das, Ld. Counsel for the, that his case (O.A. No. 351/00328/2017) may be taken up on urgent basis because the matter cannot wait till 17.3.2017, as this ~~Tribunal~~ will be closed for Holi vacations and there is no Vacation Court, accordingly this matter is taken up on urgent basis.

2. Heard Mr. P.C. Das, Ld. Counsel for the applicant and Mr. S.K. Ghosh, Ld. Counsel, who usually appears for Union of India and is present in Court and on my advice Mr. P.C. Das, Ld. Counsel serves a copy of the O.A. on Mr. S.K. Ghosh, Ld. Counsel appearing for A&N Administration.

3. This O.A. has been filed by the applicant under Section 19 of the Administrative Tribunal Act, 1985 challenging the impugned office order dated 6th March, 2017 passed by the Chief Engineer, Andaman Public Works Department, Port Blair by transferring the applicant from Port Blair to CD, Rangat in the Zone-III without cancelling the earlier order of transfer dated 25th March, 2016 against which an original application being O.A. No. 351/00142 of 2016 is pending before this Tribunal and during pendency of such original application, the impugned order dated 6th March, 2017 is absolutely bad in law and illegal being Annexure "A-18" of this Original Application and non-consideration of the applicant's representation dated 7.3.2017 preferred by the applicant before the Chief Engineer, APWD, Andaman & Nicobar Administration being Annexure "A-19" of this original application praying for the following reliefs:-

"(a) To quash and/or set aside the impugned office order dated 6th March, 2017 passed by the Chief Engineer, Andaman Public Works Department, Port Blair by directing your applicant to join duty in a lower post by transferring him from Port Blair to CD, Rangat in the Zone-III without cancelling the earlier order of transfer dated 25th March, 2016 against which an original application being O.A. No. 351/00142 of 2016 is pending before this Hon'ble Tribunal and during

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pendency of such original application, this impugned order dated 6th March, 2017 is absolutely bad in law and illegal being Annexure A-18 of this original application.

(b) To pass an appropriate order directing upon the respondent authority not to disturb the status of present applicant who is holding the charge of Assistant Engineer in the Andaman Public Works Department with effect from the year 2011 and to consider his regular promotion on the basis of Vigilance Clearance made by the Andaman & Nicobar Administration and after issuing such promotion order, the Administration may transfer your applicant in any place of Andaman & Nicobar Islands but before issuing such order of promotion by directing your applicant to join duty in a lower post to the post of Junior Engineer is otherwise bad in law and illegal.

(c) To declare that the impugned order of transfer dated 6th March, 2017 is bad in law and illegal on the ground that the applicant already filed an original application being O.A. No. 351/00142 of 2016 against such transfer order which is pending before this Hon'ble Tribunal and this Hon'ble Tribunal also passed an interim order on 18.11.2016 and during pendency of such original applicant the subsequent order of transfer is clearly attract the Section 19(4) of the Administrative Tribunal Act, 1985.

d) To pass an appropriate order directing upon the respondent authority to consider the representation dated 7.3.2017 as made by the applicant before the respondent authority concerned.

e) Costs;

f) Any other appropriate relief or reliefs as Your Lordship may deem fit and proper."

4. Mr. P.C. Das, Ld. Counsel for the applicant submitted that vide Office Order No. 471 your applicant got the permanent charge to the post of Assistant Engineer by the order of the respondent department. That vide Office Order the Andaman Public Works Department also issued an order on 18.7.2011 for discharging the duties and functions assigned to the applicant against a vacancy post since the applicant's functioning duties to the post of Assistant Engineer for regular promotion to the post of Assistant Engineer. On 17.3.2016 the Andaman & Nicobar Administration issued an order in respect of vigilance clearance in favour of the applicant. The applicant made a representation before the respondent authority on 28.3.2016. The Ld. Advocate for the applicant communicated the respondents that as per the order dated 15.6.2016 of this Tribunal the applicant shall not be compelled to join in the transfer post i.e. to the post of

Verdict

Junior Engineer. The applicant preferred a representation on 24.6.2016 by which the applicant sent the certified copy of the order dated 15.6.2016 passed by the Tribunal in O.A. No. 351/00065/N/2016. This Tribunal on 18.11.2016 passed an interim order in O.A. No. 351/00142 of 2016. On 2.12.2016 this Tribunal had issued a notice enclosing the copy of the order dated 18.11.2016 to all the respondents. On 6.3.2017 the Chief Engineer, Andaman Public Works Department, Andaman & Nicobar Administration issued an impugned order by which the applicant has been transferred from Port Blair to CD, Rangat in Zone-III by violating the interim order dated 18.11.2016 passed by this Tribunal and without cancelling the earlier transfer order dated 25.5.2016. The applicant preferred a representation dated 7.3.2017 against the impugned office order dated 6.3.2017 before the respondent authority, which is still pending consideration.

5. Mr. P.C. Das, Ld. Counsel fairly submitted that strictly in compliance to Section 20 of the Administrative Tribunal Act, 1985 he has ventilated his grievance to respondent No. 4 on 7.3.2017 against the order of transfer which was issued on 6.3.2017.

6. Though in my considered view, it is quite premature to entertain this O.A., however on the sincere prayer of Ld. Counsel for the applicant, I leave it to the authorities, that if any such representation has been preferred by the applicant on 7.3.2017 and the same is still pending consideration, then the same may be considered and disposed of by the respondent No. 4 as per the rules and regulations and the result thereof be communicated to the applicant by way of a reasoned and speaking order within a period of two months from the date of receipt of this order.

7. I also make it clear that if any such representation/appeal dated 7.3.2017 is still pending consideration as stated by the Ld. Counsel for the

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applicant, then the same may be considered and disposed of. Status quo as on date insofar as the applicant is concerned shall be maintained and he shall continue in the present place of posting.

8. With the aforesaid observation/direction, this O.A. stands disposed of.

9. As prayed by Mr. P.C. Das, Ld. Counsel a copy of this order be handed over to Mr. S.K. Ghosh, Ld. Counsel, who may suitably communicate the same to the concerned respondent No. 4 for consideration.

10. Certified copy of this order be handed over to Ld. Counsel for both sides as per rules.

(A.K. Pathak,
Judicial Member

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