

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**ORGINAL APPLICATION NO.200/00460/2019**

Jabalpur, this Wednesday, the 22nd day of May, 2019

HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER

K.K.Mandlekar, S/o Shri G.R.Mandlekar, Aged about 56 years, Presently working as Sr. Divisional Accounts Officer, Accountant General (Accounts & Entitlement) Raipur (C.G.); R/o 598, Street-33, Smriti Nagar, Bhilai, Dist Durg, Chhattisgarh(C.G) **- APPLICANT**

(By Advocate – Shri Manoj Sharma)

Versus

Accountant General (Accounts & Entitlement) Chhattisgarh, Zero Point, Baloda Bazar Road, Raipur (C.G.)-492001 **- RESPONDENT**

O R D E R

Through this Original Application the applicant is challenging the action of the respondent whereby option from the applicant has been called for transfer and posting without completion of three years of tenure posting at present place of posting.

2. Precisely the case of the applicant is that he was initially appointed to the post of Divisional Accountant in the year 1992 and later on he was regularly promoted to the higher post of Senior Divisional Accounts Officer. In June, 2008 he was transferred to the office of Executive Engineer, Irrigation Division, Water Resources Department, Rajnandgaon. Thereafter, in June 2011 he was transferred in the office of Executive Engineer, PWD Division-II, Raipur. Thereafter, in June 2014

he was transferred and posted to the office of Executive Engineer, PWD(B&R) Division Durg.

3. For the purpose of transfer and posting, separate guidelines have been issued on 20.03.2015 (Annexure A-1) by the office of the Comptroller and Account General. In these guidelines, the divisions are classified in various categories such as Very Heavy Divisions, Heavy Divisions, Medium Divisions and Light Divisions. In para 2 of these guidelines there is a procedure for constitution of a committee on transfers and postings.

4. Thereafter on 30.05.2017 (Annexure A-2) the applicant was transferred and posted in the Office of Executive Engineer, PWD (Building and Road) Division-I, Raipur. Even after completion of six years at Raipur, the respondent-authority retained the applicant at Raipur after considering the recommendations of the Engineer-in-Chief, PWD Raipur. Thereafter, the applicant has not completed three years tenure of posting in the Office of Executive Engineer, PWD (Building and Road) Division-I, Raipur.

5. In terms of the transfer guidelines, options for transfer and postings are required to be called only from those incumbents who are going to complete three years of service in one division. Vide Office Memorandum dated 15.05.2019 (Annexure A-5) the respondent has

called for options for choice of place of posting for annual transfers during the year 2019-20. Along with this OM dated 15.05.2019 a list of officials due to be considered for Annual General Transfer has been enclosed. In the said list the name of the applicant is shown at serial no.2. While the post of the applicant presently held is shown at serial no.22 in another list of vacant divisions enclosed with said OM dated 15.05.2019.

6. The submission of the learned counsel for the applicant is that the action of the respondent-department for calling option from the applicant shows their non-application of mind and is in grave violation of the transfer guidelines, on the ground that if once the option form has been called for then the incumbent is earmarked to be transferred from the present place of posting without completion of three years' tenure. In that case other incumbents may opt for transfer at applicant's place. Then it will be difficult for the applicant to be retained at the present place of posting and it will create third party's right.

7. Heard the learned counsel of applicant and perused the pleadings.

8. As per the Transfer and Posting Guidelines (Annexure A-1) under Para 2 there is a provision for constitution of a committee on transfer and posting and in Para 4 parameters have been given which are required to be considered by the committee while recommending the cases for postings/transfers. As per Para 4(d) of the said guidelines, posting of the

officers should be made in the appropriately graded divisions as far as possible, and further as per Para 4(e) option for posting in particular station(s) should be called for from the individuals and efforts should be made to accommodate the officers at the place of their choice as far as possible, subject to availability of vacancy and administrative exigencies. Further, as per Para 5 the tenure of posting shall normally be three years in a particular 'Division' and six years at a particular 'Station'. Incumbency period for the 12 years preceding the year in which the transfers are being made is to be taken into account for this purpose.

9. As per OM dated 15.05.2019 (Annexure A-5) officials due for transfer are directed to submit their duly filled option in the prescribed proforma by 23.05.2019.

10. As per the list of official due for annual transfer 2019 enclosed with the OM dated 15.05.2019, the applicant is figured at serial no.2. In the list of District Wise vacant positions of Divisional Accountant for year 2019-20 enclosed with OM dated 15.05.2019, the post of the applicant presently held is shown at serial no.22.

11. The main contention raised by the applicant is that the action of the respondents is violative of fundamental rights and the same is arbitrary, unjust and unreasonable. As per transfer guidelines an incumbent should be posted for three years in a particular division and as per impugned

OM calling for option of the applicant is nothing but sort of a victimization and harassment and arbitrary exercise. The main thrust of the applicant is that the applicant has been posted at the present place of posting only on 30.05.2017 (Annexure A-2) and has not completed three years tenure, but the name of the applicant has been shown in the list of officials due for annual transfer. Further post which is held by the applicant presently has been shown as vacant for the said transfer in the year 2019-20.

12. From the documents and submissions made by the applicant, it is very clear that as per policy completion of three years is one of the criteria and admittedly the applicant has not completed three years at the present posting because as per Annexure A-2 the applicant has been transferred and posted at the present place on 30.05.2017. So, *prima facie* the showing of name of the applicant in the list of officials due for annual transfer in 2019-20 is in violation of the transfer guidelines.

13. At this stage the counsel for the applicant submits that the applicant will be satisfied if the respondents are directed to consider the case of the applicant on representation to be presented before the respondent-department and if the respondent-department is directed to consider his case as per the representation and the policy in a time bound manner.

14. I am of the view that at the admission stage this Original Application can be disposed of in view of the submissions made by the applicant.

15. Accordingly, this Original Application is disposed of with a direction to the respondents that if the applicant submits his representation within a week from the date of receipt of a copy of this order, the respondent shall consider the case of the applicant as per his representation and policy and pass a detailed reasoned order within 15 (fifteen) days from the date of receipt of the representation of the applicant. In the meanwhile, no action shall be taken against the applicant by the respondents in terms of OM dated 15.05.2019 (Annexure A-5).

**(Ramesh Singh Thakur)
Judicial Member**

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