

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00684/2016

Jabalpur, this Friday, the 25th day of January, 2019

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Ajay Sancha Asst. Eng.
S/o Shri S. Sancha
Aged about 40 years
R/o CMS Compound
Ghamapur
Jabalpur M.P. 482001
(By Advocate –**Shri S.K. Nandy**)

-Applicant

V e r s u s

1. Union of India,
Through its Secretary
Central Public Works Department
Nirman Bhawan
New Delhi 110001

2. The Director General
Govt. of India,
CPWD Nirman Bhawan
New Delhi 110001

3. The Executive Engineer (Co-ord.)
Western Region CPWD
3rd Floor New CGO Building
48 New Marine Lines,
Mumbai 400020 (M.H.)
(By Advocate –**Shri S.P. Singh**)
(*Date of reserving the order:-27.08.2018*)

- Respondents

O R D E R**By Ramesh Singh Thakur, JM:-**

This Original Application has been filed by the applicant calling in question the legality, validity and propriety of the office order No.37/2016 dated 16.05.2016 (Annexure A/1) passed by respondent No.3, whereby the applicant has been transferred from Jabalpur to Bhopal and order dated 27.06.2016 (Annexure A/6) whereby the representation of the applicant has been rejected by the respondent-department.

2. The applicant has sought for the following reliefs:-

“8(i) Summon the entire relevant file/record pertaining to transfer of the applicant.

8(ii) Set aside the transfer order dated 16.05.2016 (Annex. A/1) and the order dated 27.06.2016 (Annexure A/6) with all consequential benefits arising thereto:

8(iii) Any other order/orders, direction/directions may also be passed.

8(iv) Award cost of the litigation to the applicant.”

3. The facts of the case are that the applicant is presently holding the post of Assistant Engineer in CPWD Jabalpur. The applicant was shocked and surprised to receive the impugned transfer order dated 16.05.2016 whereby before completion of normal tenure at a station his services have been transferred from Jabalpur to Bhopal.

4. It has been submitted by the applicant that the applicant was posted at Jabalpur only in the year 2013 that too on his own request on the pretext that his wife is posted at Government Science College, Jabalpur as Lecturer. The applicant has preferred representation dated 04.04.2012 (Annexure A/7) for posting him at Jabalpur. It is further submitted by the applicant that at present there is no administrative exigency or public interest in transferring the applicant's service. The respondent-department has issued a list of routine transfer of Assistant Engineer. However the applicant's name is not mentioned in the said list of transfer. The

allegation of the applicant is that the present transfer is the fall out of the disciplinary proceedings which has been issued by the department by issuing the charge sheet dated 13.10.2015 (Annexure A/2). It has been further submitted by the replying respondents that the said charge sheet has been issued by the respondent-department under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 for the misconduct on the charges, that the applicant being a witness in a criminal case has not supported the case of the prosecution. It is submitted by the applicant that the applicant has separately challenged the charge sheet qua the said disciplinary proceedings in O.A.No.200/00153/2016. It has been submitted by the applicant that though no interim order was passed, but on approaching the Hon'ble High Court the stay was granted by the Hon'ble High Court. So, the main allegation of the applicant is that the present transfer is the fall out of this charge sheet which has been specifically submitted by the

applicant that statement under Section 161 Cr.PC is not evidence at all and there is no question of supporting or not to support the prosecution case. So, the charge sheet for misconduct is not tenable in the eye of law. The submission of the applicant is that there is malice in law and the applicant has been victimized by abruptly transfer from Jabalpur to Bhopal despite the fact that the applicant has not yet completed normal tenure prescribed at station. So, the action of the respondents in transferring the applicant before completion of his normal tenure is arbitrary, unjust and is against all canons of justice.

5. The applicant has also submitted that applicant's son namely Shaurya Sancha is 12 year and a daughter namely Samrth Sanch aged 7 year are studying in Class 7th and 3rd respectively. Moreover, the wife of the applicant is working as Lecturer in Government Science College Jabalpur, though the applicant had made the representation that was also rejected vide Annexure A/6.

It is also submitted by the applicant that the order passed by the respondent-department is not a reasoned and speaking order.

6. The respondents have filed their reply. It has been submitted by the replying respondents that the contention of the applicant is that the action of transfer is fall out of the disciplinary proceedings is not maintainable due to the fact that keeping in view of the necessity of proper utilization of Assistant Engineer, the applicant has been transferred. It has been submitted by the respondent that due to reduction of two posts of Assistant Engineers, there is no vacant post of Assistant Engineer at Jabalpur. It has been submitted that the Chief Engineer has written that due to the project work is already in completion state, the Assistant Engineers post in the project may be transferred due to closing of 2 sub divisions. It has been submitted by the respondents that as per law settled by Hon'ble Apex Court, the posting and transfer of the employee who are serving

under the administrative control of the government and hold transfer order can be challenged only on the ground of infringement of service condition on malafide ground against the competent authority who issued the order of transfer. It has been submitted by the replying respondents that the applicant is working in their establishment which is transferable post and the respondents can transfer and post the applicant within the territorial jurisdiction of the respondent and applicant is bound to join the transfer post. As per the transfer policy the employee cannot claim immunity or priority on the basis of transfer policy. The transfer policy is a guideline only and it is not enforceable as a matter of rights as it is not statutory in nature.

7. The transfer of the applicant has been issued on the administrative ground due to reduction of two posts of Assistant Engineer. There is no post of Assistant Engineer at Jabalpur, so the impugned order of transfer issued on the administrative reasons. Moreover, the

applicant has been posted in a particular project and project is completed and the applicant is not entitled to be posted at Jabalpur when a project is completed. It has been further submitted by the replying respondents that CBI Jabalpur has registered a case against some Shri Vaibhav Chauhan, Deputy Chief Personnel Officer (HQ) Western Central Railway Jabalpur under Section 7 of the PC Act 1988 and had proposed to lay a trap to catch him red handed. The applicant (the then JE) was requested by CBI on 08.06.2007 to act as independent witness for this trap proceeding. Shri Vaibhav Chauhan was caught red handed by CBI for demanding and accepting bribe of Rs. 50000/- on 08.06.2007 in the presence of witness. The applicant has signed pre and post trap memo on 08.06.2007 and during trial in CBI Court Jabalpur, he did not deposed as per facts recorded in memo dated 08.06.2007. The applicant is an active presence, turned completely hostile and changed his statement recorded by investigation officer during his

participation as witness. It has been specifically submitted by the replying respondents that as per Rule 16 Chapter XIII of Vigilance manual Vol.I provides disciplinary action against the Government servant who made a statement in preliminary enquiry and changes his stand during evidence in the enquiry and if such action on his part is without justification or with the objective of favouring one or the other party, his conduct would constitute violation of Rule 3 of the Conduct Rules. It has been submitted by the replying respondents that charge memo dated 13.10.2015 under Rule 14 for misconduct or misbehavior was issued to the applicant and inquiry has been proposed to be held. It has been submitted by the replying respondents that aggrieved by the charge memo dated 13.10.2015 and order dated 16.12.2015, the applicant filed O.A. No.200/153/2016 before this Tribunal and the said O.A. is pending for final adjudication. The Tribunal has rejected the interim relief on 19.04.2016. It has been further submitted that

the applicant had approached the Hon'ble High Court of Madhya Pradesh by filing a Writ Petition No.8095/2016 and the Hon'ble High Court has granted interim protection and stayed the entire departmental proceeding initiated against the applicant. It has been specifically submitted by the replying respondent that, the act and conduct of the applicant is contrary to become a good government servant and he has violated the rules and procedure of the Government of India, hence the charge was issued for initiating the departmental enquiry which is pending before the competent authority. It has been further submitted by the replying respondents that there is no relation of transfer order issued by the competent authority with the departmental proceedings. So, the transfer order passed by replying respondent is as per the need of administrative exigency and the impugned order of transfer is just and proper.

8. We have heard the learned counsel for both the parties and also gone through the documents attached with the pleadings.

9. At the outset the main case of the applicant is that the respondent-department has issued the impugned order dated 16.05.2016 (Annexure A/1) whereby the applicant has been transferred from Jabalpur to Bhopal as A.E. (P), EE(P) under SE (P), (CZ) against existing vacancies. From the impugned order itself it is clear that the applicant has been transferred from project division Jabalpur to Bhopal against existing vacancies. Meaning thereby that the vacancy is there but nobody has been posted till the date of issuance of this impugned order. The thrust of the argument of the applicant is regarding the fall out of the criminal case, whereby Shri Vaibhav Chouhan (Deputy Chief Personnel Officer), WCR, was caught red handed by CBI in a corruption case and the applicant stood witness to the memo prepared by the investigating officer before and after the trapping

exercise. The respondent-department have also spelt out the facts regarding the backing out from the statement given by the applicant under section 161 of the Cr. P.C., while appearing as a witness in the corruption case against Shri Vaibhav Chouhan. It is clear from the pleadings itself, that the applicant was declared as hostile witness. It is also the fact that the purpose of statement under Section 161 Cr.PC is totally different and it is not a piece of evidence at all. For the purpose of judicial proceedings, it is the statement which is recorded by the Court during the trial. Admittedly the statement recorded under Section 161 Cr.PC is not a statement of witness at all. The purpose of recording the statement of 161 Cr.P.C. is to test the veracity of the witness and to test the truthfulness of the incidence itself. During the course of the argument it has come to the fact that the applicant has filed O.A. No.153/2016 and has sought for quashing of charge sheet dated 13.10.2015, which was issued by the competent

authority for the alleged misconduct done by the applicant to the fact that the applicant has not supported the case of prosecution. Though the replying respondent has submitted in their reply that the O.A. No.153/2016 is pending for adjudication before the Tribunal. But it has come to our notice that O.A. No.153/2016 has been finally decided on 26.07.2018 and this Tribunal has quashed and set aside the charge sheet dated 13.10.2015 with all consequential benefits. So, it is clear that the charge sheet issued by the replying-respondents have already been quashed by this Tribunal on 26.07.2018. The main allegation of the applicant is that the transfer order dated 16.05.2016 is the outcome of the charge sheet dated 13.10.2015 and the applicant has tried to show the nexus between the charge sheet issued by the respondents and the order passed by the competent authority regarding the transfer from Project Division Jabalpur to Bhopal. The respondent-department has denied the allegation of the applicant. The replying

respondent has specifically submitted in their reply that the transfer policy is a guidelines and it has no statutory force. Further the replying-respondents have specifically submitted that it is will of the employer to post the employee to any place as per the requirement and administrative exigency of the department. Further the replying respondents has submitted that due to reduction of two posts of Assistant Engineer, there is no vacant post of Assistant Engineer at Jabalpur and moreover the project work at Jabalpur is completed and in the interest of administration, the applicant has been posted at Bhopal.

10. It is true that the transfer policy is a guidelines and it has no statutory force. But exercise of administrative discretion is to be tested in a judicial review. There should not be any arbitrariness on the part of the respondent-department. In the instant case though the applicant has tried to show the nexus between the charge sheet dated 13.10.2015 issued by replying respondents

and the transfer order vide Annexure A/1 dated 16.05.2016 and the Annexure A/6 whereby the representation of the applicant has been rejected by the replying respondents vide order dated 27.06.2016. From the reply it is clear that the place of working where the applicant was posted, the project work is completed. Secondly, it is clear from the reply that due to reduction of two posts of Assistant Engineer, there is no vacant post of Assistant Engineer at Jabalpur. The submission made by the applicant to the fact that the wife of the applicant is posted at Government Science College as a lecturer and as per representation dated 04.04.2012 the applicant had been posted at Jabalpur. It is true that as per policy the authority may consider the case of the employee to be posted at a place of posting of his/her wife but it should not be at the cost of administrative exigencies. From the reply of the replying respondents, it is clear that the applicant has been transferred from Jabalpur to Bhopal on the administrative ground

specifically that the transfer order Annexure A/1 is against the vacancy of Assistant Engineer and secondly the project work is over, where the applicant had been posted. Moreover, it is totally prerogative/discretion of the employer to post his employee as per necessity and administrative exigency. The respondent department has relied upon the order passed by this Tribunal in O.A. No.200/511/2017 dated 01.08.2017 whereby this Tribunal has relied upon the judgment of Hon'ble Supreme Court in the matters of Union of India vs. S.L. Abbas (1993) 4 SCC 357 and the matters of State of M.P. vs. S.S. Kourav (1995) 3 SCC 270, whereby the Hon'ble Apex Court has held that the wheels of administration should be allowed to run smoothly and the court or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. In the instant case, the applicant could not prove the allegation of malafide

against any of the respondents, which is also clear as per the reply filed by the respondents.

11. In view of the above, we are of the view that no interference is required in the action of the respondent-department.

12. Resultantly, this O.A. is dismissed. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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