

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCHO.A 351/1165/2018
M.A/351/675/2018

Date of Order: 16.11.18

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

K. Amose, son of Late K. Kuppusamy, aged about 51 years, residing at Shoal Bay, District South Andaman, Pin - 744104 and at present working to the post of Head Draughtsman in the Road Construction Division, Andaman Public Works Department, Wimberlygunj under Andaman & Nicobar Administration;

--Applicant

-Versus-

1. Union of India service through the Secretary, Ministry of Urban Development and Employment, Government of India, Nirman Bhawan, New Delhi - 110011.
2. The Chief Secretary, Andaman & Nicobar Administration, Secretariat Complex, Port Blair - 744101.
3. The Secretary, Public Works Department (PWD), Andaman & Nicobar Administration, Secretariat Complex, Port Blair - 744101.
4. The Chief Engineer, Andaman Public Works Department, Port Blair - 744101.
5. The Superintending Engineer, Construction Circle-I, Nirman Bhawan, A&N, P.W.D, Port Blair 744101.
6. The Executive Engineer, RCD, Andaman Public Works Department, Wimberlygunj, South Andaman, Pin 744206.

--Respondents

For The Applicant(s): Mr. A. K Banerjee, Counsel
Ms. P. Mondal, Counsel

For The Respondent(s): Mr. R. Halder, Counsel

O R D E R

Ms. Bidisha Banerjee, Member (J):

On 10.08.2018, the following interim order was passed:

"Ld. Counsel for both the parties are present and heard.

In this OA, the applicant has assailed an order dated 31.07.2018, whereby and whereunder an Establishment Board, in its meeting held on the same date upheld the transfer of the applicant.

The order has been assailed on the ground that on earlier occasion, while disposing the OA. 1027/18 on 16.07.2018 this Tribunal had directed the Chief Engineer or Superintendent Engineer of A & N PWD, Port Blair to issue a reasoned and speaking order on the representation of the applicant dated 09.07.2018, within a period of 6 weeks from the date of receipt of a copy of the order and to maintain the status quo as on the date of order till disposal of the representation whereas the order dated 31.07.2018 has been issued by the Board in blatant violation of the direction of this Tribunal in as much as the matter was never referred to a Board. The Board was never authorized to dictate the Chief Engineer or Superintendent Engineer, so that the order that would be issued by such authorities would not be upon due application of their mind on the contents of the representation but rather under the dictate of the Board.

Ld. counsel for applicant would submit that having served Zone- IV & V under the respondents and no suitable post being available Zone- VI, the applicant was entitled to opt for Zone-I, II or III in terms of revised transfer policy of 31.07.2003 and upon issuance of the order dated 31.07.2018, therefore the Board has not only given ago bye to the policy. Para 6 whereof reads as under:

"6. On completion of the first tenure in Zone IV, V or VI, officials will be eligible to opt for Zone I, II or III for the normal posting".

But also decided the entire matter in violation of the solemn order passed by this Tribunal having not allowed the applicant to opt for Zone-I, II and III.

Ld. counsel for applicant further submits that the transfer order dated 6.7.2018 is itself in violation of the para 8 of the said circular in

as much as "all transfer orders shall be issued on or before 30th April of every year and will take effect immediately", whereas transfer has been ordered in the instant case in July.

Ld. counsel for applicant, therefore, vociferously submits that the report of 31.07.2018 which would prevent the Chief Engineer or the Superintendent Engineer from independently applying their mind on the representation, ought to be quashed.

Ld. counsel for respondents on the other hand, submits that the respondents are guided by para 4 of the said circular which permits the department to adjust its employee elsewhere till the suitable post of correct seniority is available in the Zone and that there was no violation of the provisions.

In response to such submission, ld. counsel for applicant would submit that there is still one vacancy existing under Zone I & III respectively which needs to be considered by the Chief Engineer or Superintendent Engineer for placement of the applicant.

In view of such position, since, *prima facie* case has been made out and it appears that the placement of the matter before the Board is apparently in violation of the direction of this Tribunal, the recommendation of the Board applicant is stayed and the Chief Engineer or Superintendent Engineer is permitted to apply their mind independently on the representation preferred by the applicant dated 09.07.2018, as was directed in the earlier OA as well as any further representation made after the Board met for the purpose of consideration of the transfer, and pass a reasoned and speaking order within a period of 4 weeks.

Till such time the status quo in regard to the present applicant that was directed to be maintained in the earlier OA shall be maintained.

Respondents are also directed to file reply by 4 weeks. Rejoinder, if any, be filed by 2 weeks thereafter. "

2. Pursuant to such directions, a speaking order was issued on 31.08.2018 which reads as under:

“ ANDAMAN AND NICOBAR ADMINISTRATION
OFFICE OF THE CHIEF ENGINEER
ANDAMAN PUBLIC WORKS DEPARTMENT
NIRMAN BHAWAN

Port Blair, dated the 31 August, 2018

ORDER

Whereas, O.A No. 351/1027/2018 (K Amose -Vs-UOI & Others) was disposed on 16.07.2018 by the Hon'ble CAT, Calcutta Bench, Calcutta. The operative part of the order dated 16.07.2018 is as below:

“ Accordingly, the respondent No. 5 i.e the Chief Engineer, Andaman public Works Department, Construction Circle-I, Nirman Bhawan A&N, PWD , Port Blair is directed to consider and dispose of the representation/representations of the applicant dated 09/07/2018 (Annexure A/5 & A/6) by passing a well reasoned order as per the rules and regulations in force within a period of six weeks from the date of receipt of this order and communicate the result to the applicant forthwith. So far continuance of the applicant in the present place of posting is concerned, status quo as on today shall be maintained till his representation is disposed and the result is communicated to him”.

And whereas, in compliance with the above direction, the representation dated 09/07/2018 and enclosed application dated 23/02/2018 of the applicant Shri K. Amose, Draughtsman Grade-II (Civil) was examined by the undersigned and found that the applicant has stated in his representation dated 09/07/2018 that the transfer policy has not followed as a result Shri. Dhirubhai Patel, Mr. Bhaskar Rao, Smti. Swarnalatha Singh, Shri V. Rajendran and Shri. Pranab Mondal were not even completed Zone-IV and requested to cancel or modify his transfer and on examination of his application dated 23/02/2018, it is found that therein the applicant has requested to modify the station seniority list already published.

And whereas, on examination of the transfer order No. 916 dated 06/08/2018, it is found that the transfer with respect to Shri. Pranab Mondal and Smti. Swarnalatha are in accordance with the transfer policy. Further, it is noticed that Shri V. Rajendran has been posted to Zone-I during June 2017, as such, as per transfer policy he can be shifted from Zone-I only after five years based on his station seniority. Shrio Dhirubhai Patel and Shri R. Bhaskar Rao have not been transferred out of Zone-I in the current transfer order on educational ground of their children appearing in Class-XIIth examination March 2019.

And whereas, the station seniority list has also been examined and on comparison of station seniority of the applicant with other Draughtsmen working in similar grade, it is found that the applicant Shri. K. Amose is the senior most Draughtsman. Grade-II (Civil) in Zone-I as he is continuously serving Zone-I since May 2008; as such, there is no infirmity found in the transfer order No. 916 dated 06/08/2018.

And whereas, the applicant has submitted another representation dated 03/08/2018 addressed to the Chairman, Hard Case Committee, APWD, Port Blair which has been duly forwarded to the Member Secretary for placing it in the next meeting of Hard Case Committee.

This issues in compliance of order dated 16/07/2018 passed in O.A No. 351/1027/2018 and subsequent order dated 10/08/2018 passed in O.A No. 351/01165/2018 (AN) (K.Amose -vs- UOI & Others) by the Hon'ble CAT, Calcutta Bench, Calcutta.

CHIEF ENGINEER
APWD"

3. Since the speaking order itself indicates that the representation dated 03.08.2018 addressed to the Chairman, Hard Case Committee, Andaman Public Works Department, Port Blair has been forwarded to the Member Secretary for placing in the next meeting of Hard Case Committee, the O.A is disposed of with a direction upon the respondents to communicate to the

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applicant the decision of the Hard Case Committee as soon as it is taken which shall accordingly govern the entitlement of the applicant to his retention or of his transfer, as the case would be. Till such time since the matter is already under consideration, interim order granted on 10.08.2018 shall continue.

4. The O.A is accordingly disposed of. No costs.

(Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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