

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00561/2018

Jabalpur, this Wednesday, the 10th day of July, 2019

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

O.N.Tiwari, S/o Late C.V.Tiwari, D.O.B. 58 years, Present Post-Superintending Hydro Geologist, N.C.C.R., C.G.W.B. Raipur, Mob. No. 94060 92202, R/o C-30 31 Sector 8A, Kamal Vihar, District-Raipur-482001 (C.G.)
-Applicant

(By Advocate –**Shri S.K.Nandy**)

V e r s u s

1. Union of India, through its Secretary,
Ministry of Water Resources, River Development &
Ganga Rejuvenation, Central Ground Water Board,
Bhujal Bhawan, N.H. 4, Faridabad-121001

2. The Chairman, Central Ground Water Board,
Bhujal Bhawan, NH4 Faridabad-121001

3. Administrative Officer, Ministry of Water Resources,
River Development & Ganga Rejuvenation,
Central Ground Water Board, Bhujal Bhawan,
N.H. 4, Faridabad-121001
-Respondents

(By Advocate –**Shri S.P.Singh**)

(Date of reserving the order:-26.11.2018)

O R D E R

By Ramesh Singh Thakur, JM:-

The applicant by way of filing this Original Application is calling in question the legality, validity and propriety of the order

dated 11.04.2018 passed by the respondents whereby the services of the applicant have been transferred from NCCR, Raipur to a remote place in Himachal Pradesh i.e. NHR, Dhramshala, a copy of the order dated 11.04.2018 is annexed as Annexure A-1.

2. The applicant has prayed for the following reliefs in this Original Application:-

“8. Relief Sought:

(i) Summon the entire relevant record including the transfer file and noting as far as it relates to applicant from the possession of respondents for the perusal of this Hon'ble Tribunal.

(ii) Quash the transfer order 11.04.2018 (Annexure A/1) to the extent it relates to the applicant and he may be allowed to remain at the same place with all consequential benefits. Further quash the order dated 06.06.2018 (Annexure A/5) by which applicant's representation has been rejected by passing non speaking order.

In Alternative

The applicant may be considered to be posted at NGT, Raipur as he is possessing the qualification of Doctorate;

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

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

3. The applicant submitted that as per the rotational transfer polity of Central Ground Water Board Headquarters (CGWB) vide notification dated 11.12.2017 the employees having less than two years of service to superannuate, the request for last posting at their choice station for consideration. The respondents has not abide by the said clause of the notification issued by the dept. as the applicant was left with near about two years of service. Knowing

about the ongoing process of transfer the applicant submitted representation dated 09.04.2018, requesting him to retain him at present place of posting i.e. Raipur. A copy of the said representation is annexed as Annexure A-2. However, even before his case could be considered applicant's transfer order was passed by the Dept.

4. Feeling aggrieved with the transfer order dated 11.04.2018, the applicant preferred O.A. No. 200/492/2018, which was disposed of vide order dated 14.05.2018 (Annexure A-3) with liberty to the applicant to file a detailed representation in regard to his grievance within a period of seven days, with further direction that if such representation filed, competent authority shall decide the same by passing a reasoned and speaking order and the decision so taken shall be communicated to the applicant. As per direction of the Tribunal the applicant preferred a representation dated 21.05.2018 (Annexure A-4) and has raised all the grievances relating to his posting as well as his family responsibility. However, the respondents rejected his representation by passing an order dated 06.06.2018 (Annexure A-5). The reasons assigned by the respondents while rejecting the applicant's representation would show that the authority has bent upon to harass the applicant.

5. The respondents have issued a rotational transfer policy in respect of Officers/Officials of CGWB. A copy of the same is annexed as Annexure A-6. As per provisions incorporated in the policy Para 16, the applicant preferred representation dated 22.12.2017 (Annexure A-7) for his choice posting. However, without considering the applicant's request the respondents have issued the order dated 11.04.2018 (Annexure A-1). Hence this Original Application.

6. The main grounds for challenge in this Original Application is that the applicant has given option for three choice place of posting and is at fag end of his career having less than two years of service, the applicant has been subjected to a transfer to a hilly station by overlooking his request for choice posting for which he made representation also, which was rejected by the respondent department without assigning any reason.

7. The respondents have submitted their short reply. In preliminary submission of the reply they submitted that the applicant has misinterpreted the transfer policy issued by the office of the answering respondents. The respondents submits that the applicant is not entitled for any interim relief as the applicant has already been relieved by the officer of the answering respondents

on 07.05.2018 (Annexure R-1) and further order dated 18.06.2018.

A copy of the relieving order is annexed as Annexures R-1 & R-2.

8. The respondents further submitted that Revised Transfer Policy has been issued by the Ministry of Water Resources, RD & GR, New Delhi vide letter dated 11.12.2017 (Annexure A-6) in respect of CGWB Personnel (both gazetted and non gazetted) duly approved by the Hon'ble Minister (WR, RD & GR). The officers and employees of CGWB have mandatory provision for posting in any part of the country to meet the requirements of the Organization. Therefore, transfer/posting of officers/employees at periodical intervals from one station to another are an essential feature of CGWB's organizational requirements and developmental interests. Therefore, it is desirable that all the officers and employees should serve in various parts of the country to get a holistic vision, exposure, gain and share experience.

9. In order to comply with the transfer policy issued by Ministry, the transfer order has been issued by the competent authority which does not violate any provision of service conditions of applicant. It is further submitted by the respondents that the Hon'ble Apex Court has held in several matters that the Court and Tribunal will not interfere in the transfer matter normally unless/otherwise does not violate the service condition of the

applicant or issued with malafide intention. It is further submitted by the respondents that the applicant is holding a transferable post and he can be posted within the admissible jurisdiction of the answering respondents as per the needs for smooth functioning and working of the office of the respondents.

As per transfer policy of officers/officials is considered as per the following:-

“Only those officers with a cumulative stay of 12 years or more to be considered for transfer in the current year except in the case of posts identified as “Sensitive”, where the rules governing their transfer shall prevail. Officers, due to retire on superannuation up to 31.05.2019, to be exempted from transfer.”

10. The respondents have further submitted that the department had tried to accommodate the applicant on one of the three choice station opted by him but however, it was not possible to accommodate the applicant as per his choice therefore he has been posted to other station i.e. NHR, Dharamshala, where his services are required as per organizational interest.

11. The applicant has claimed that he is entitled for transfer exemption on the ground of retirement within two years, as per Revised Transfer Policy 2017. The respondents submitted that the dept. has allowed him to continue at Raipur for more than 17 years (accumulated). Hence he has been posted in the larger interest of the organization as per transfer policy Para No. 7(iv), **a Govt.**

servant can be transferred to any station or post if necessary in public interest. It is the prerogative of the Head of Dept/Employer, who decides each transfer and posting keeping in view the organizational requirement. It is pertinent to note that post of Superintending Hydrogeologist (Scientist-D) or other such post is CGWB has All India Transfer Liability and this fact is well known to the applicant.

12. It is further submitted by the respondents that representation dated 09.04.2018 by the applicant for retention at Raipur has been considered by the competent authority but not acceded to due to administrative reasons and the applicant stands relieved on dated 07.05.2018 (Annexure R-1).

13. The applicant has filed the rejoinder wherein he has reiterated its earlier stand taken in the O.A. The applicant submitted that this O.A. was filed by the applicant on 18.06.2018 and the relieving order was also passed on 18.06.2018. However, on the date of admission i.e. 19.06.2018 a copy of the relieving order was presented before this Tribunal. The respondents after knowing about the filing of the O.A. on 18.06.2018 have issued the relieving order on the same date which was not served upon the applicant. It is further submitted that, earlier also after issuance of transfer order dated 11.04.2018 only the applicant along amongst

the list of 65 employees was relieved in a hasty manner vide order dated 07.05.2018.

14. All the 65 Group A Officers were transferred vide order dated 11.04.2018, the applicant was relieved instantly. Officers at Sr. No. 28,37,38,48,49 & 55 went before various benches of this Tribunal and got stay on various grounds, 08 officers got alternative posting and transfer of some employees (S. No. 30 & 51) have been Cancelled without any reason. It is significant to mention here that, in similar matter and on similar facts and grounds one Shri J. Soloman Raju has filed O.A. No. 21/518/2018 before the Hon'ble Hyderabad Bench of this Tribunal and on similar grounds he has been granted relief and the impugned order has been stayed by the Bench. Copy of the order dated 11.06.2018 is annexed as Annexure RJ/1.

15. It is further submitted by the applicant that the statement of respondents that the applicant was transferred to meet govt. exigencies as the post of Superintending Hydro Geologist is vacant at Dharamshala and to meet out functional requirement he was to be transferred immediately. In this regard it would be significant to mention here that, there were many officers of same cadre posted nearby and who could have been accommodated or posted there.

16. The respondents have filed the additional reply to the rejoinder filed by the applicant. The respondents submit that as per the judgment of the Hon'ble Apex Court the instant O.A. is not tenable and is liable to be dismissed. It is further submitted that the applicant has not filed any proof about malafide and also infringement of the service condition of the applicant hence the instant O.A. is not tenable as per verdict of the Hon'ble Apex Court in the matters of **S.L. Abbas vs. UOI & Ors.**

17. It is further submitted by the respondents that the transfer is an incidence of service and employee of the department is bound to obey the orders as issued by the department being an obedient employee, but the applicant deliberately and wilfully avoided the orders as issued by the department and made false allegation against the department.

18. It is further submitted by the respondents that no senior most officer is available at Dharmshala due to retirement of Regional Director, hence applicant has been posted according to need and requirement of the department, hence the impugned order issued only in the interest of administration and not otherwise. The respondents further submitted that the Hon'ble Apex Court has held in the case of **Somesh Tiwari vs. UOI & Ors.**, AIR SC 1399 and **SC Saxena vs. UOI & Ors.**, 2006 SCC L&S, that transfer

which is ordinarily an incidence of service should not be interfered with and that the transfer officer must join on the post first and then make a personal submission for consideration of any relief. Transfer is not a matter of right and should not ordinarily be interfered with as also the transfer officer must join at the new place of posting and then go to the court to ventilate his grievances.

19. It is submitted by the respondents that the applicant has already taken charge at Dharamshala on 13.08.2018. Copy of which is filed as Annexure R-3. Thereafter, he has also submitted joining report on 13.08.2018. Copy of joining letter is filed as Annexure R-4. In view of the above, the respondents vehemently oppose averment and contention of the O.A. and prayed to dismiss the O.A. as it is devoid of any merit.

20. Heard the learned counsel for the parties and perused the pleadings and the documents annexed therewith.

21. From the pleadings it is very much clear that the applicant had made representation earlier dated 09.04.2018 (Annexure A-2) to retain the applicant at Raipur. Thereafter, the actual transfer order was issued on 11.04.2018(Annexure A-1). The respondent department has rejected the representation by passing an order dated 06.06.2018(Annexure A-5). The applicant preferred Original Application No. 200/492/2018 and the same was disposed of on

14.05.2018 (Annexure A-3) and liberty was granted to the applicant to file detailed representation. As such detailed representation dated 21.05.2018 (Annexure A-4) was filed with the respondent and ultimately the respondents rejected the representation on 06.06.2018 (Annexure A-5). As per Annexure A-5 the respondent department has dealt with the grievances as made in the representation in detail.

22. The main contention of the applicant is that the applicant had given option for three choice place of posting and is at fag end of his career having less than two years of service. Subsequently the applicant has further submitted that he is being selected to transfer to a hilly station by overlooking his request for choice posting. The respondent on the other hand has submitted that the applicant has been relieved by officer of the respondents on 07.05.2018 (Annexure R-1).

23. It has been specifically submitted by the replying respondents that as per Revised Transfer Policy issued by the Ministry of Water Resources, RD & GR, New Delhi vide letter dated 11.12.2017 (Annexure A-6) in respect of CGWB Personnel (both gazetted and non gazetted) duly approved by the Hon'ble Minister (WR,RD & GR), the officers and employees of CGWB have mandatory provision for posting in any part of the country to

meet the requirements of the Organization. Therefore, transfer/posting of officers/employees at periodical intervals from one station to another are an essential feature of CGWB's organizational requirements and developmental interests. Moreover, the employees should serve in various parts of the country to get a holistic vision, exposure, gain and share experience. With the said objection the applicant has been transferred to NHR, Dharamshala with the approval of the competent authority and there is no violation of service condition of applicant.

24. The respondent department further submitted that the Hon'ble Apex Court has held in several matters that the Court and Tribunal will not interfere in the transfer matter normally unless/otherwise does not violate the service condition of the applicant or issued with malafide intention. The respondents has specifically submitted that the respondent department had tried to accommodate the applicant on one of the three choice station opted by the applicant but it was not possible to accommodate the applicant as per his choice, therefore, the applicant was posted to other station i.e. NHR, Dharamshala where his services are required as per organizational interest. It is the specific case of the respondents that the applicant was allowed to continue at Raipur

for more than 17 years (accumulated) and he has been posted in the larger interest of the organization as per transfer policy Para 7(iv), a Govt. servant can be transferred to any station or post if necessary in public interest.

25. Though the applicant has made submission in the rejoinder that the other offices have got alternative posting and transfer of some employees have been cancelled without any reason.

26. From the reply of the respondents it is very much clear that applicant is holding the post of Superintending Hydro Geologist and the post is vacant at Dharamshala. So it is clear itself that the respondent department has issued the transfer order of the applicant to meet govt. exigencies as the post at NHR Dharamshala is lying vacant. The respondent department relied upon the judgment passed by the Hon'ble Apex Court in the matters of **Union of India Vs. S.L. Abbas**, (1993) 4 SCC 357 and also relied upon the judgment in the matters of **Somesh Tiwari vs. Union of India and others** (2009) 2 SCC 592 & **S.C. Saxena v. Union of India**, (2006) 9 SCC 583 wherein it has been held that transfer which is ordinarily an incidence of service should not be interfered with and that the transfer officer must join on the post first and then make a personal submission for consideration of any relief. Transfer is not a matter of right and should not ordinarily be interfered with as also

the transfer officer must join at the new place of posting and then go to the court to ventilate his grievances.

27. The applicant has only raised the question regarding his transfer on the basis of the fact that the applicant is going to retire within two years. The respondent department has specifically submitted that services of the applicant are required in administrative exigencies as the post is lying vacant at NHR, Dharamshala. There is no other ground as argued by the applicant regarding the malafide intention for challenging the transfer order.

28. Resultantly, we do not find any reason to interfere with the impugned order and the Original Application is dismissed. No order on costs.

(Ramesh Singh Thakur)
Judicial Member
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(Navin Tandon)
Administrative Member