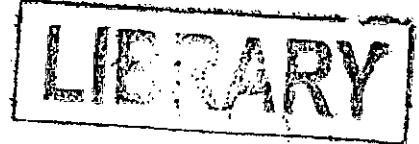


**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**



No. O.A. 350/00096/2019
M.A. 350/00291/2019
CPC. 350/00018/2019

Date of order: 13. 09. 2019

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

Tarun Kumar Das,
S/o Late Kanai Lal Das,
Aged about 59 years,
Working as Assistant Garrison Engineer
(Contract) under the overall control of
Garrison Engineer (AF), Kalaikunda,
At present residing at 29/3, OMQ,
Airforce, Kalaikunda Airfield,
P.O. Kalaikunda Airfield,
Dist. West Midnapore,
West Bengal, Pin - 721 303.

..... Applicant.

Versus

1. Union of India
Through the Secretary,
Ministry of Defence,
New Delhi - 110 011.
2. Engineer-in-Chief (MES)
Kashmir House, Rajaji Marg,
New Delhi - 110 011.
3. Chief Engineer Eastern Command (MES)
(CEEC), Red Road,
Kolkata - 700 021.
4. Command Works Engineer (AF)
Kalaikunda,
P.O. Air Field Kalaikunda,
Dist. West Midnapore (W.B.)
Pin - 721 303.
5. Garrison Engineer (AF)
Office of the GE(AF) Kalaikunda
P.O. Air Field Kalaikunda
Dist. West Midnapore (W.B.)
Pin - 721 303.

..... Respondents.

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6. Shri Kunal Kumar,
 Junior Engineer (QS&C)
 Office of the GE (AF) Kalaikunda
 P.O. Air Field Kalaikunda
 Dist. West Midnapore (W.B.)
 Pin - 721 303.

..... P. Respondents.

For the applicant : Mr. C. Sinha, Counsel
 For the respondents : Mr. B.B. Chatterjee, Counsel

O R D E R

Per Dr. Nandita Chatterjee, Administrative Member

The applicant has approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

- "(a) To set aside and quash impugned order No. C/1513/356/E1Con dated 08 Nov. 2018 issued by Garrison Engineer (AF), Kalaikunda.
- (b) To set aside and quash impugned Part-I Order dated 08.11.2018 issued by Garrison Engineer (AF), Kalaikunda.
- (c) To set aside and quash impugned letter No. C/1515/359/E1Con dated 07. Dec, 2018 issued by Garrison Engineer (AF), Kalaikunda.
- (d) To direct the respondents to allow the applicant to function as AGE (Contract).
- (e) Any other order or orders as the Hon'ble Tribunal deems fit and proper."

2. CPC bearing No. 18 of 2019 has been filed for purported violation of the interim order issued by the Tribunal on 23.1.2019.

An M.A. bearing No. 291 of 2019 has been filed, on the other hand, by the respondents praying for modification of the interim order dated 23.1.2019.

3. Heard both Ld. Counsel. Examined pleadings and documents on record. Written notes of arguments has been submitted on behalf of respondents.

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4. The submissions of the applicant, as articulated through his Ld. Counsel, is that, the applicant was appointed as a Surveyor (Assistant) on 12.12.1983, promoted as Assistant Engineer (QS&C), and thereafter was given his last leg posting as AGE (Contract) under the GE (AF), Kalaikunda vide orders dated 30.11.2017.

On 16.10.2018, a charge memorandum was issued to him; to which he submitted his reply on 19.11.2018 and the proceedings are pending thereupon.

That, on 8.11.2018 (Annexure A-4 to the O.A.), Part I order was issued in which the applicant was directed to perform the duties of AGE (Planning). The applicant represented against the said orders, which, however, was rejected cryptically on 7.12.2018 (Annexure A-11 to the O.A.) on the ground that as the applicant had been issued a chargesheet under Rule 14 of CCS (CCA) Rules, 1965, he cannot continue to hold a sensitive post as AGE (Contracts). Accordingly, being aggrieved, the applicant has approached the Tribunal for relief.

The primary grounds advanced by the applicant, in support of his claim, inter alia, are as follows:-

(a) That, the orders on allocation of ties dated 8.11.2018 had been issued by an incompetent authority. Further, there is no order of the competent authority modifying the posting order dated 30.11.2017 as the Engineer in Chief.

[Signature]

(b) That, the rejection letter dated 7.11.2018 by which the applicant's representation was regretted is unauthorized, cryptic and demonstrates non-application of mind.

(c) That, stepping aside of the applicant to a non-sensitive post is equivalent to a stigmatic transfer.

4. The respondents, during hearing, drew our attention to an order dated 25.2.2019 (Annexure M-5 to M.A. No. 291 of 2019) in which the respondent authorities, in compliance to the interim relief of the Tribunal granted on 23.1.2019, have retained the applicant as AGE (Contracts) but had allocated him specific duties which are non-sensitive in nature. The respondents would argue that the interim orders of the Tribunal have been complied with and that there has been no stigmatic aspersions in the order so impugned by the applicant. The respondents have also prayed for modification of the interim order in their M.A. No. 291 of 2019. The respondents, by way of written statement, have argued that as per CVC guidelines, a charge sheeted incumbent can only perform non-sensitive duties and that there has been no locational disturbance as the applicant has been side stepped in his own office.

The respondents also aver that the applicant's integrity is under doubt and hence CVC Guidelines are applicable in his case.

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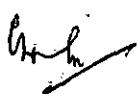
5. The moot issue for adjudication in this context is whether the allocation of duties to the applicant has been made in violation of professed norms and principles.

6.1. It was admitted during hearing by the respondent authorities that the appointing authority of the applicant is the Respondent No. 2, which is also evidenced by the posting orders issued on 30.11.2017 (Annexure A-1 to the O.A.) and also the charge memorandum dated 30.10.2018 at Annexure A-2 to the O.A. The respondents, in their written notes, have attempted to clarify the authority of the Garrison Engineer who had issued the Part I orders on allocation of duties dated 8.11.2018 (Annexure A-4 to the O.A.), the rejection of the applicant's representation on 7.12.2018 (Annexure A-11 to the O.A.), and the further allocation of duties on 25.2.2019 (Annexure M-5 to the M.A.), as no reference had been made to any approval of the competent authority in the abovementioned orders. The clarification is reproduced, verbatim, as under:-

"(a) GE is competent to issue Part I Order for allocation of duty & he has done so correctly.

(b) No posting order has been issued by GE.

It is submitted that MES-196024 AE (QS&C) Shri Tarun Kumar Das was posted to Garrison Engineer (AF) Kalaikunda vide HQ Engr-in-Chief Branch, Military Engineer Services letter No. MES/51/2017 dated 30 November, 2017. Accordingly, Shri Tarun Kumar Das was assigned to perform his duty as AGE Contract in E-8 Section of GE (AF) Kalaikunda vide the then Garrison Engineer (AF), Kalaikunda Part - I Order No. 80 dated 22nd December, 2017. Accordingly, the applicant, Shri T.K. Das, performed duty as AGE Contract at Kalaikunda from the very first date vide above order of the Garrison Engineer (AF), Kalaikunda for almost an year without any protest/reservation. Therefore, it is evident that the than Garrison Engineer (AF), Kalaikunda as well as present Garrison Engineer (AF), Kalaikunda being the head of the Office are empowered to assign the duties to AGE Contract, Shri T.K. Das and also empowered to



issue any Part I Orders deal with general administration, training and matters not affecting an individual's pay and allowances, service or documents. (Copy enclosed and marked as Annexure WR-2). ”

As WR-2 has been referred to, we would examine the annexed extract from the consolidated policy relating to works procedure wherein the following is recorded with respect to Part I orders:-

“7. Orders of a Unit are divided into two parts:-

- (a) Part I Orders deal with general administration, training and matters not affecting an individual's pay and allowances, service or documents.
- (b) Part II Orders are reporting incidents and casualties which affect the individual's pay, service or records, increments, promotions, reversions, punishments, posting/transfers, verifications of service, changes in pay or post, suspensions, deputation, leave etc.”

Apart from the subject matter of Part I orders, however, there is no reference to the authority empowered to issue Part I orders in the extracted works procedure. Hence, the question as to whether the Garrison Engineer was empowered to issue Part I orders remains unanswered. The applicant's earlier actions in not questioning the Garrison Engineer's authority earlier when he was entrusted as AGE (Contract) cannot be interpreted as an estoppel to question such authority at a later date as interpretation of delegation of powers (in the absence of records to that effect) call for legal scrutiny.

Although the orders refer to allocation of duties, the re-allocation of duties, even if not leading to any locational disturbance, involves movement from one position to another. One of the elementary principles of administrative law is that the competent authority has to apply his mind in order to exercise such powers of movement and, as held in

Purtabpore Company Ltd. v. Cane Commissioner of Bihar, AIR 1970

SC 1896 it is the competent authority alone which has to apply its mind and make such orders.

[Signature]

In *Abani Kanta Roy v. State of Orissa*, 1995 Supp (4) SCC 169

the Hon'ble Apex Court held that it is the settled law that transfer, which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer. Admittedly, the orders relate to reallocation of duties which would also be subject to settled principles of governance.

In this case, the respondents have not been able to refute successfully that the professed norms or principles were violated in as much no delegation of powers was brought before us to controvert that an incompetent authority had issued the orders on allocation of duties.

Hence, there being an established incidence of infraction of the professed norms, we consider the orders of the Garrison Engineer dated 8.11.2018 and 25.2.2019 (Annexure A-4 to the O.A. & M-5 to the M.A.) to be violative of the principles, and, hence, we would be inclined to set aside the same.

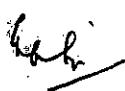
6.2. The respondents have repeatedly referred to the fact that the applicant was removed from the post of AGE (Contracts) as a major penalty charge sheet has been issued to him under CCS (CCA) Rules, 1965. This again is contradictory to the respondents' communication dated 17.11.2018 (Annexure A-7 to the O.A.) wherein they have noted that the applicant was side stepped to AGE (Planning) due to *lack*

"administrative reasons". As ruled in **C. Ramanathan v. Acting Zonal Manager, Food Corporation of India, 1980 (1) SLR 309**, it will hence be necessary to pierce the veil to find the operative reason behind the orders. Clearly, the orders on reallocation of duties cannot be issued simultaneously on administrative grounds as well as pendency of proceedings. The respondents are quite within their rights to post the applicant in any non-sensitive posts but to associate the same with the pendency of disciplinary proceedings against the applicant amounts to linking the same with a punitive transfer which has been disapproved by the Hon'ble Supreme Court in **The Management of the Syndicate vs. The Workmen AIR 1966 SC 1283** in which the court also recognized the principle that there is no power to punish by way of transfer.

6.3. The applicant has also alleged that the orders of allocation of duties was stigmatic in nature.

The respondents would aver that the applicant's integrity is under doubt, which the applicant would vociferously deny by citing his APARs in his rejoinder in none of which his integrity has been questioned.

No charges having been proved as yet against, the applicant, and no penalty having been imposed thereupon, the materials in record do not disclose any stigma, and, following the ratio in **Ajay Kumar v. State of Bihar 1984 (1) SLR 743 (Pat)**, we do not consider the allocation of duties to be associated with stigmatic aspersions.



7. We are of the considered view that the orders of re-allocation of duties dated 8.11.2018 and that dated 25.2.2019 were indeed issued by an incompetent authority; resultantly, there was violation of professed norms and settled principles governing transfer/allocation. Accordingly, we set aside both orders.

The competent respondent authority, however, is quite at liberty to allocate duties to the applicant on administrative interests and, if administrative interests so demand, nothing precludes the said authority to assign non-sensitive duties to the applicant.

The applicant's status, in the interregnum, will be decided by the authority competent to decide in this regard.

8. The O.A. is allowed to the extent of the above directions.

CPC No. 18 of 2019 and M.A. No. 281 of 2019 stands disposed of with the O.A.

No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP