
(2009) 02 AHC CK 0036
In the Allahabad High Court

Dwijendra Nath Roy

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-02-2009

Acts Referred:

Administrative Tribunals Act, 1985 — Section 25
Constitution of India, 1950 — Article 226, 227

Citation : (2009) ACJ 1921 : (2009) 2 AWC 1921 : (2009) 2 UPLBEC 1769

Hon'ble Judges : S.P. Mehrotra, J; R.K. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.K. Agrawal and S.P. Mehrotra, JJ.—The present writ petition under Article 226/227 of the Constitution of India has been filed against the order dated 22nd January, 2009, passed by the Central Administrative Tribunal dismissing the original application, namely, Original Application No. 1217 of 2007 filed by the petitioner.

2. It appears that the petitioner at present is holding the post of Scientist S.D. in National Test House.

3. The petitioner had earlier filed a writ petition being Civil Misc. Writ Petition No. 23125 of 2004 before this Court in regard to controversy regarding his promotion to the post of Scientist S.D. During the pendency of the said writ petition, the petitioner was granted promotion to the post of Scientist S.D. on 26.10.2005 with effect from the date of actually assuming charge, and not from the actual date of eligibility.

4. Further, while the said writ petition was pending, the petitioner was transferred from Ghaziabad to Chennai by the order dated 20.2.2006, passed by the Director General, National Test House, copy whereof has been filed as Annexure-2 to the writ petition.

5. The aforesaid transfer order dated 20.2.2006 was challenged by the petitioner

by filing another writ petition, namely, Civil Misc. Writ Petition No. 12586 of 2006 before this Court.

6. The aforesaid two writ petitions were decided by this Court by its judgment and order dated 8.10.2007, inter alia, holding that the writ petitions were not maintainable on the ground that in view of the decision of the Supreme Court in *L. Chandra Kumar v. Union of India* and Ors. 1997 SCC (L&S) 577, the petitioner should first approach the Central Administrative Tribunal under the Administrative Tribunals Act, 1985 before approaching this Court under Article 226/227 of the Constitution of India.

7. It further appears that the petitioner, thereafter, filed an original application, being Original Application No. 1217 of 2007 before the Central Administrative Tribunal challenging the said order of transfer dated 20.2.2006. The petitioner also filed another original application being Original Application No. 30 of 2007 in regard to promotion matter.

8. By the impugned order dated 22.1.2009, the Central Administrative Tribunal has dismissed the aforesaid Original Application No. 1217 of 2007 filed against the transfer order dated 20.2.2006. The other original application, namely, Original Application No. 30 of 2007 in regard to promotion matter of the petitioner is stated to be still pending before the Central Administrative Tribunal.

9. Against the said order dated 22.1.2009, passed by the Central Administrative Tribunal, the petitioner has filed the present writ petition under Article 226/227 of the Constitution of India seeking reliefs, as mentioned above.

10. We have heard Sri Ashok Khare, learned senior counsel assisted by Sri Sudhanshu Srivastava, learned Counsel appearing for the petitioner and Sri Triloki Singh, learned Counsel appearing for the respondent No. 1, and have perused the record.

11. It is submitted by Sri Ashok Khare, learned senior counsel that the transfer order dated 20.2.2006 remained stayed during the pendency of the writ petition before this Court and also during the pendency of the aforesaid Original Application No. 1217 of 2007 before the Central Administrative Tribunal. It is further submitted by Sri Khare that the said transfer order dated 20.2.2006 has been passed in colourable exercise of power in order to create hurdle in the way of the petitioner in pursuing Original Application No. 30 of 2007 regarding his promotion matter before the Central Administrative Tribunal, Allahabad Bench, Allahabad.

12. It is further submitted by Sri Khare that recital in the order of the Central Administrative Tribunal that the petitioner was relieved after dismissal of the writ petitions by this Court, and the petitioner has joined at Chennai and is working there, is not correct in view of the office order dated 9.2.2009, a copy whereof has been filed at page No. 35 of the paper book of the writ petition. The said office order, it is submitted, shows that the petitioner was relieved on 9.2.2009

from Ghaziabad.

13. Sri Khare further submits that an enquiry has been directed to be held against the petitioner by the order dated 10.2.2009 (Annexure-9 to the writ petition), and the petitioner has been directed to appear in the enquiry proceedings at Sahibabad, and therefore, transfer of the petitioner to Chennai would create hardship for the petitioner.

14. We have considered the submissions made by Sri Ashok Khare, learned senior counsel appearing for the petitioner, and we find ourselves unable to accept the same.

15. From a perusal of the impugned order of the Central Administrative Tribunal dated 22.1.2009, it is evident that the respondents were able to establish before the Tribunal that on account of targets being given, a senior officer was required to be posted at Chennai, and the transfer of the petitioner was being made totally in public interest. The Tribunal has further pointed out that even though the petitioner has tried to show mala fide intention on the part of the Director, National Test House but the petitioner has neither made the Director a party, nor has provided any evidence of mala fide intention. There was no intentional delay in promotion of the petitioner. It has further been pointed out that the wife of the petitioner has also been offered a posting at Chennai but she has declined to accept the same. It is further noted by the Tribunal that the petitioner is holding a post which is transferable any where in India, and he has been transferred in the interest of work.

16. Without going into the controversy, as to whether the petitioner was relieved on 9.2.2009 or earlier, and as to whether the petitioner has joined at Chennai, we are of the opinion that the Central Administrative Tribunal has given cogent and valid reasons for dismissing the aforesaid Original Application No. 1217 of 2007 filed against the transfer order dated 20.2.2006. The said transfer order was passed on account of requirement of posting a Senior Officer at Chennai. Thus, the petitioner has been transferred to Chennai in public interest. The respondents have also taken care of the interest of the wife of the petitioner in offering her posting at Chennai. In the circumstances, we are unable to accept the contention of Sri Ashok Khare, learned senior counsel appearing for the petitioner that the respondents have acted in colourable exercise of power in transferring the petitioner from Ghaziabad to Chennai.

17. As regards the grievance raised by the petitioner that his transfer to Chennai would create hardship for him, as he would not be able to pursue his Original Application No. 30 of 2007 pending before the Central Administrative Tribunal at Allahabad in regard to his promotion matter, we may observe that the petitioner may move an application before the Chairman, Central Administrative Tribunal u/s 25 of the Administrative Tribunals Act, 1985 for transfer of the said original application from Allahabad Bench to Chennai Bench of the Central Administrative Tribunal. If any such application is made by the petitioner, the same will be

decided sympathetically.

18. As regards the grievance of the petitioner that his transfer to Chennai would create hardship in appearing before the enquiry proceedings at Sahibabad, the petitioner may make a representation before the Director General, National Test House seeking transfer of the enquiry proceedings from Sahibabad to Chennai. If any such representation is made, the Director General, National Test House will pass suitable orders thereon.

19. We further observe that even though the wife of the petitioner has declined posting at Chennai, but in case she desires such posting, she may make a suitable representation in this regard before the authority concerned, whereupon the authority concerned will pass appropriate order for her posting at Chennai.

Subject to the above directions/observations, the writ petition is dismissed in limine.