
(2016) 08 MEG CK 0006
In the Meghalaya High Court
Case No : WP(C) Nos. 199 and 200 of 2016.

Shri Abhishek Kumar - Petitioner @HASH North Eastern Electric Power Corporation Limited and Others

Date of Decision : 18-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 311

Citation : (2016) 4 GauLT 931 : (2017) 2 NEJ 351

Hon'ble Judges : Dinesh Maheshwari, CJ.

Bench : Single Bench

Advocate : Mrs. M. Dev, Advocate, for the Petitioner; Mr. V.K. Jindal, Sr. Advocate with Ms. T. Marak, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

Mr. Dinesh Maheshwari, C.J.(Oral) - Introductory

These two writ petitions involving inter-related issues, where the petitioner, an employee of the respondent-North Eastern Electric Power Corporation Limited [hereinafter also referred to as "NEEPCO/"the Corporation"], has questioned the respective orders of his transfer and suspension as also the enquiry proceedings, have been considered together and are taken up for disposal by this common order.

2. Though elaborate pleadings have been taken by the parties where, on one hand, the petitioner has assailed the impugned orders of transfer and disciplinary proceedings as being wholly illegal, unauthorized and even mala fide and on the other hand, the respondents have asserted on the validity of their actions but, for the reasons indicated hereinafter later, it does not appear necessary to dilate on all the factual aspects projected by the parties; and only a brief reference to the relevant background aspects would suffice.

The relevant background aspects

3. The petitioner, holding the post of Manager (HR), was transferred and posted in the Corporate Vigilance Department of the respondent Corporation under the

Chief Vigilance Officer, Shillong ["CVO"] by an order dated 27.07.2015. However, by the impugned order dated 23.05.2016 [Annexure-5 in WP (C) No.199 of 2016], he was ordered to be transferred to Doyang Hydro Electric Project ["DHEP"] in the State of Nagaland, purportedly "in the interest of works of the corporation & on administrative expediency" and by the same order, in place of the petitioner, another incumbent working as Senior Manager (HR), DHEP was ordered to be posted in the Corporate Vigilance Department. The CVO, however, took exception against the aforesaid transfer order dated 23.05.2016 qua the petitioner, particularly with reference to the Circular dated 28.03.2006 of the Central Vigilance Commission, which provides, inter alia, that the personnel in Vigilance Units are to be posted in consultation with the CVOs for an initial tenure of three years; and any premature reversion before the expiry of tenure has to be with the concurrence of CVOs. Hence, by an order dated 24.05.2016 [Annexure-6 in WP (C) No.199 of 2016], the CVO practically negated the aforesaid transfer order dated 23.05.2016 qua the petitioner, while directing that the petitioner "shall continue to discharge his duties with the Corporate Vigilance Department". The CVO's said order dated 24.05.2016 with its endorsements is reproduced as under:-

"Office of The Chief Vigilance Officer

Office Order No.01

Date: 24.05.2016

Vide NEEPCO Office Order No.176 dated 23.05.2016, issued under Memo No.Pers14/G-13/HR-EXE/2307-17, Shri Abhishek Kumar, Manager(HR), posted under Corporate Vigilance Department, has been transferred and posted to DHEP and in his place Shri Basant Kumar Tigga, Sr.Manager(HR), has been transferred from DHEP to Corporate Vigilance Department, and it is stated that both stand released with immediate effect.

2. Central Vigilance Commission Circular No.16/3/06 bearing no.006/VGL/022 dated 28.03.2006, inter alia, stipulates that -

"All personnel in Vigilance Units will be posted only in consultation with and the concurrence of the CVOs. They will be for an initial tenure three years extendable up to five years. Any premature reversion before the expiry of such tenure will only be with the concurrence of the CVOs."

3. NEEPCO Office Order No.176 dated 23.05.2016, issued under Memo No.Pers14/G-13/HR-EXE/2307-17, quoted in para 1 above, violates the above-quoted mandatory stipulation by the Central Vigilance Commission. Without referring to several other irregularities and improprieties in the said order, this single infraction makes the order bad in law, and thus not implementable.

4. It is, therefore, ordered that Shri Abhishek Kumar, Manager (HR), shall continue to discharge his duties in the Corporate Vigilance Department."

No. NEEPCO/CVO-128/2014-15/527

dated May 24, 2016

To

Shri Abhishek Kumar

Manager (HR)

Corporate Vigilance Department

NEEPCO, Shillong

MemoNo.NEEPCO/CVO-128/2014-15/528-535 dated: May 24, 2016

Copy:

1. Chairman and Managing Director, NEEPCO, Shillong :With a request to cancel the office order no. 176 dated 23.05.2016

2. Director (Personnel)

3. Director (Finance)

4. Director (Technical)

5. ED (S)

6. HoP.DHEP.NEEPCO (by fax)

: Please do not release Shri Basant Kumar Tigga, Sr. Manager (HR). He will not be accepted in Corporate Vigilance Department.

7. GM (HR) Estt.

8. Deputy Manager (Finance) Bills

Sd/-

(S.C. Verma)

Chief Vigilance Officer"

4. The Chairman and Managing Director ["CMD"] of the respondent Corporation, however, considered the order so passed by the CVO "untenable and non-implementable"; and purportedly overruled the same by his internal office memo of the even date i.e., 24.05.2016, a copy whereof has been placed on record by the respondent Corporation as Annexure-I to the counter affidavit in WP (C) No.199 of 2016, and is reproduced for ready reference as under:-

"No.CMD/Estt/24/104

Date 24.05.2016.

Internal Office Memo

From : C.M.D., NEEPCO, Shillong

To : C.V.O., NEEPCO, Shillong

This has reference to your Office Order No. 01 issued vide No. NEEPCO/CVO-128/2014-15/528-535 dated 24th May, 2016 vide which you have ordered as under which is contrary to the transfer order issued by the corporate HR.

"It is therefore ordered that Shri Abhishek Kumar, Manager (HR), shall continue to discharge his duties in the Corporate Vigilance Department".

Clause 3 (i) of the CVC Circular No.16/3/06 dated 28.03.2006 as referred stipulates that the CVO shall bring to the notice of the CVC any deviation from the circular dated 28th March, 2006. Whereas, the office order issued by CVO violates the provision of CVC circular, wherein transfer & posting order by the competent authority has been reversed.

Whereas, the decision on transfer and posting of the two executives under reference was taken by the management based on the administrative expediency and in the interest of the smooth functioning of the organization.

Whereas, any order on transfer and posting of employees issued by HR Department with approval of the competent authority, is to be implemented in letter and the spirit. A contrary order issued by any other department which is not competent to take decision on the subject is tantamount to indiscipline & insubordination.

Whereas, the contrary office order which has been issued stands untenable, and non-implementable. Hence, the same stands overruled. The office order issued by Corporate HR Department is in order on the basis of requirement and is tenable & implementable without any deviation. Non-implementation of posting order by officers concerned will be strictly viewed and the same will call for stern disciplinary action as deemed fit by the competent authority."

5. However, the case of the petitioner is that he was not relieved by the CVO, who was his controlling authority; and on the strength of the CVO's aforesaid Office Order No. 1 dated 24.05.2016, he continued to work in the Corporate Vigilance Department of the respondent Corporation; and his biometric information for the purpose of attendance was also kept activated in the Corporate Vigilance Department. The petitioner has further pointed out that he was served with a show-cause notice dated 13.06.2016 for the alleged noncompliance of transfer order that was responded by him on 21.06.2016, essentially with reference to the fact that he had not been relieved by the controlling authority, the CVO. The petitioner was allegedly on tour to different stations from 22.06.2016 to 03.07.2016 but then, by the impugned order dated 22.06.2016 [Annexure-11 in WP(C) No.200 of 2016], he was put under suspension on the allegation that he had disobeyed the order of transfer; and by another order of the even date [Annexure-12 in WP (C) No.200 of 2016], the petitioner was served with charge sheet, essentially on the allegation that his act

of not joining at the transferred place pursuant to the order dated 23.05.2016 amounted to indiscipline and wilful disobedience and that he was required to be treated as being on unauthorized leave.

6. The petitioner has filed these two writ petitions challenging the aforesaid order dated 23.05.2016 [WP (C) No.199 of 2016] as also the disciplinary proceedings and the suspension order dated 22.06.2016 [WP (C) No.200 of 2016].

Initial consideration of petitions and interim order dated 11.07.2016

7. These petitions were initially considered on 11.07.2016 when it was contended before the Court on behalf of the petitioner that the impugned transfer order was directly at conflict with the guidelines issued by the Central Vigilance Commission in its Circular dated 28.03.2006, which were essentially aimed at protection of the persons posted with the Vigilance Units and which, inter alia, provided that the personnel in Vigilance Units are to be posted in consultation with and concurrence of the CVOs for a minimum tenure of three years and any premature reversion has to be with concurrence of the CVOs. It was asserted that in the present matters, the CVO had not only not concurred but had specifically overruled the transfer order; and in the wake of the CVO's order dated 24.05.2016, neither the transfer order survived nor the petitioner could have been proceeded departmentally for its alleged non-compliance. It was submitted on the other hand on behalf of the respondent Corporation that the concerned authority had justifiably passed the transfer order in the given set of peculiar circumstances; and that even as per the Circular dated 23.08.2006 of the Central Vigilance Commission, the CVO could have only brought the alleged deviation to the notice of the Commission but he could not have passed any order of overriding or staying the transfer order in question. It was also indicated that the respondent Corporation had brought the matter to the notice of concerned Ministry and were awaiting their decision.

8. Having examined the matter at the preliminary stage on 11.07.2016, this Court found a prima facie case worth consideration; and in the totality of circumstances, while calling upon the respondents to show cause as to why the writ as prayed for be not issued, this Court stayed the operation and effect of the impugned orders relating to the suspension and disciplinary proceedings dated 22.06.2016 [Annexure-11 and 12 in WP (C) No.200 of 2016] while also indicating that prima facie, the order of CVO dated 24.05.2016 cannot be dubbed as invalid and in view of the said order of the CVO, no further order was required at the given stage in relation to the transfer/posting of the petitioner. However, this Court, in the balance of equities, provided that the concerned CVO would consider assigning appropriate job/task to the petitioner, who would confine his working only as per assignment. In the order dated 11.07.2016, this Court, inter-alia, observed and directed as under:-

"Ordinarily, this Court is reluctant to interfere with the transfer order of a person unless it is shown suffering from violation of any statutory provision or from

malafide. Similarly, this Court considers interference with any order of suspension or disciplinary proceedings only when strong grounds are made out. However, having given thoughtful consideration to the present matter, this Court is inclined to entertain these petitions so as to call upon the respondent to show cause and to provide interim protection to the petitioner.

The petitioner had admittedly been posted to the Vigilance Unit under the order dated 27.07.2015. The Central Vigilance Commission had issued the Circular dated 28.03.2006 essentially to provide basic protection against victimisation of the officials of the Vigilance Units. One of the safeguards provided in sub-Clause (i) of Clause 3 thereof is that such personnel in Vigilance Units are to be posted in consultation with and on the concurrence of the CVOs for a minimum tenure of three years and any premature reversion could only be with the concurrence of the CVOs. Of course, the last line thereof, which has not been reproduced by the CVO in the order dated 24.05.2016, reads that the "CVO shall bring to the notice of the Commission any deviation?".

The admitted position in the present case is that the order of transfer of the petitioner was issued much before three years of his posting in the Vigilance Unit. Though it is strenuously contended by the learned counsel for the respondents that CVO could have only brought the matter to the notice of the Commission but on the purposeful reading of the Clause aforesaid, it is difficult to say prima facie that the CVO could not have passed the necessary order so as to retain the petitioner in the Vigilance Unit.

However, while leaving all other aspects to be considered at the relevant stage, suffice it to say for the present purpose that at this stage the order dated 24.05.2016 as passed by the CVO cannot be said to be an entirely illegal or unauthorised one. In the face of the said order, prima facie, it is difficult to say that the petitioner has acted in any deliberate disobedience or has shown indiscipline by not obeying the transfer order in question.

Learned senior counsel Mr. VK Jindal contended that the respondents may conclude the disciplinary proceedings at the earliest. However, in the given set of facts and circumstances, it does not appear justified that the matter in the disciplinary proceedings be proceeded until this matter is heard further after counter affidavit from the respondents.

Accordingly, in both these petitions, the respondents are called upon to show cause as to why the writ as prayed be not issued.

Mr. VK Jindal, learned senior counsel appearing for the respondents prays for and is granted a week's time to file counter affidavit. The petitioner may file rejoinder affidavit, if so chosen, before the next date.

These matters be listed for Admission hearing on 22.07.2016.

In the meanwhile and until the next date of hearing, the operation and effect of the impugned orders dated 22.06.2016 [Annexure-11 and 12 in WP(C) No.200 of

2016] shall remain stayed.

So far the impugned transfer order dated 23.05.2016 is concerned, for what has been observed herein above in relation to the order of the CVO dated 24.05.2016, no further order appears requisite at present.

In the interest of administration it is, however, provided that until the next date of hearing, the concerned CVO may consider assigning appropriate job/task to the petitioner who shall confine his working to such assigned job/task only.

List these matters on 22.07.2016."

Stand of the Respondent Corporation

9. On behalf of the respondent Corporation, detailed counter affidavits have been filed seeking to justify the actions impugned while indicating that the CVO concerned, who was on deputation with NEEPCO since 05.09.2014, had himself selected the petitioner for posting in the Vigilance Department and the petitioner was posted accordingly. It has been submitted further that on 09.05.2015, the Under Secretary to the Government of India, Ministry of Home Affairs (Police-I Division) had forwarded two copies of Memorandum (charge sheet) issued against the said CVO by his parent Department, which carried several serious allegations against him. According to the respondent Corporation, after receiving the charge sheet, the CVO concerned instigated the petitioner to rake up serious but unwarranted allegations against the senior officers so as to tarnish the image of NEEPCO. Several factual aspects in this regard have been stated in detail in the counter affidavits with reference to the complaints made by the petitioner; and the petitioner has also joined the issue in his pleadings in the rejoinder affidavits but, looking to the subject-matter of these petitions and the real questions involved, this Court need not elaborate on the same; and such allegations and counter-allegations are left at that only. As regards the subject-matter of these petitions, so far the transfer order dated 23.05.2016 is concerned, the respondent Corporation has stated the reason therefor in the counter affidavit in the following terms:-

"(vi) It is evident that there was a deep nexus and connivance between the Petitioner and the then CVO, who admittedly used the Petitioner's complaint letter dated 17-5-2016 as an input to start the investigation against the then CMD, NEEPCO and further since the Petitioner himself was the Complainant in the complaint dated 17-5-2016 and was at the same time a part of the investigation team to investigate his complaint dated 17-5-2016, which was also enquired into by the Executive Director (HR), and was found to be false and fabricated, it became necessary on the part of the management to recommend to the CMD to approve the transfer of the Petitioner to Doyang Hydro Electric Project in view of the aforesaid reasons and administrative expedencies and consequently as per approval of the CMD, the Petitioner was transferred vide Office Order No. 176 dated 23-5-2016."

10. The respondent Corporation has referred to the subsequent orders passed by the authorities, including the aforesaid order dated 24.05.2016, whereby the CVO directed that the petitioner shall continue to function in the Vigilance Department only; and the internal office memo of the even date i.e., 24.05.2016, as issued by the CMD, purportedly overruling the order issued by the CVO as regards transfer and posting of the petitioner. It has been suggested in the counter affidavits that the transfer of the petitioner is even otherwise expedient for proper enquiry/investigation on the complaints made by him and his regular presence in the Vigilance Department at Shillong is likely to come in the way of proper enquiry/investigation. The respondent Corporation has further submitted that upon passing of the order by CMD, the petitioner ought to have joined at the place of transfer but he did not; and upon receiving of information that he had not joined at DHEP, the petitioner was warned and then, was put under suspension and was served with the charge sheet. The respondent Corporation would submit that the transfer order having been issued by the competent authority and having been reiterated and re-affirmed by the said competent authority, it was required of the petitioner to comply with the same; and for avoidance, he was required to be proceeded departmentally.

11. Certain subsequent events since after issuance of the impugned orders have been narrated in the counter affidavits, which indicate that the then CMD of the respondent Corporation superannuated on 30.06.2016 and the CMD, NTPC was given additional charge of the office of CMD, NEEPCO on 04.07.2016. It has been alleged that immediately with the superannuation of then CMD, the CVO proceeded to lodge three FIRs against him as also against the Executive Director, Security and the Director (Personnel), NEEPCO. The respondent Corporation would submit that such FIRs blatantly tarnished the image of NEEPCO and hence, the Central Government in the Ministry of Home Affairs took a swift action and the then CVO, who was on deputation, was immediately transferred on 04.07.2016 as Inspector General, Central Reserve Police Force at New Delhi; and another officer in IFS cadre, holding the post of CVO, Damodar Valley Corporation, was ordered to look after the work of CVO, NEEPCO in addition to his normal duties until regular appointment on the post.

12. The respondent Corporation would further submit that the FIRs as also the other proceedings against its officers were largely the outcome of connivance and nexus of the then CVO with the petitioner; and the then CVO settled the tour programme of the petitioner from 22.06.2016 to 03.07.2016 only in order to help him in avoiding service of the suspension order. Elaborate submissions have been made to suggest that the then CVO was nursing a grudge against the officers of the Corporation including its CMD.

The petitioner's rejoinder

13. The petitioner has filed his rejoinder affidavits, inter-alia, denying the allegations levelled against him. The petitioner has also taken objection against the stand sought to be taken by the respondents No.1 and 2 in tandem with the

respondent No.3 with the submissions that the records of the office of CVO [the respondent No. 3], carry the material and facts substantially different and at divergence with the stand of the other respondents. The petitioner has further taken exception against the allegations made against the then CVO, who is not a party to these petitions. The petitioner has denied the allegations of his nexus or connivance with the then CVO;and has asserted that he proceeded to lodge the complaints on the basis of the facts available with him.

Preliminary submissions

14. When these matters were taken up for hearing on 09.08.2016, this Court enquired on the present stand of the parties to which, Shri VK Jindal, learned senior counsel appearing for the respondent Corporation submitted that with the relevant subsequent events related with the officers at the top, where the then CMD has retired on 30.06.2016 and the then CVO has been transferred to New Delhi on 04.07.2016, the entire scenario has changed. The learned senior counsel, thus, submitted that without prejudice to the submissions sought to be made in opposition of these petitions, the respondent Corporation may review the orders and actions in question and for that matter, may consider withdrawing the order of suspension and the enquiry proceedings against the petitioner; and even if the petitioner is posted at Doyang Hydro Electric Project, the Corporation shall be willing to post him only in the Vigilance Cell thereat. However, learned counsel for the petitioner responded with the submissions that the actions against the petitioner were the outcome of mala fide and there was no reason that the petitioner be posted to Doyang again, where he had earlier served for 2? years.

15. Having taken note of their respective stands, the learned counsel for the parties were heard at length. Today, it is also been indicated that there are several other Vigilance offices of the respondent Corporation at different places in North Eastern States.

Rival Contentions

16. It has been strenuously argued by the learned counsel appearing for the petitioner that all the impugned actions suffer from bias and mala fide while asserting that in view of the Central Vigilance Commission's Circular dated 28.03.2006, once the petitioner is working in the Corporate Vigilance Department, his tenure has to be of minimum three years and he cannot be disturbed in the posting before this period. Learned counsel has also argued that when the petitioner could not have been disturbed in his posting without concurrence of the CVO and when the then CVO himself had passed the order on 24.05.2016 whereby, the earlier order of transfer as issued by the CMD stood eclipsed for all practical purposes and when the petitioner was not relieved by the then CVO, he had rightly continued to work in the Vigilance Department; and hence, the attempted disciplinary proceedings for his not joining at the place of transfer remain unwarranted and unjustified. The learned counsel has further

contended that the petitioner made the complaint dated 17.05.2016 in all bona fide and in fact, the entire harassment of the petitioner is only a counter-blast to his efforts at vigil and protection of the public property. The learned counsel has yet further submitted that all the allegations of the respondent Corporation are essentially directed against the then CVO but, in a wholly unjustified manner, the petitioner is sought to be tied up with the then CVO in the name of non-existent connivance/nexus. The learned counsel has made elaborate submissions that the present one is clearly a case where the transfer order suffers from mala fide and deserves to be set aside on this ground alone; and has relied on the decision of the Apex Court in *Somesh Tiwari v. Union of India and Others*: (2009) 2 SCC 592. As regards the enquiry proceedings and suspension, the learned counsel would submit that they are the result of the alleged noncompliance of the transfer order that stood nullified by the order passed by the CVO; and therefore, the enquiry proceedings against the petitioner remain totally unwarranted and unauthorized. Per contra, learned counsel for the respondent Corporation would argue that the order of transfer was made in administrative exigencies and in any case, the CVO concerned had no authority to override the order passed by the competent authority. According to the learned counsel, even if there was an attempt on the part of the CVO to interfere with the transfer order issued by the competent authority, the CMD specifically overruled the CVO's order on 24.05.2016 itself. Thus, according to the learned counsel, the petitioner was duty bound to obey and comply with the final order passed by the highest authority in the respondent Corporation i.e., CMD and his avoidance to do so clearly amounted to indiscipline, rendering him liable for disciplinary proceedings.

17. Learned counsel for the respondent Corporation has also attempted to suggest that the initial order of posting of the petitioner in the Vigilance Department was itself not accord with the guidelines inasmuch as it was the CVO himself who sought for the posting of the petitioner in the Corporate Vigilance Department whereas, such a posting ought to have been by the Corporation, may be with the concurrence of the CVO. Learned counsel has yet further submitted that as per the referred Circular dated 28.03.2006, any premature reversion before the expiry of tenure has to be with the concurrence of the CVO, but the respondent Corporation has only posted the petitioner to a different place and has not "reverted" him and, therefore, the said Circular does not apply to the present case. According to the learned counsel, the CVO could have only brought the deviation, if any, to the notice of the Commission but could not have passed the order as if he was an authority superior. In support of his submissions that the order of transfer does not call for interference by the Court, the learned counsel has referred to the decisions of the Hon"ble Supreme Court in *Shanti Kumari v. Regional Deputy Commissioner Health Services, Patna*: 1981 SC 1577; *Gujarat Electricity Board and another v. Atmaram Sungomal Poshani*: (1989) 2 SCC 602; *The Secretary to the Govt. Transport Department v. Munuswamy*: AIR 1988 SC 2232; and *T.D. Subramanian v. Union of India*: AIR 1982 SC 776.

18. This Court has given anxious consideration to the submissions made by the

parties with reference to the material placed on record and the law applicable.

Attachment of petitioner in Vigilance Department and implications

19. The fundamental fact of the matter remains that the petitioner, holding the post of Manager (HR), was earlier attached with the General Manager (HR) CC & ER, Corporate Office, Shillong and was consciously transferred and placed in the Corporate Vigilance Department, Shillong under the Chief Vigilance Officer, Shillong w.e.f. 27.07.2015. The suggestion that the petitioner's initial attachment with the Vigilance Department was itself questionable for he was the person chosen by the then CVO himself has only been noted to be rejected. Even if the then CVO had suggested for such an attachment, the order of the petitioner's placement in Corporate Vigilance Department was specifically issued only by the competent authority of the respondent Corporation; and it is not the case that the then CVO forced anyone in the respondent Corporation to mandatorily post the petitioner alone. Once the petitioner was posted to the Vigilance Department, he acquired such special privileges which are peculiar and singular to the officials working with the Vigilance Units of the Ministries/ Departments/Organisations. Obviously, by the very nature of the job where a person is posted to be a part of the vigilance within the organization, he is required to be allowed the basic safeguards and protection so as to enable him to work independently and without fear or apprehension of victimisation. The Central Vigilance Commission, while recognising such peculiar nature requirements of the persons working with Vigilance Units/Cells/Departments, had issued the Circular dated 28.03.2006 in exercise of its powers, of superintendence over the vigilance administration of the Ministries/Organisations within its purview, under Section 8 (1) (h) of the Central Vigilance Commission Act, 2003 ["the Act of 2003"], which could be reproduced in its entirety as under:-

"No. 008/VGL/022

Government of India

Central Vigilance Commission

Satarkta Bhawan, Block "A"

GPO Complex, INA,

New Delhi- 110 023

Dated the 28th March 2006

Circular No. 16/3/06

Sub: Protection against victimisation of officials of the Vigilance Units of various Ministries/Departments/Organisations.

The Commission has viewed seriously certain instances of harassment and attempts at victimisation of vigilance officials of certain organisations. The need to allow the vigilance officials to work independently and freely without any fear, which is the foundation for effective vigilance administration in any organisation, has been recognised since long. In fact, the Committee on Prevention of Corruption (Santhanam Committee) had recommended that "those posted to the Vigilance Organisations should not have the fear of returning to their parent cadre with the possibility of facing the anger and displeasure of those against whom they made inquiries". The Committee had also recommended that "those working in Vigilance Organisation should have an assurance that good and efficient work in the Vigilance Organisation will enhance their opportunities for promotion and not become a sort of disqualification".

2. The Commission has considered the problem of possible victimisation of Vigilance officials after they finish their tenure in the Vigilance Department and revert to their normal duties. In the case of CVOs, already, the Commission, as Accepting Authority, is in a position to moderate, if necessary, any biased reporting against the CVO in his ACR. Similarly, the Commission has always been extremely careful and cautious while taking cognizance of complaints against the CVOs and as a matter of principle always obtains the CVOs' response before coming to any conclusion on the need to investigate such complaints.

3. In order that the required degree of protection is conferred on the Vigilance officials supporting the CVO and keeping in view the spirit of the Santhanam Committee which with commendable foresight had anticipated very clearly some of these issues, the Commission issues the following consolidated instructions in exercise of its powers under Section 8 (1) (h) of the CVC Act:

(i) All personnel in Vigilance Units will be posted only in consultation with and the concurrence of the CVOs. They will be for an initial tenure of three years extendable up to five years. Any premature reversion before the expiry of such tenure will only be with the concurrence of the CVO. The CVO shall bring to the notice of the Commission any deviation from the above.

(ii) The ACR of personnel working in the Vigilance Department will be written by the CVO and reviewed by appropriate authority prescribed under the relevant conduct rules. The remarks in review shall be perused by the CVO and in case he has reservations about the comments made under the review, he shall take it up with the Chief Executive/HOD to resolve the issue. In case he is unable to do this, he shall report the matter to the Commission who will intercede in the matter suitably.

(iii) Since the problem of victimisation occurs, if at all, after the reversion of the personnel to their normal line departments, the Commission would reiterate the following:

(a) On such reversion the vigilance personnel shall not be posted to work under an officer against whom, while working in the vigilance department, he had

undertaken verification of complaints or detailed investigation thereafter. Needless to say his ACR shall not be written by such officer/s.

(b) All such Vigilance personnel will be deemed to be under the Commission's purview for purposes of consultation in disciplinary matters. This is irrespective of their grade. This cover will be extended to a period of not less than five years from the date of reversion from the vigilance department.

(c) All Vigilance personnel on reversion shall be entitled to represent through the CVO and chief executive of the organisation to the Commission if they perceive any victimisation as a consequence of their working in the Vigilance department. This would include transfer, denial of promotion or any administrative action not considered routine or normal. This protection will be extended for a period not less than five years after the reversion of such personnel from the vigilance department.

4. The above instructions may be noted for strict compliance. The CVO should report promptly to the Commission, the details of any real or perceived victimisation of any official who is working in the Vigilance Unit. Similarly, he should also report such instances pertaining to the former officials of the Vigilance Unit, up to a period of five years after they had completed their tenure in the Vigilance Unit. He should also report where such deserving officials are ignored/superseded in matters of promotion.

Sd/-

(V. Kannan)

Director"

20. It is at once clear that the aforesaid Circular, when issued by the Central Vigilance Commission by virtue of Section 8 (1) (h) of the Act of 2003, even if otherwise not of the statutory rules, carries the attributes of such binding nature instructions which would ordinarily call for adherence rather than deviation or avoidance.

21. It has been laid down in the Circular above-quoted that the personnel in the Vigilance Units will be posted in consultation with and concurrence of the CVO for the initial tenure of three years, which is extendable up to five years; and any premature reversion before the expiry of such tenure has to be "only" with the concurrence of CVO. It is not far to seek that the expression "reversion" in the Circular is not akin to reversion in rank, as suggested by the learned counsel for the respondent Corporation. Contextually interpreted, it is apparent the expression "reversion", as appearing in Clause 3 (i) of the Circular dated 28.03.2006, essentially refers to any proposition of posting the person from Vigilance Unit to any other Unit/Department in the organization, which would obviously amount to reversion from the Vigilance Unit. It is this process of reverting the person to his original or other posting that has been referred as "reversion" in Clause 3 (i) of the Circular *ibid*. It is not in dispute that the

petitioner had not completed the tenure of three years in the Vigilance Department. Thus, if the petitioner was sought to be withdrawn from the Vigilance Department so as to be posted to another Department in the Corporation, it was minimum required that the concurrence of the CVO was sought in the matter.

22. A suggestion has repeatedly been made by the learned counsel for the respondent Corporation that in case of deviation, the CVO could have only brought the matter to the notice of the Commission, but he could not have passed the order as if to override the transfer order of the petitioner. It is difficult to accept this line of argument because if such a proposition is accepted, the very object of Clause 3 (i) of the Circular would be defeated.

23. Looking to the object and purpose of the Circular *ibid.*, the requirement that CVO shall bring the deviation to the notice of the Commission cannot and does not mean that the CVO is reduced to a mute spectator or a mere informer when the deviation takes place so as only to refer it to the Commission and not to do anything else. This Court is clearly of the view that the aforesaid Clause 3 (i) of the Circular, when read as a whole with its intent and purpose, inherently and innately carries a corresponding authority of the CVO to take such requisite measures as are necessary, so as to prevent the questioned deviation. Once it is not disputed that NEEPCO comes within the purview of the Act of 2003 and once the applicability of the said Circular to NEEPCO is not disputed, the respondents cannot suggest that they could ignore the said Circular or arbitrarily deviate therefrom, for which, the CVO could do no more than work as a mere messenger for the Commission. If such a sweeping proposition is accepted, the aforesaid Clause 3 (i) and rather the entire Circular would be rendered nugatory and meaningless.

24. True it is that in the present case, the CVO could not have acted as if exercising superior power over and above the hierarchy of the administration but then, the administration itself could not have ignored the requirements of the Circular dated 28.03.2006 with impunity. When the specific requirement for premature reversion from the Vigilance Unit before expiry of the term is that it has only to be with the concurrence of CVO, it was minimum required that if the petitioner was sought to be prematurely withdrawn from the Vigilance Unit, the concurrence of CVO was sought in the matter. Admittedly, in the present case, the respondent Corporation not only avoided to seek concurrence of the CVO, but even when the CVO stated his strong objection against the proposition of transfer of the petitioner, the CMD concerned chose to assert his purported authority and attempted to suggest that the CVO's letter dated 24.05.2016 was overruled by him. Such an approach of insistence on the part of the CMD of the respondent Corporation cannot be appreciated, particularly in view of the purpose and intent of the aforesaid Circular of the Central Vigilance Commission dated 23.08.2006.

25. At this juncture, apposite it would be refer to the other limb of submissions on behalf of the respondent Corporation that the then Chief Vigilance Officer,

Shillong was himself ill-disposed towards the officers of NEEPCO and was rather acting with hostility and in a vindictive manner; and in fact, he had filed the FIRs so as to tarnish the image of the Corporation. When the FIRs have been lodged, the matter would obviously be investigated by the investigating agency/agencies concerned in accordance with law and this Court would not make any comment thereupon but it cannot be assumed at this stage that all the FIRs were lodged by the then CVO only in order to harm the organisation or its officers. Another limb of submissions that the said CVO was served with a charge sheet from his parent department on 07.05.2016 hardly appears to be having any relevance in the present matter. Even if the said CVO was served with the charge sheet from his parent department, at the relevant point of time concerning the case of the petitioner, he was indeed working as CVO; and with mere serving of charge sheet on him by the parent department, it cannot be assumed that his power and authority as CVO in the respondent Corporation ceased to exist. In any case, if the respondent Corporation had any doubt or apprehension on the manner of working of the CVO or on his conduct or disposition, the matter could have been brought to the notice of the Ministry concerned as also of the Central Vigilance Commission for appropriate orders. Instead of adopting appropriate course of law, it appears that in these matters relating to the posting of the petitioner, the concerned authorities in the respondent Corporation only chose to take up and expand the tug of war which could hardly be appreciated for a responsible agency and instrumentality of the Government.

The orders for suspension and departmental proceedings

26. It is at once clear from the factual aspects of the matter that so far the order of transfer of the petitioner was concerned, the then CVO working in the respondent Corporation had taken serious exception against the same and had specifically ordered that the petitioner would continue to work in the Vigilance Department and in fact, addressed successive communications on the given date to the authority concerned seeking cancellation of the order of transfer of the petitioner. The petitioner has categorically asserted that he was not relieved by the CVO; and it has also been pointed out that and his biometric information for the purpose of attendance was kept activated in the Corporate Vigilance Department. In such circumstances, it is difficult to accept that the petitioner was liable to be suspended and was liable to be proceeded departmentally for his alleged noncompliance of the order of transfer.

27. Thus, the submissions made on behalf of the respondents at the commencement of hearing of these two petitions that they may consider withdrawing the questioned orders relating to the suspension and departmental proceedings appear to be that of proper review of its own propositions by NEEPCO. In any case, for what has been discussed here in above, this Court is clearly of the view that the proceedings for suspension and serving of charge sheet against the petitioner were entirely unwarranted; and in the totality of circumstances, in order to avoid any ambiguity or doubt, it appears just and

proper to annul such proceedings and to quash the impugned orders dated 22.06.2016 [Annexure 11 and 12 in WP (C) No.200 of 2016].

Bone of contention: The order of transfer dated 23.05.2016

28. As noticed, the learned counsel for the parties have made elaborate submissions, respectively on challenge to and in support of the impugned transfer order dated 23.05.2016. In the case of Somesh Tiwari (supra) as cited on behalf of the petitioner, Hon''ble Supreme Court found the transfer order in question invalid for being punitive in nature and suffering from non-application of mind to the relevant facts. The decisions in Shanti Kumari and Gujarat Electricity Board (supra) as cited on behalf of the respondents on the requirement of making representation against the order of transfer are hardly of relevance in the present case. In the case of Munuswamy (supra) the Hon''ble Supreme Court has pointed out the requirement that reasonable apprehension of bias is to be based on cogent material. In the case of T.D. Subramanian (supra), the transfer order was not found mala fide and made in the exigencies of service.

29. It remains trite that the transfer and posting are the ordinary incidents of service and an employee does not carry any vested right to remain posted in a particular Department/Branch/Cell or at a particular place. Of course, as noticed above, so far the Vigilance Department is concerned, special nature protections/safeguards are available to the personnel posted therein for their free and unruffled working; and to the extent the protection towards tenure was sought to be ignored by the respondent Corporation in relation to the petitioner, the impugned action cannot be held justified. However, beyond this aspect, such protections/safeguards cannot be stretched or expanded to the extent of vesting the petitioner with a right to remain continuously posted in a particular Unit/Department and that too at a particular station only. Thus, it cannot be laid down as a blanket proposition that once posted in the Vigilance Department at Shillong, the petitioner has an indefeasible right to remain posted thereat alone.

30. One of the suggestions made on behalf of the petitioner is that he had made a complaint bona fide and he would be a proper person to assist in the investigation on his complaint. In counter, it has been suggested on behalf of the respondent Corporation that the very fact that the petitioner has filed such a complaint (which according to the respondent Corporation is a baseless one), he does not deserve to remain in the Vigilance Department. In the opinion of this Court, neither of the extreme side propositions canvassed from the rival sides in this regard could be considered standing conformity with law. Even when the petitioner has filed a complaint in the matter of vigilance, it does not give him a right to persecute and to follow it up beyond his functions and duties. When the matter is said to be pending with the investigating agency, the role of the petitioner may be to assist the investigating agency but he cannot himself take over the role of an investigator. At the same time, the respondent Corporation cannot suggest as a matter of right that because the petitioner has filed a complaint, he is bound to be transferred. If such a proposition of the respondent

is accepted, it would be permitting a transfer by way of punishment. Thus, rejecting both the extreme propositions of the parties, this Court is of the view that in such a matter, a balanced approach is required, where the transfer and posting of the petitioner should be examined with reference to the interest of the organisation and overall administrative exigencies.

31. Though learned counsel for the petitioner has asserted that the transfer order in question suffers for mala fide and therefore, calls for interference but in the given set of facts and circumstances, suffice it would be to observe that the impugned transfer order dated 23.05.2016, even if not suffering from mala fide as such, cannot be said to be discreet for want of the respondent Corporation attending on all the requirements of the Circular of the Central Vigilance Commission; and for the concerned authorities in the respondent Corporation only taking up and expanding the avoidable and unnecessary tug of war over the matter of posting of the petitioner.

32. In the peculiar circumstances of this case, the aforesaid aspects are not required to be elaborated further for the reason that substantial changes have taken place since after passing the impugned transfer order dated 23.05.2016 and disputed orders dated 24.05.2016 by the then CVO and the then CMD inasmuch as the then CVO, against whom several allegations have been suggested by the respondents, has since reverted back to his parent department and the new incumbent is holding the charge; and the then CMD has also retired on attaining the age of superannuation on 30.06.2016. Coupled with these, the fact, of course, remains that the petitioner has hitherto continued to work only in the Vigilance Department at Shillong.

33. In the changed scenario, it is expected, as has indeed been indicated in the preliminary submissions before the Court on behalf of the respondent Corporation, that the authorities in the Corporation revisit their propositions in accordance with law. In the given set of circumstances, this Court is also of the view that instead of endorsing the proposition suggested on behalf of respondents that the petitioner may be assigned the Vigilance Cell, even if he is posted at DHEP, appropriate it would be to hold the said transfer order dated 23.05.2016 as redundant that has lost its force and is not available for enforcement now but while leaving it open for the respondent Corporation that if any fresh order regarding transfer/posting of the petitioner is in contemplation, the same may be made while keeping in view the observations foregoing as also while keeping in view the submissions made during the course of arguments before this Court.

Conclusions

34. Accordingly and in view of the above:

(1) The impugned orders dated 22.06.2016 [Annexure 11 and 12 in WP(C) No.200 of 2016] are hereby quashed;

(2) The impugned transfer order dated 23.05.2016 [Annexure 5 in WP(C) No.199 of 2016] is held redundant and being not available for enforcement now. However, it is left open for the respondent Corporation that if any fresh order regarding transfer/posting of the petitioner is in contemplation, the same may be made while keeping in view the observations in this order as also the submissions made during the course of arguments before this Court.

(3) No further order being requisite, these petitions stand disposed of. No costs. WP (C) No. 200 of 2016

35. Vide order passed in WP (C) No. 199 of 2016, this petition stands disposed of. MC [WP (C)] No. 106 of 2016

36. Vide common order passed in WP (C) No. 199 and WP (C) No. 200 of 2016, this misc. case stands disposed of. MC [WP (C)] No. 105 of 2016

37. Vide common order passed in WP (C) No. 199 and WP (C) No. 200 of 2016, this misc. case stands disposed of.