
(2007) 04 JH CK 0069
In the Jharkhand High Court

Vivekanand Chaudhary

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-04-2007

Acts Referred:

Citation : (2007) 3 JCR 225

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—In this writ petition the petitioner has prayed for quashing the order dated 30.11.2006 contained in Memo No. 3036 dated 8.12.2004 (Annexure-14) whereby the respondent No. 2 has rejected the petitioner's representation which had been filed against his transfer. The petitioner has also prayed for quashing the order contained in Memo No. 1682 dated 29.6.2006 (Annexure-6) and the order contained in Letter No. 599 dated 8.7.2006 (Annexure-9). It has been stated that by the impugned Letter No. 599 dated 8.7.2006, the petitioner, who has been holding the post of Junior Engineer, Water Resources Development Department, Deoghar, has been sought to be transferred to the Office of the Chief Engineer, Water Resources Development Department, Ichagaludih (Chakradharpur). The petitioner has challenged the said transfer order on the ground that the same is malicious and contrary to the rules, inasmuch as the petitioner was sought to be transferred within a period of ten months from the date of assuming the charge at Deoghar. The petitioner had challenged the transfer order in W.P (S) No. 4474/2006. However at that time the petitioner's representation against his transfer was pending before the Secretary of the Department and in view thereof, the said writ petition was disposed of by order dated 16.10.2006 directing the Secretary to consider the petitioner's representation and dispose of the same by a speaking order. By the impugned Annexure-14 the petitioner's representation has been rejected. On perusal of the impugned order, it is evident that the petitioner has been

transferred on several imputations alleging and calling him as liar, indisciplined, destructive minded and arrogant etc. According to the respondents, the petitioner's transfer is in public interest and for the smooth and peaceful performance of the departmental works. The petitioner submitted that the said allegations are wholly frivolous and baseless, inasmuch as, the same have never been communicated to the petitioner earlier. The impugned transfer is wholly illegal and by way of punishment, on the alleged charges, however, without following the due procedure established by law and the same is unsustainable and liable to be quashed by this Court.

2. A counter affidavit has been filed by the respondents supporting the impugned orders. It has been stated that the petitioner had been disturbing the departmental works and there were adverse report against him. Complaints had been made by the Assistant Engineer and others regarding his unbecoming behaviour and on such allegations/charges the petitioner has been transferred. Nowhere in the counter affidavit there is any statement of informing the said allegation/charges to the petitioner or of giving him an opportunity to explain or hearing.

3. It is an admitted fact that the petitioner has been sought to be transferred within a short span of ten months only on the basis of the said charges. It is well settled that the transfer on any charge or by way of punishment cannot be made without giving the person any notice and opportunity of hearing.

4. I find that the petitioner has been transferred on the charges of indiscipline, arrogant behaviour and other allegation amounting to misconduct, within a short span of ten month from the date of assuming his charge at the present place. The impugned transfer is by way of punishment on the said charges. Admittedly the alleged charges were not informed to the petitioner and no opportunity of hearing was given to him before passing the said order. Even after his representation, no charge was served on him and representation has been also mechanically and casually disposed of by Annexure-14. The impugned orders thus do not conform to the requirement of fair play and principle of natural justice. The impugned transfer orders as also the impugned order rejecting the petitioner's representation (Annexure-14) are thus arbitrary, unjust and are violative of principle of natural justice and the same are not sustainable. The said impugned orders are, hereby, quashed. This writ petition is, accordingly, allowed.