

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

SRI JUSTICE VIPIN SANGHI, C.J.
AND
SRI JUSTICE ALOK KUMAR VERMA, J.

3RD APRIL, 2023

WRIT PETITION (S/B) NO. 98 OF 2023

Between:

Rajiv BhartariPetitioner.

and

Union of India and others.Respondents

Counsel for the petitioner : Mr. Abhijay Negi and Ms. Snigdha Tiwari.

Counsel for the respondents : Mr. Karan Anand, learned Standing Counsel for the Union of India / respondent No. 1.

Mr. S.N. Babulkar, learned Advocate General with Mr. C.S. Rawat, learned Chief Standing Counsel and Mr. Pradeep Joshi, learned Additional Chief Standing Counsel for the State of Uttarakhand/respondent Nos. 2 & 3.

Mr. Rahul Gupta, Mr. Aman Rab and Mr. Shiv Pande, learned counsel for respondent No. 4.

Upon hearing the learned Counsel, the Court made the following

ORDER : (per Sri Vipin Sanghi, C.J.)

The respondents are served.

2. Counter-affidavit stands filed on behalf of respondent Nos. 2 & 3.

3. Learned counsel for respondent No. 4 seeks time to file a counter-affidavit. Let the same be filed within ten days.

4. Rejoinder, if any, be filed before the next date.
5. Mr. Abhijay Negi has pressed for an urgent interim relief. Mr. Negi points out that the relief sought in the writ petition is for a writ of *quo-warranto* against respondent No. 4, to say, that he has no authority to hold the post of Principal Chief Conservator of Forest/ Head of Forest Force (hereinafter referred to as '*PCCF/HoFF*') in the State of Uttarakhand after the order of the CAT dated 24.02.2023, in the light of the specific condition in his Appointment Order dated 17.05.2022. The petitioner has also sought a direction to restrain respondent No. 4 from functioning as PCCF/HoFF, in view of the aforesaid judgment of the CAT, Allahabad (Circuit Bench, Nainital). The petitioner also seeks a direction to restore him to the post of PCCF/HoFF with immediate effect, as directed by the Tribunal under the aforesaid order. Further reliefs have also been sought by the petitioner.
6. The appointment order of respondent No. 4, upon transfer of the petitioner from the said post, has been placed on record. The same specifically states that the appointment of respondent No. 4 to the post of PCCF/HoFF is subject to the order passed in Writ Petition (S/B) No. 98 of 2022.

7. In Paragraph-8 of the order dated 18.04.2022, the Court has directed that the record of the said writ petition be transferred to CAT, Allahabad, and it was hoped that the Tribunal shall endeavour to decide the matter early. The said writ petition had been preferred by the petitioner to assail his transfer to the post of Chairman, Uttarakhand Biodiversity Board, Dehradun. Since the petitioner was aggrieved by the order passed in the aforesaid writ petition, the petitioner had approached the Supreme Court, and the Supreme Court vide order dated 12.12.2022, while declining to interfere with the impugned order passed by this Court, requested the CAT to take up the matter, pending before it, for hearing on the day it was scheduled to be listed, i.e. on 20.02.2023, and dispose of the same expeditiously.

8. In pursuance of the said direction of the Supreme Court, the CAT has allowed the Transfer Application (post the transfer of the aforesaid writ petition) in favour of the petitioner herein. The pertinent findings returned by the Tribunal are as follows: -

"21. If the facts and circumstances of the present case are taken into consideration in the light of the arguments advanced by the learned counsel for the parties, certainly no CSB meeting was held in the present matter in case of pre-mature transfer, which is mandatory to conduct the CSB meeting. Thereafter, competent authority may accept or reject the board's recommendation. Although in the present matter, applicant himself was one of the member of the CSB Board but CSB meeting could be held in his absence. If the law

laid down in cases of Shri Ishwar Chandra (supra) and Talluri Srinivasa (supra) are taken with Ernakulam Bench decision, the ratio laid down in the case of Ernakulam Bench cannot be relied upon as Hon'ble Apex court has clearly held in the case of Shri Ishwar Chandra (supra) and Talluri Srinivasa (supra) that in absence of one of the member of the committee, meeting of the board /committee cannot be held to be invalid. Thus, if applicant himself was one of the members of the Board/committee, and he could not participate in the board meeting, being under consideration zone, then also other committee members could conduct the board meeting. Applicant's transfer has been made in this matter on the basis of simply note prepared by the concerned minister. No such procedure has been prescribed in any statutory law, rule or regulation to transfer the cadre post officer only on the basis of note prepared by the concerned minister without recommendation of the CSB, which is not justifiable and Court is of the opinion that injustice has been done to the applicant and therefore he is entitled for relief claimed in the instant OA. It is worth mentioning that there was interim direction of the Hon'ble High Court to the effect that DPC resolution be not given effect to and respondent No. 4 appointment has been made subject to the out come of the present O.A. Thus, applicant plea cannot be defeated on the aforesaid ground. Applicant's plea can also not be rejected on the ground that he has to retire from service within few months. Nothing is on record to show that there was recommendation of CSB for transfer of the applicant prematurely. Transfer order is not bonafide one. Except to assertion in the pleading, nothing is on record to show that applicant career was blemish or any charge sheet had been served upon him at the time of impugned transfer order. If for the sake of argument this fact that applicant was not performing his duty very well on the post of PCCF (HOFF) is taken into consideration, then also at least procedure prescribed for transfer should have been followed.

22. Hon'ble Apex Court in catena of judgments has observed that when an order of transfer is passed in lieu of punishment the same is liable to be set aside being wholly illegal.

23. *The Hon'ble Apex Court in the matter of Arvind Dattatraya Dhande vs State of Maharashtra, AIR 1997 SC 3067, has held in the matter of an appellant who had conducted raid on toddy shops at various places and samples were taken from the toddy for analysis; consequently offences were registered on the basis of the analyses report which revealed that the toddy was adulterated; aggrieved by this, the toddy contractor later lodged complaint against the appellant and action was taken against the officer by way of transfer. In this matter it was held that*

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"..the transfer is not in public interest but is a case of victimization of an honest officer at the behest to the aggrieved complainants carrying on the business in liquor and toddy. Under these circumstances the transfer of the appellant is nothing but mala fide exercise of the power to demoralize honest officers who would efficiently discharge the duties of a public officer". The appeal was accordingly allowed.

24. *The Hon'ble Apex Court has in the case of Somesh Tiwari vs Union of India and others decided on 16th December, 2008 in Civil Appeal No. 7308 of 2008 (Arising out of SLP (Civil) No. 3516 of 2007) in para-20 observed as follows:-*

"20. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground ie on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment the same is liable to, be set aside being wholly illegal..."

25. *Thus, on the basis of aforesaid discussion, the O.A. is liable to be allowed. Accordingly, the OA is*

allowed. Impugned order dated 25.11.2021 is quashed." Respondents are directed to restore the applicant to the post of PCCF (HOFF) forthwith."

9. Mr. Negi submits that despite the direction issued by the Tribunal on 24.02.2023 quashing the transfer of the petitioner from the post of PCCF /HoFF, and directing restoration of the petitioner in the said position, the respondents have not complied with the said order till date. He submits that the petitioner is due to retire on 30.04.2023, and it is absolutely essential for the petitioner who is an officer of the State and his honour that he is restored to his position as PCCF/HoFF forthwith.

10. Mr. Negi has also referred to the findings returned by the Tribunal. The Tribunal found that the petitioner's transfer from the post of PCCF/HoFF was merely on the basis of a Note prepared by the concerned Minister without following the procedure of placing the matter with regard to the transfer of the petitioner before CSB and undertaking to transfer the petitioner under the recommendations of the CSB. The transfer of the petitioner has been found to be *mala fide* by the Tribunal.

11. On the other hand, Mr. C.S. Rawat, learned Chief Standing Counsel for the State of Uttarakhand, who appears for the respondent Authorities, submits that the respondents

have prepared a writ petition to challenge the order of the Tribunal before this Court, which would be filed very shortly.

12. Mr. Gupta, who appears on behalf of respondent No. 4, submits that a charge-sheet making serious allegations against the petitioner has been issued in the meantime. Mr. Negi, in reply to the same, points out that the charge-sheet has been issued after the order of the Tribunal dated 24.02.2023.

13. Despite the Tribunal allowing the Transfer Application of the petitioner on 24.02.2023 quashing the petitioner's transfer and directing restoration in the post of PCCF/HoFF, the said order was neither immediately assailed by the Government, nor even by respondent No. 4. They have taken their own sweet time, while the date of retirement is fast approaching, and today Mr. Rawat submits that the writ petition will be filed shortly.

14. Looking to the fact that the Tribunal has found, on the basis of the record, that the transfer of the petitioner was made merely on the basis of a Note prepared by the concerned Minister and without following the statutory procedure, we are of the view that the order of the Tribunal dated 24.02.2023 should be implemented forthwith. Pertinently, even after the petitioner was transferred out and respondent No. 4 has been brought-in as PCCF/HoFF,

the matter was not placed before the CSB for *post facto approval*. Merely because the Minister concerned is one of the members of the CSB that itself does not authorize him to unilaterally take a decision to transfer the petitioner in the manner that he did.

15. We, therefore, direct that respondent No. 4 shall forthwith stand divested of his duties as PCCF/HoFF, and the writ petitioner shall forthwith be restored to the said post. He shall be permitted to take-over charge at 10:00 AM tomorrow i.e. on 04.04.2023. However, since there are allegations made against the petitioner and he has been issued a charge-sheet, we restrain him from taking any decision on any matter concerning the charge-sheet issued to him, and he shall not deal with any file or matter relating to the charge-sheet.

16. It is made clear that this order shall not prejudice the rights of the respondents to assail the order dated 24.02.2023, and it shall be subject to further orders in this writ petition, or in the petition preferred by the respondents against the impugned order dated 24.02.2023.

17. List on 24.04.2023.

VIPIN SANGHI, C.J.

ALOK KUMAR VERMA, J.

Dt: 3RD APRIL, 2023
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