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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 7926/2016

% **Judgment dated 7th September, 2016**

G S NEGI

..... Petitioner

Through : Mr.Amitsh Kumar, Adv.

versus

ALL INDIA COUNCIL FOR TECHNICAL
EDUCATION AND ANR

..... Respondents

Through : Mr.Anil Soni, Adv.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

CM.APPL. 32907/2016

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. Challenge in this writ petition is to the order dated 24.8.2016 passed by Central Administrative Tribunal (in short '*the Tribunal*') in OA No.100/2867/2016 by which the OA filed by the petitioner was dismissed *in liminie*. The petitioner also seeks a direction to to set aside the order dated 14.7.2016 issued by the AICTE whereby the petitioner has been transferred from Academic Bureau, AICTE Headquarters, New Delhi, to AICTE-Eastern Regional Office (AICTE-ERO) Camp Office, Guwahati. It is also prayed that the order dated 20.7.2016 issued by the AICTE, whereby the representation of the

petitioner has been rejected, may be quashed.

4. The brief facts of the case are that in the year 1993, the petitioner was appointed as an Accounts Officer-II on deputation in the AICTE for a period of one year. In the year 1995, the petitioner was absorbed as Accounts Officer-II in AICTE. The petitioner was thereafter promoted to the post of Accounts Officer-1 on 27.10.1997 and to the post of Under Secretary (ad hoc) on 17.6.1999. The petitioner was regularized in the post of Under Secretary on 5.7.2002.
5. As per the petition, consequent upon the abolition of posts of Under Secretaries/Deputy Secretaries by the MHRD, Government of India, the petitioner vide letter dated 4.6.2009 was re-designated as Assistant Director without affecting his seniority. In the meanwhile, on 1.9.2009, the Central Bureau of Investigation, Anti Corruption Branch, Gandhi Nagar, registered FIR No.RC 9(A)/2009-GNR dated 1.9.2009 under Sections 120-B, 420, 468, 471 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, against the petitioner and some other persons. On 25.11.2009, on account of registration of FIR against the petitioner, he was placed under suspension by the AICTE. The AICTE also initiated Departmental Inquiry against the petitioner under Rule 14 of Central Civil Service (Classification Control and Appeal) Rules, 1965, and the said proceedings are stated to be still going on. On 9.10.2014, the AICTE revoked the suspension of the petitioner and the petitioner joined his duties at AICTE, Headquarters at New Delhi on 10.10.2014. The AICTE, vide its office order dated 13.10.2014, transferred the petitioner to the National Board of Accreditation (NBA). On 31.5.2015, the petitioner was relieved from NBA and the petitioner joined AICTE Headquarters at New Delhi on 1.4.2015. On 14.7.2016,

the AICTE issued the impugned office order dated 14.7.2016 whereby the petitioner was transferred to AICTE-Eastern Regional Office (AICTE-ERO) Camp Office at Guwahati. Thereafter the petitioner submitted his representation on 14.7.2016 to the respondent for cancellation of transfer order. The said representation of the petitioner was rejected. Aggrieved by the action of the respondent, the petitioner filed OA No.100/2867/2016 before the Tribunal, which was dismissed by the Tribunal vide impugned order dated 11.8.2016, which led to the filing of the present writ petition.

6. Mr.Amitesh Kumar, learned counsel appearing on behalf of the petitioner, submits that since the petitioner is facing a criminal case at Gandhi Nagar, Ahemdabad, and a Departmental Inquiry is pending against him in New Delhi, it would be impossible for the petitioner to travel from Guahati to Delhi and/or to Ahmedabad as his personal presence in both the matters is mandatory. It is further submitted by Mr.Kumar that in case the transfer order is not cancelled, not only the public money would be wasted but the petitioner will also be missing his office, as considerable time would be spent by him on travel from one place to another. It is also submitted by Mr.Kumar that the petitioner has all along worked in the Accounts Department of AICTE and neither there is any such post available at Guwahati nor is there any work relating to accounts. It is also contended by Mr.Kumar that the petitioner has assailed the impugned transfer order on the ground that the Tribunal should have granted time to the petitioner to join the place of posting rather than dismissing the matter *in limine*.
7. It is further submitted by the counsel for the petitioner that the petitioner did not join his place of posting as he was hopeful that, for the reasons as stated hereinabove, the respondents would relook into

the matter and either withdraw the transfer order or post him at a convenient place to enable him to pursue the matter.

8. Mr.Soni, learned Standing Counsel for the respondents, enters appearance on an advance copy and submits that the order of transfer is not hit by *mala fides* and, thus, cannot be the subject matter of challenge. Counsel further submits that with a view to improve the standards of the technical education in the North-Eastern Region and in view of the Special Scheme of the Government of India, the petitioner has been posted as a full-fledged Regional Officer, which is a higher post, and, thus, he could not have any grievance.
9. We have heard learned counsel for the parties and considered their rival submissions. We have also examined the impugned order passed by the Tribunal. The Tribunal while relying on the case of **S.C. Saxena v. Union of India & Others**, reported at 2006 SCC (L&S) 1890, more particularly para 6, which reads as under, has dismissed the OA as the petitioner had not joined the place of posting at the first instance. Para 6 of the said judgment reads as under:

“6. We have perused the record with the help of the learned counsel and heard the learned counsel very patiently. We find that no case for our inference whatsoever has been made out. In the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed. Apart therefrom, if the appellant really had some genuine difficulty in reporting for work at Tezpur, he could have reported for duty at Amritsar where he was so posted. We too decline to believe the story of his remaining sick. Assuming there was some sickness, were are not satisfied that it prevented him from joining duty either at Tezpur or at Amritsar. The medical certificate issued by Dr. Ram Manohar Lohia Hospital

proves this point. In the circumstances, we too are of the opinion that the appellant was guilty of misconduct of unauthorisedly remaining absent from duty.”

10. While, we are in agreement with the view expressed by the Tribunal but in our view instead of dismissing the OA *in limine*, the Tribunal should have passed a conditional order and adjourned the matter for a short duration to enable the petitioner to join the place of posting and thereafter the Tribunal could have heard and disposed of the matter on merits in case the petitioner joined his place of posting.
11. At this stage, Mr.Kumar submits that the petitioner is willing to join his place of posting and will join the same within one week from today.
12. Having regard to the submissions made, the matter is remanded back to the Tribunal to hear the matter on merits. List this matter before the Tribunal on 17.10.2016. While we do not express any opinion on the merits of the matter, we direct the respondents to file their counter affidavit to the OA within two weeks from today. The counter affidavit shall specifically address two issues, which have been raised by the counsel for the petitioner in Court today during the course of hearing. Rejoinder, if any, shall be filed by the petitioner within one week thereafter.
13. We make it absolutely clear that in case the petitioner does not join his place of posting the Tribunal will not hear the matter and would dismiss the matter at that stage.
14. Accordingly, writ petition stands disposed of in view of above.

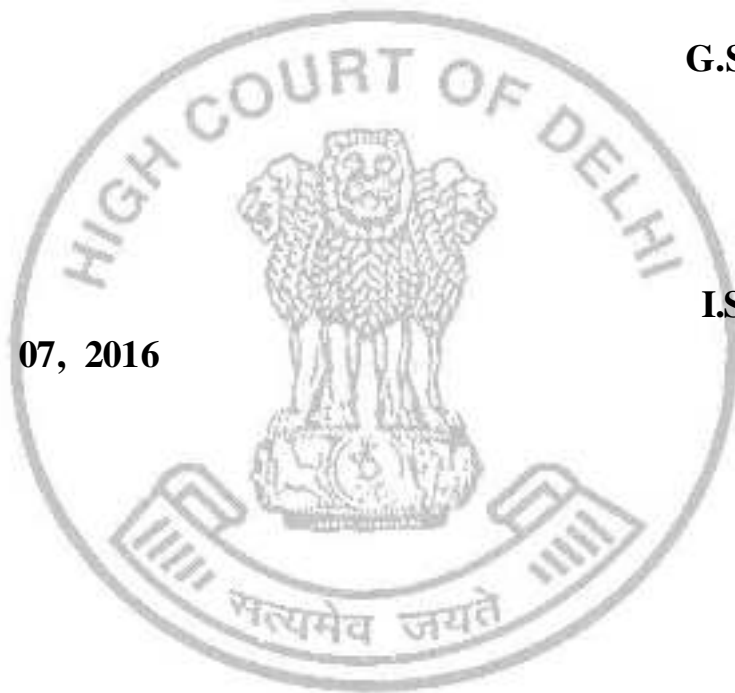
CM APPL. 32906/2016 and 32908/2016.

15. Applications stand disposed of in view of the order passed in the writ petition.

CM.APPL.NOS. 32906 & 32908/2016

16. Applications stand disposed of in view of the order passed in the writ petition.
17. DASTI to the parties.

SEPTEMBER 07, 2016
msr



G.S.SISTANI, J

I.S. MEHTA, J