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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9115 OF 2018

Ajay Basudev Bose ...Petitioner
vs.
Union of India & Ors. ...Respondents

Mr.Amitkumar D. Sale for the Petitioner
Mr.T.J.Pandian for the respondents

CORAM : A.S.OKA, &
M.S.SONAK, JJ.
DATE : SEPTEMBER 18, 2018

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1 Heard the learned counsel appearing for the petitioner and the learned counsel for the respondents. By order impugned dated 5th June 2018 passed by the learned Members of the Central Administrative Tribunal, ad-interim order passed on the Original Application filed by the petitioner has been vacated not on merits, but on the basis of the conduct of the petitioner set out in the impugned order. Considering the nature of the impugned order, the petition is forthwith taken up for final disposal.

2 As far as the order dated 12th September 2018 passed by the Sr DCM, BB, Disciplinary Authority is concerned, it does not have any bearing on the merits of this petition in as much as the order of the Disciplinary Authority is subsequent to the

impugned order.

3 The petitioner is the applicant in the Original Application before the Central Administrative Tribunal (for short 'the said Tribunal'). The challenge before the Tribunal in the Original Application was to the order dated 27th December 2017 of transfer of the petitioner who was working as HBC in Lokmanya Tilak Terminus. He was transferred as HBC at Lonavala station. The petitioner claims to be a whistle blower who is the complainant in least 5 cases under the Prevention of Corruption Act. On 23rd January 2018, the Original Application was filed by the petitioner. On 25th January 2018, interim order of status quo was passed by the Tribunal. On 5th June 2018, the impugned order was passed by the Tribunal which reads thus:

"2 Today the matter is listed for hearing on confirmation/vacation of the interim order of status-quo granted in favour of the applicant on 25.1.2018.

3 Record shows that the applicant has already filed Rejoinder on 6.3.2018 to which there is no further pleading from the respondents side. As such, pleadings are virtually complete in this case. However, today, the applicant insisted for further time to file additional rejoinder. He has also stated that he has moved the Hon'ble

High Court for giving police protection to him. He is also facing prosecution for accepting gratification before the Special Court at Mumbai. It is obvious that the applicant is trying to prolong the matter so that he will get protection of interim order. The request for further time is strongly opposed by other side.

4 In view of above, we are painfully constrained to vacate the interim order dated 25.1.2018 in the form of status-quo ante in respect of the applicant's present posting. The same is accordingly vacated, since the learned Advocate for the respondents strongly objected for grant of adjournment and the applicant is not prepared to proceed with the argument either on merit or on confirmation/vacation of the interim order.

5 The applicant may take appropriate steps in the matter.

6 Adjourned to 12.7.2018 for filing additional rejoinder by the Applicant."

(underline supplied)

4 The submission of the learned counsel for the petitioner is that firstly no reasons on merits have been assigned for vacating the interim order which was operating for about five months. Secondly, he

submitted that the impugned order proceeds on the wrong footing that the petitioner is facing the prosecution for accepting gratification before the said Court. Thirdly, though the Tribunal accepted the prayer of the petitioner and granted time to file additional rejoinder by the impugned order, interim order dated 25th January 2018 was vacated. He pointed out the order dated 11th June 2018 by which the impugned order dated 5th June 2018 was corrected. He pointed out that the sentence that the petitioner is facing prosecution for accepting gratification has been deleted by the said order dated 11th June 2018.

5 The learned counsel for the respondents submitted that there is nothing wrong with the order of transfer. He submitted that though the order of status quo was vacated on 5th June 2018, the petitioner has not joined the duty at the transferred post and he has remained absent from the duty. He tendered across the bar an order passed by the Disciplinary Authority by which the petitioner has been penalised for the charge of not accepting the relieving letter dated 23rd December 2017 and penalty has been imposed of reduction at three stages in the same time scale for a period of three years without effect of postponement of future increments. He submitted that considering the fact there is nothing illegal about the impugned order and considering the conduct reflected from the order dated 12th September 2018 of the Disciplinary

Authority, no interference is called for.

6 We have given careful consideration to the submissions. We have quoted the order dated 5th June 2018. The first reason for vacating the order is that the petitioner insisted on grant of time to file additional rejoinder. The second reason is that his Advocate was not ready to proceed with the argument either on merits or on confirmation/vacation of the interim order. Thirdly, the learned Member noted that the petitioner has moved this Court to give police protection and he is facing a prosecution for accepting the gratification. Therefore, the Tribunal observed that it is obvious that the petitioner is trying to prolong the matter so that he will get the protection of interim order.

7 As stated earlier, by order dated 11th June 2018, on an application made by the petitioner, the sentence recording that the petitioner is facing prosecution for accepting gratification is deleted. In the order dated 11th June 2018, the contention of the petitioner was noted that in fact he has filed private complaints against two railway Officers who have demanded bribe from him.

8 If the Tribunal was of the view that the demand for grant of time for filing additional rejoinder was totally unjustified, the Tribunal could have granted one or two days time to the Advocate for the petitioner to get ready for arguing the case on

merits. In fact, the Tribunal by the impugned order granted time till 12th July 2018 to the petitioner to file additional rejoinder. This direction indicates that the prayer made by the petitioner for grant of leave to file additional rejoinder was not without any justification. Therefore, we find that the Tribunal committed an error by vacating the interim order on the ground that the petitioner sought time to file additional rejoinder. The second ground given is that the petitioner was facing a prosecution for accepting illegal gratification. The said ground does not survive as the said statement was factually incorrect. In fact, when the Tribunal was earlier impressed by the fact that the petitioner is facing a prosecution for accepting gratification, on 11th June 2018, when it was noticed that the petitioner was not facing any such prosecution and in fact he was the complainant in such prosecutions, the Tribunal ought to have reconsidered the order dated 5th June 2018.

9 Most importantly, the Tribunal has not given any reason on merits for vacating the interim order 25th January 2018. The Tribunal has held that continuation of the interim order was not warranted on merits. Moreover, it is not the finding recorded that the petitioner has persistently taken adjournments with a view to take undue advantage of the interim order granted on 25th January 2018.

10 We are, therefore, of the considered view that

there was no justification to vacate the interim order dated 25th January 2018 and therefore, interim order will have to be restored. Interests of justice will be subserved if the Tribunal is requested to hear the parties on the confirmation/vacation of the interim order at the earliest. We may also note here that the prayer for confirmation/vacation shall be decided on its own merits and without being influenced by this order.

11 Accordingly, we pass the following order:

- (I) Impugned order dated 5th June 2018 is hereby quashed and set aside and the interim order of status quo passed on 25th January 2018 is hereby restored;
- (II) We request the Tribunal to take up the issue of confirmation/vacation of the said interim order for hearing as expeditiously as possible and preferably within a period of two months from the date on which this order is uploaded;
- (III) We make it clear that we have made no adjudication on the merits of the order of transfer as well as on the merits of the case made out by the parties for grant of confirmation/vacation of the interim order;
- (IV) We also make it clear that all questions arising out of Original Application are kept open;

(V) Rule is made partly absolute on above terms.

(M.S.SONAK,J.)

(A.S.OKA,J.)