



\$~3

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

+ **LPA 838/2023 & CM APPL. 66991-66994/2023**

PADAM KUMAR

..... Appellant

Through: Mr. Nitin K. Gupta, Mr. Sanchay Mehrotra, Mr. Rahul Sinha and Ms. Ritika Gautam, Advocates.

versus

**NATIONAL HIGHWAYS AND INFRASTRUCTURE
DEVELOPMENT CORPORATION LTD & ORS. Respondents**

Through: Ms. Pratishtha Vij and Mr. Abhinav Mukerji, Advocates for R-1 to 4.
Mr. Subhash Tanwar, CGSC, Mr. Rahul Kumar Sharma, GP with Mr. Sandeep Mishra, Mr. Ashish Choudhary, Advocates for R-5.

%

Date of Decision: 22nd December, 2023

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

1. The present appeal arises out of judgment dated 18th October, 2023 passed by the learned Single Judge in *W.P.(C) 10069/2023* by which the writ petition filed by the appellant was dismissed. By the impugned judgment, the learned Single Judge upheld the decision of the respondent no. 1, thereby holding that neither the transfer nor termination of the services of the appellant can be held illegal.



2. Facts of the case in brief are as follows:

2.1 The appellant is a retired officer from Border Road Organization (herein referred as “BRO”), having retired as Chief Engineer.

2.2 In the year 2022, the respondent no.1/Corporation invited applications for the post of Executive Director and selected the appellant for the said post for engagement on contractual basis. Pursuant to his selection, the appellant was issued an engagement letter dated 2nd January, 2023 which provided that the engagement of the appellant was on contractual basis for an initial period of two years.

2.3 Thereafter, the appellant started serving in the Ladakh region. He was transferred to Port Blair vide transfer order dated 5th July, 2023 with directions to join the said location immediately. The appellant sent a representation dated 6th July, 2023 against the posting/transfer order. However, the appellant was relieved from the charge of Executive Director, Ladakh on 7th July, 2023.

2.4 In the meanwhile, the respondent Corporation also received a “Secret” communication from the Intelligence Bureau (“IB”) wherein the conduct of the appellant during his service with BRO was termed as a case of concerning national security, where the appellant was under strict investigation for being in touch with some suspicious female persons, being a person from across the border. Thus, the appellant was investigated by the IB Officials.

2.5 Subsequently, the appellant requested for an extension to join at the transferred location at Port Blair. Eventually, the appellant submitted his resignation vide letter dated 21st July, 2023. Later on, the appellant submitted a representation dated 25th July, 2023 wherein he raised a plea



regarding his unlawful and illegal transfer and submitted that he had been forced to resign. Thus, respondent no. 1 disengaged and removed the appellant from his contractual service by letter dated 25th July, 2023 with immediate effect owing to his failure in reporting for duty at Port Blair.

2.6 The appellant sent a representation dated 26th July, 2023 to the respondent no. 1 against his removal order dated 25th July, 2023. Thereafter, the appellant filed a petition before this Court being *W.P.(C) 10069/2023* challenging his transfer and removal order. By the impugned judgment, the learned Single Judge dismissed the writ petition filed by the appellant against which the present appeal has been filed.

3. On behalf of the appellant, the following contentions have been raised:

3.1 The respondents terminated the service of the appellant vide order dated 25th July, 2023 on the ground of his failure in reporting for duty at Port Blair. Whereas, in fact the appellant upon his movement from Ladakh on 8th July, 2023, was in Delhi as his leaves had been approved till 15th July, 2023 and was asked by respondents no.2 and 3 to attend office, wherein he was interrogated by IB Officials in Delhi.

3.2 The action of the respondents is in complete violation of the Principles of Natural Justice, as the appellant was not issued any warning letter or notice for not reporting at Port Blair by any scheduled date. The appellant was terminated with a pre-determined mind without giving any just and fair opportunity to him.

3.3 The appellant, till date, has neither been called by the IB nor has any charge-sheet been issued to him. The appellant was forced to resign on 21st July, 2023 under threat of being implicated by the IB on non-existent



grounds by making him believe that it was in his interest to resign to save his face.

3.4 The respondents have acted with complete impunity and in an extremely unfair and unjust manner in punishing the appellant. The appellant had objected to the manner of appointment of the Engineer for the Ladakh project. Therefore, the respondent Corporation has acted with malafide intent by taking offence to the complaint/representation filed by the appellant. Even after pressurizing the appellant to resign on 21st July, 2023 under duress, termination order dated 25th July, 2023 was issued to cause more embarrassment and disrepute to him.

4. On the other hand, learned counsel for respondents have justified the impugned order passed by the learned Single Judge.

5. We have heard learned counsel for the parties and perused the record.

6. At the outset, it is to be noted that the appellant had been engaged by respondent no.1 on contractual basis. The Office Order dated 2nd January, 2023 approving the engagement of appellant on contractual basis recorded in clear terms that the period of the contractual agreement of the appellant can be curtailed at the discretion of the competent authority by giving him thirty days notice in writing or by paying one month's remuneration without allowances in lieu of the notice period. The Office Order dated 2nd January, 2023 approving the engagement of the appellant reads as under:

*“ National Highways & Infrastructure Development Corporation Limited
{A Public Sector Undertaking under the Ministry of Road, Transport
Highways, Govt. of India)*

*PTI Building, 3rd Floor,
4, Parliament Street,
New Delhi-110001*

F.No. NHIDCL/2(11)/Rectt Tech/2022/HR/38 Dated: 25th July, 2023



OFFICE ORDER (No. 09/2023)

In pursuance of the NHIDCL offer letter for engagement issued vide letter of even number dated 28.12.2022 and on joining his duties at NHIDCL HQrs, New Delhi, w.e.f, 02.01.2023 (FN), the Competent Authority in the National Highways & Infrastructure Development Corporation Limited (NHIDCL) has approved the engagement of Sh. Padam Kumar as Executive Director (T/P) on Contract basis, with effect from 02.01.2023 {FN}.

2. Engagement of Sh. Padam Kumar in NHIDCL shall be governed as per the NHIDCL Terms & Conditions as mentioned in the Employment Agreement, for engagement of retired Govt. employees on Contract basis. His initial tenure of engagement shall be 02 (two) years which can be extended further with the approval of the Competent Authority. The period of his engagement can also be curtailed at the discretion of the Competent Authority in NHIDCL by giving him 30 days notice in writing or by paying one month's remuneration without Allowances in lieu of the notice period.

3. Sh, Padam Kumar is posted as Exacutive Director (P) at NHIDCL Regional Office- Leh (Ladakh), until further orders.

4. This issues with the approval of the Competent Authority.

(S. Ramakrishnan)
Deputy General Manager (HR)"
(Emphasis Supplied)

7. Pursuant thereto, an Employment Agreement dated 2nd January, 2023 was entered between the appellant and respondent no. 1. The said Employment Agreement specified in unequivocal terms that the tenure of contract employment was initially for a period of two years and the same can be curtailed by respondent no. 1 by giving thirty days notice in writing or by paying one month's remuneration in lieu of the notice period. It further stipulated that the first one hundred and eighty days of employment shall constitute a probationary period, during which period the employer may in its absolute discretion, terminate the employment without assigning any reasons. The relevant Clauses of the Employment Agreement read as



follows:

“XXX XXX XXX”

3. *Term and Probation Period*

The tenure of contract employment shall be initially for a period of two years or till attaining the age of 65 years, whichever is earlier. The same may be curtailed at the discretion of NHIDCL by giving him/her 30 days notice in writing or by paying one month's remuneration in lieu of the note period.

a. **It is understood and agreed that the first 180 (one hundred eighty) days of employment shall constitute a probationary period (“Probationary Period”) during which period the Employer may in its absolute discretion, terminate the Employee's employment, without assigning any reasons and without notice or payment of one month's remuneration in lieu of the Notice Period.**

.....

13. *Amendment and Termination*

a. **In case the Employer terminates the employment without just cause or without assigning any reason, in that case the Employer shall provide the Employee with advance notice of termination or compensation in lieu of notice equal to 01 (One) months).**

b. The Employee may terminate his employment at any time by providing the Employer with at least 01(One) month(s) advance notice of his intention to resign.

c. In case of death of an Employee, his/ her employment shall be terminated on the last day of the month in which the date of the Employee's death occurs, and in case of termination of employment for Just Cause or disability, his/her employment shall be terminated w.e.f. the date on which Notice of the Company is served upon the Employee or is deemed to be served in terms of sub-clause b of clause 15.

d. **For purposes of this Agreement, “Just Cause” means the Employee's gross misconduct resulting in material damage to the Company, willful insubordination or disobedience, theft, fraud or dishonesty, willful damage or loss of employer's property, bribery and habitual lateness or absence, or any other willful and material breach of this Agreement.**

XXX XXX XXX”

(Emphasis Supplied)



8. The Employment Agreement of the appellant also stipulated that the respondent no. 1 may change the post or location during the term of engagement based on the company's operation or working requirements. Further, the Employment Agreement also provided that the contract employee can be posted/ transferred anywhere in India at the discretion of respondent no. 1. The relevant Clauses of the Employment Agreement read as under:

“XXX XXX XXX

2. *Position*

a.....

b. **During the term period of this Agreement, the Company may change the employee's above mentioned post for position) or location based on the Company's operation or working requirements or according to the employee's working capacities and performance, including but not limited to adjustments made to the employees job description or work place, promotion, work transfer at the same level, and demotion etc., or adjustments made to the employee's responsibilities without any change to employee's post (or position).**

.....

20. **Liability to serve anywhere**

a. **The Contract employee can be posted/ transferred anywhere in India at the discretion of NHIDCL.**

b. *Air Travel by entitled class as per Govt. of India's orders for the applicable Pay Level from the old place of posting to the new place of posting is admissible, No TA/DA or lump sum amount is admissible on first place of engagement.*

c. *For approved Tour program, TA/DA will be admissible as per Rules/entitlement.*

d. *Marking attendance through Aadhaar Enabled Biometric Attendance System (AEBAS) will be mandatory for the employee.*

XXX XXX XXX”

(Emphasis Supplied)

9. At the time of joining his contractual employment with the respondent no.1, the appellant expressly accepted the terms and conditions of the



Employment Agreement by way of his Joining Report dated 2nd January, 2023, in the following terms:

“To

*The Dy. GM (HR),
National Highways & Infrastructure Development Corporation,
3rd Floor, PTI Building, 4, Parliament Street,
New Delhi-110001,*

*Subject: Joining Report as Executive Director (T/P) on Contract basis
in NHIDCL.*

Sir,

*Reference your Office's letter No. NHIDCL/2(11)/Rectt
Tech/2022/HR/3552 dated 28.12.2022 on the above subject.*

*2. I accept the NHIDCL Employment Agreement including Terms
and Conditions and report for duty as Executive Director (T/P) on
Contract basis in NHIDCL w.e.f. 02.01.2023 (FN).*

Thanking you

Yours faithfully

Dated: 02.01.2023

Encl above:

*{Padam Kumar}
Executive Director (T/P)
Mob. No. 6350225037
Email id: padam2363@gmail com”*

10. Thus, it is clear that the appellant was engaged with the respondent-corporation vide Employment Agreement dated 2nd January, 2023 and the appellant had duly accepted the terms and conditions as laid down in the said agreement. The Employment Agreement of the appellant clearly provided about the transferable nature of the job. Therefore, the respondent no. 1 was within its authority to transfer the appellant anywhere in the country as per its requirements. The transfer orders are in the nature of administrative decisions and the Courts do not usually interfere with the same, especially where the nature of employment is such that transfers are inevitable and done on a routine basis.



11. The Employment Agreement between the appellant and respondent no. 1 categorically provided for a probation period of six months, where the respondent corporation was empowered to terminate his services without any notice or reasons. Further, Clause 13 of the Employment Agreement provided for termination of employees with notice for one month compensation to the said employee.

12. It is undisputed that in the present case, the order of disengagement of the appellant was in terms of the provisions of the Employment Agreement and one month salary of the appellant was duly disbursed. The letter dated 25th July, 2023 disengaging the services of the appellant reads as under:

*“ National Highways & Infrastructure Development Corporation Limited
{A Public Sector Undertaking under the Ministry of Road, Transport
Highways, Govt. of India)*

*PTI Building, 3rd Floor,
4, Parliament Street,
New Delhi-110001*

F.No. 1(414)/NHIDCL/2023/HR/PF/218365/2580 Dated: 25th July, 2023

OFFICE ORDER (No. 315/2023)

*Sh. Padam Kumar, Executive Director (P) on Contract in NHIDCL, who has been transferred from RO-Leh (Ladakh) to RO-Port Blair (A&N islands) vide NHIDCL Office Order No. 2/NHIDCL/Posting & Transfer/HR/2017/177476/2375 dated 05.07.2023 **is hereby removed & disengaged from the services of NHIDCL, with immediate effect, after his failure in reporting for duties at RO-Port Blair.***

2. Further, Sh. Padam Kumar, Executive Director (P) shall be entitled for one month's remuneration in lieu of the notice period as required to be served on him in the light of NHIDCL Terms & Conditions as mentioned in the Employment Agreement signed between Sh. Padam Kumar and NHIDCL, for his removal & disengagement from the services of NHIDCL, with immediate effect. Before termination of his service contract, Sh. Padam Kumar may also obtain 'No Dues Certificate' from all concerned at RO-Leh (Ladakh).



3. This issues with the approval of the Competent Authority of NHIDCL.

(S. Ramakrishnan)
Dy. General Manager (HR)”
(Emphasis Supplied)

13. This Court had also summoned the original file of the respondent no. 1. Upon perusal of the file, it is manifest that the allegation against the appellant was that he had frequent and unauthorized contact with a “suspicious female friend” from across the border leading to an IB inquiry against him. This is a serious allegation. Therefore, the transfer as well as the subsequent disengagement of the appellant in terms of the provisions of the Employment Agreement which governed the contractual engagement of the appellant, cannot be faulted with.

14. In view of the aforesaid detailed discussion, this Court finds no merit in the present appeal. The same is accordingly dismissed along with the pending applications.

ACTING CHIEF JUSTICE

MINI PUSHKARNA, J

DECEMBER 22, 2023

ak