

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.336 of 2024

[Javed Akhtar Arbab vs. Federation of Pakistan and others]

Date of hearing : 13.09.2024

Plaintiff : Javed Akhtar Arbab, through Mr. Faizan Hussain Memon, Advocate.

Defendant No.2 : National Highway Authority, through Syed Yasir Ahmed Shah, Advocate.

Defendants No.1, 3 and 4 : Nemo

ORDER ON INJUNCTION APPLICATION (CMA NO.5352 OF 2024)

Muhammad Faisal Kamal Alam, J: Learned Counsel for the Plaintiff has filed this Suit, challenging his Transfer Order, that is, Office Order dated 15.03.2024 (*the 'Impugned Office Order'*), whereby, he is posted as PD EFAP and DPD Hala Project Lot 9 (Bridges on N-55) along with the Office Order of same date, whereby, the Defendant No.4 is posted as DD (Maint) NHA Hyderabad with look after charge of Coordinator, China Aided Project on N-5 and N-55, PD (Phuleli and DPD Hala Moro Section), OPS (own pay scale).

2. Learned Counsel for Plaintiff stated that the Transfer Order is illegal and violative of the Service Regulations of Defendant (*National Highway Authority*), providing a fixed tenure of three years for posting and transfer, in terms of the Regulation 4.10 (*at page-43 of the Court File*). Contended that only exception to this Regulations is 4.15, when there is some complaint or other administrative grounds, an Officer can be transferred earlier and the Transfer Order should give reasons, which is not mentioned in the above Transfer Order, which is sought to be set-aside. Learned Counsel for Plaintiff cited the following Case Law_

- i) **2018 SCMR 1411**
[Khan Muhammad vs. Chief Secretary, Government of Balochistan Quetta and others]
- ii) **PLD 2013 Supreme Court 195**
[Syed Mahmood Akhtar Naqvi and others vs. Federation of Pakistan and others].
- iii) **2021 PLC (C.S) Note-11**
[S.M Kaleem Makki through Attorney vs. Province of Sindh through Chief Secretary and others]

3. The above argument is disputed by the learned Counsel for Defendant-NHA. He stated that this transfer is not by way of punishment, therefore, the above Citations do not apply to the facts of the present case. Contended that Clause 4.11 of the Regulations for Appointment, Promotions and Transfers provides an exception, that the above Regulations, which are rather guidelines, is not applicable to those cases where the Officers possess some technical qualification; placed reliance on the reported Decision-SBLR 2022 Sindh 1125 *[Tufail Ahmed Shaikh vs. Federation of Pakistan and others]*.

4. Arguments heard and record perused.

5. The National Highway Authority Employees Service Rules, 1995, made under the National Highway Authority Act, 1991, are appended with the Written Statement, and under Rule 30 (referred by the Defendants' Counsel), relating to Posting and Transfer, it is provided that an employee of the Authority can be posted or transfer either to the Head Office or any of the subordinate Offices in Pakistan. With regard to main contention of Plaintiff's Counsel, that the Plaintiff has been frequently transferred in violation of the above Regulations / Guidelines, the learned Counsel has referred to the earlier Office Order dated 11.01.2022 (*Annexure P/3 of the plaint*), in which the Plaintiff was transferred to the Post of the Deputy Director at NHA Sukkur, in own Pay Scale (OPS), whereas the actual Pay Scale of Plaintiff is BS-17, as he is working as Assistant Director.

6. The last transfer Order of Plaintiff is of 6.6.2022 when he was posted as Deputy Director [Maintenance], that is, in the present position. Since 1.4.2024, Stay is operating in favour of Plaintiff, and till date he has completed Twenty Six months at the current posting. The impugned posting is of Technical nature, as Plaintiff is made Project Director, being an Engineer, which is a Technical Qualification, and falls within the exception of 4.11 of the above Regulations/Guidelines.

7. Gist of the Case Law cited by the Plaintiff's Counsel is, that normally period of posting of a 'Government Servant' at a Station, is three years, unless, there are valid reasons or some exigency, a transfer before the expiry of the above period become necessary in the opinion of the Competent Authority; a Civil Servant cannot be posted or transfer by disregarding his Seniority, nor Government can cut short the normal tenure of a posted / transferred Civil Servant, without assigning any reason. The Case Law is distinguishable and do not apply to the facts of the present case, for the reasons mentioned above.

8. Plaintiff has been transferred as the Project Director, which cannot be termed as a punishment nor any *mala fide* can be attributed to Defendants.

9. Consequently, three basic ingredients for grant of an Injunction Application are lacking in the present Application-CMA No.5352 of 2024, which is dismissed. The Ad-Interim Order is vacated.

JUDGE

Karachi.

Dated: 20.09.2024

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