

No. EDN(TE)E(1)35/2015
Government of Himachal Pradesh
Technical Education Department

O.A. No. 1642/2015

IN THE MATTER OF :-

Shri Yoginder Kumar Vashishta S/o Shri Chuni Lal, R/o Village Mehrin Kathla and Post Office Nalti, Tehsil Ghumarwin, District Bilaspur, Himachal Pradesh. Presently working as Senior Lecturer (Electrical Engineering) in Technical Education Department.

.....Applicant

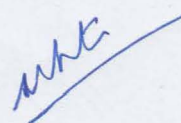
Versus

1. The State of Himachal Pradesh through Principal Secretary (Technical Education) to the Government of Himachal Pradesh.
2. Principal, Government Polytechnic Kangra.

.....Respondents

ORDER

1. That the Hon'ble Himachal Pradesh Administrative Tribunal vide its order dated 29.10.2015 passed in O.A. No. 1642/2015 filed by the above petitioner had disposed of with the stipulation that subject to the applicant making a fresh detailed representation, supported by documents alongwith certified copy of this order, highlighting the above aspects and with a request for suitable adjustment against an existing /likely vacancy out of at least five such vacancies to be indicated in the representation to meet the requirement under the transfer policy, to respondent No. 1, through the Principal Secretary (Technical Education) to the Government of Himachal Pradesh, within a week from today, who shall consider and decide the same in accordance with law, sympathetically, an the transfer policy framed by the State Govt, by 30th November, 2015, after affording an opportunity of being heard to the applicant, if so desired. The Original Application stands disposed of in the above terms."

-1-


2. That vide representation dated 4.11.2015 through Shri Onkar Jairath, Advocate, HP High Court, Shimla, has enclosed copy of the judgment dated 29.10.2015 passed by the Hon'ble HP State Administrative Tribunal, complete set of the Original Application alongwith its Annexures and requested that the same may be treated as representation in compliance to the direction issued by the Hon'ble Himachal Pradesh State Administrative Tribunal and requested that keeping in view the submission made in the body of the Original Application may kindly considered sympathetically and he may be either retained at Kangra or may kindly be adjusted at Hamirpur or Sundernagar or Kangra where posts are lying vacant within stipulated time as directed by the Hon'ble Tribunal by taking favourable decision in the interest of justice.

3. That the Applicant earlier approached the Hon'ble HP Administrative Tribunal by filing O.A. No. 1070/2015, against the impugned revocation order dated 14.05.2015(to the extent of transfer), vide which the suspension of applicant has been revoked and ordered to be transferred from Govt. Polytechnic Kangra to Govt. Polytechnic Banikhet, District Chamba after nine months of his stay at present place of posting without allowing him to complete his normal tenure there and without keeping in view the adverse family circumstances being faced by the Applicant and further without keeping in view the fact that the post against which the applicant is working is lying vacant at Kangra and no one has been posted in his place against the relieving order dated 16.5.2015. The representation of applicant to retain him at Govt. Polytechnic Kangra or adjust him at Hamirpur or Sundernagar was rejected vide order dated 29.05.2015 on the grounds that he has been posted at Govt. Polytechnic Banikhet, District Chamba as his suspension was revoked on the recommendation of the Review Committee and he has been posted at a distant place, so that he cannot impede investigation in any manner.

4. That the applicant being aggrieved by and dissatisfied with the impugned order 14.05.2015 (to the extent of his transfer) contained in

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Annexure A-3, impugned relieving order dated 16.5.2015 contained in Annexure A-4 and dated 29.5.2015 contained in Annexure A-7, assailed the same in the Hon'ble HPAT by filing the present O.A. No. 1642/2015-titled Yoginder Kumar Vashishta Vs. State and others on the following grounds:-

"That the State Govt. has framed a transfer policy governing the transfer of its employees and according to this policy an employee can only be transferred from one place to another place after completion of his normal tenure of stay at the particular place i.e. three years. The respondents have acted contrary to all the relevant instructions issued from time to time and he has been ordered to be transferred just after 9 months. The impugned orders have been issued without keeping in mind the adverse family circumstances of the applicant, faced by him after the uncertain death of his wife. The son of the applicant is studying at Sainik School Sujampur and after the death of his wife the applicant is the only one to look after his son. He has been transferred from Kangra without posting any substitute there and post is still lying vacant. That the case against him has been registered after ignoring all the actual facts and circumstances of the case that the investigation has already been completed by the Investigating authority and as such no question of influencing the investigation arises and further the challan is yet to be put up by the Police before the Trial Court and in case the applicant is ordered to be transferred to Banikhet it would become very difficult for him to attend the hearing of the case at Sundernagar from Banikhet."

5. That the applicant has sought following relief in this O.A.No. 1642/2015:-

(i) That the impugned order dated 29.5.2015 may be quashed and set aside.

(ii) That the respondent may be directed to allow the applicant to work at Govt. Polytechnic Kangra till he completes his normal tenure of stay at the present place of posting.

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6. I have gone through the entire record and have found that Shri Yoginder Kumar Vashist has joined the Department of Technical Education on 29.3.1996 and remained posted w.e.f. 29.3.1996 to 11.09.2014 at Government Polytechnic Sundernagar, District Mandi, nearest place to his native place, for a period of 18 years 5 months. Thereafter, the applicant on his promotion to the post of Senior Lecturer (Electrical Engineering) was posted in Government Polytechnic Kangra on 29.8.2014 and he joined there on 12.09.2014. An order of his deemed suspension in terms of sub-rule (2) of Rule-10 of the Central Civil Services (Classification, Control and Appeal) Rules 1965 was issued on 23.01.2015 as he was detained in police custody on 20.01.2015 for a period exceeding forty-eight hours in FIR No. 28/15 and a Criminal Case u/s 306 and 506 IPC was registered against him.

7. As per procedure laid down in reviewing the suspension order of the petitioner, a Review Committee was constituted. The Review Committee in its meeting dated 27.04.2015 took note of the fact that criminal proceedings against Shri Yoginder Kumar Vashist, Senior Lecturer (Electrical Engineering) may be prolonged for years and it would not be in the interest of the Department to keep him under suspension till the conclusion of the criminal proceedings in the Court. The Review Committee decided revocation of the suspension orders of Shri Yoginder Kumar Vashist. On the recommendation of Review Committee, suspension orders of the petitioner were revoked vide order dated 14.5.2015 and he was posted at Banikhet, as the Committee recommended that Shri Yoginder Kumar Vashist be posted at a vacant post in a distant place so that he cannot impede investigation in any manner. The Chief Judicial Magistrate, Mandi in the Bail Order dated 28.01.2015, Para-7 has also imposed conditions that the bail petitioner shall not tamper with the prosecution evidence directly or indirectly nor shall influence the witnesses in any manner. It is not merely a case of transfer of applicant from Govt. Polytechnic Kangra to Govt. Polytechnic Banikhet, rather than case of revocation of deemed suspension of the applicant and his posting at a distant place on the recommendation of

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the Review Committee. Further the applicant is working as Senior Lecturer (Electrical Engineering), Class-I (Gazetted) and as per clause-10 of the Comprehensive Guiding Principles-2013 for regulating the transfer of State Government employee issued by the Department of Personnel, Govt. of Himachal Pradesh vide Office Memorandum No PER(AP-B)E(3)-17/2012 dated 10th July, 2013, it has been made clear that the Government can transfer any officer/official at any time irrespective of stay, in view of administrative exigency, in the public interest. However, normally the tenure/stay of an officer/official at one station shall be three years, which will not be applicable to the officers of IAS/HPAS/HPPS/HPFS, other allied services and all Class-I & II officers. The applicant has been posted at Govt. Polytechnic Banikhet, on the recommendation of the Review Committee as well as keeping in view the available workload in Electrical Engineering stream. The available workload at Govt. Polytechnic Kangra was lesser as compared to Govt. Polytechnic Banikhet. Further, the applicant has joined at Govt. Polytechnic Banikhet on 05.06.2015. Banikhet is not a tribal area and well connected with road facility. It is the privilege of the Government to post an employee according to administrative exigencies. There are only 02 Lecturers(Electrical Engineering) at Govt. Polytechnic Banikhet and there is no Sr. Lecturer (Electrical Engineering) or HOD(Electrical Engineering) there. There are 02 Lecturers(Electrical Engineering) and 01 HOD(Electrical Engineering) at Govt. Polytechnic Kangra. Hence it was necessary to post a Senior Lecturer or HOD at Banikhet in order to arrange a balanced staffing position. Hence Shri Yoginder Kumar Vashisht has been rightly posted at Banikhet on revocation of his suspension on the recommendation of the Review Committee and administrative exigencies/requirements, as per spirit contained in clause 10 of the transfer policy dated 10.07.2013. The plea of the applicant to look after his son studying at Sainik School Sujampur Tihra does not carry any weightage, as it is a residential school.

Now therefore, undersigned after careful consideration of the facts and circumstances of the case, is of the considered view that the

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request of Shri Yoginder Kumar Vashist for his retention at Government Polytechnic, Kangra or adjusting him at Hamirpur or Sundernagar cannot be acceded to being devoid of merits in view of discussions herein above, as he has been rightly posted at Banikhet in the public interest, which is a place, where he is not likely to tamper with the prosecution evidence directly or indirectly or influence the witnesses in any manner or impede investigation of the criminal offence and as per exigencies/requirement of his services there.

Copy of the order be supplied to the petitioner through his counsel, Director, Technical Education, HP, Sundernagar as well as Principal, Government Polytechnic, Kangra.

Place: Shimla-2

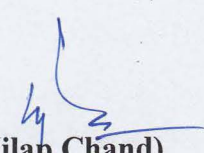
Dated: 18th November, 2015


(Sanjay Gupta)
Principal Secretary (TE) to the
Government of Himachal Pradesh

Registered Letter
Shri Yoginder Kumar Vashist,
Senior Lecturer (Electrical Engg),
Govt. Polytechnic Kangra (HP)
C/o Shri Onkar Jairath, Advocate,
H.P. High Court, Shimla-171001.

Endst. No. EDN(TE)E(1)35/2015 Dated: Shimla-2, the 18th November, 2015
Copy for information & necessary action is forwarded to:-

1. The Advocate General, Himachal Pradesh, Shimla-171001 in compliance to orders passed on 29.10.2015 in O.A. No. 1642/2015.
2. The Director, Technical Education, Vocational & Industrial Training, HP, Sundernagar, District Mandi (HP) PIN-174401.
3. The Principal, Government Polytechnic Kangra.
4. The Principal, Government Polytechnic Banikhet, Distt Chamba (HP).
5. Shri Yoginder Kumar Vashishta, Sr. Lecturer (Electrical Engg), Govt. Polytechnic Banikhet, District Chamba (HP).
6. Personal file of the concerned officer.
7. Guard file.


(Milap Chand)
Under Secretary (TE) to the
Govt. of Himachal Pradesh.
Phone-0177-2626416