

Central Administrative Tribunal
Principal Bench

O.A.No.2272/2002

New Delhi, this the 15th day of November, 2002

Hon'ble Shri A.P. Nagrath, Member (A)

Shri N.K.Gupta, Junior Engineer
presently posted at G & D Site, CWC, Village Mawi
District Muzaffarnagar (UP)
House No.636, Sector-11-12, HUDA
Panipat (Haryana) ..Applicant
(By Advocate: Shri K.K. Mehrotra)

Versus

1. The Union of India through its Secretary
Ministry of Water Resources
Shram Shakti Bhawan, New Delhi-1
2. Central Water Commission through
its Chairman, Govt. of India
Sewa Bhawan, R.K.Puram, New Delhi-66
3. The Superintendent Engineer
Office of the Chief Engineer (Yamuna basin)
Govt. of India, Central Water Commission
Upper Yamuna Division,
Kaliindi Bhawan, B-5, Tara Crescent
Q.I.A., New Delhi 16

..Respondents

(By Advocate: Shri M.K.Bhardwaj for Shri A.K.Bhardwaj)

O R D E R

By order dated 22.7.2002 (Annexure A-5), the applicant of this OA has been ordered to be relieved from the post of Junior Engineer, G&D Mawi with effect from the afternoon of 31.7.200 to report for duty at G&D Baranwada (UP). Being aggrieved of this order, he has filed the present OA with the prayer that this impugned order be cancelled/set aside/withdrawn and the applicant be allowed to continue at Mawi Site, Distt. Muzaffarpur (UP) till he has put in minimum period of three years.

2. I have heard the learned counsel for the parties and have also perused the averments in the OA and the reply filed by the respondents.

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3. The main ground on which the impugned order is challenged is that the applicant had been posted at Mawi site only in April, 2001 after having completed his tenure in Sikkim. The learned counsel for applicant submitted that as per the Govt. orders, the employee, who has completed a tenure of about 2/3 years in the North Eastern Region, is entitled to his choice of place of posting as far as possible. The applicant had given his preference for Delhi and Faridabad. But instead the applicant was posted to G & D Mawi site, UYD, Distt. Muzaffarnagar (UP) where he came only in the year April, 2001. Within a period of one year only, he was ordered to be transferred to Baranwada by order dated 2.5.2002. The learned counsel stated that the applicant was earlier in Northern Division, Central Water Commission, Jammu in the year 1995 and then at Kishtwar and was further posted to Sikkim. After having been brought to Mawi, he has again been ordered to be transferred to Baranwada which amounts to frequent transfer. This action of the respondents has put the applicant in acute personal problems. His daughter is a student of class-IX and she would find difficulty in getting an admission in school at the new place. While conceding that the transfer is a condition of service, the learned counsel urged that no individuals can be picked up for different treatment. A large number of other Junior Engineers have continued for more than four years at one site and if at all any need was there to transfer some persons to Baranwada, it should have been from amongst others who had longer stay at Mawi site and not the applicant. The learned counsel terms this action of the respondents as malafide on their



part. While adverting to the reply filed by the respondents, Shri K.K. Mehrotra, learned counsel for the applicant stated that it appears that this transfer has arisen out of the alleged lapse on the part of the applicant for which a show cause notice had been served to him on 29.11.2001. The applicant had submitted his explanation to that notice but without communicating any decision on his representation, which was submitted in December, 2001, he has been ordered to be transferred and relieved vide impugned order. His plea was that unless it had been clearly established that the applicant was responsible for some grave act of negligence and unless a decision on his explanation to the show cause notice had been communicated to him, the respondents could not have resorted to this arbitrary action of transfer.

4. The learned proxy counsel for the respondents Shri M.K. Bhardwaj, on the other hand, took a plea that the applicant has nowhere challenged the order of transfer in this OA. He has only challenged the relieving order. He asserted that in the event that the transfer order has not been challenged, no ground is made out for challenging the relieving order which is merely a follow up on the transfer order. Even otherwise, the learned proxy counsel contended that in the matters of transfer the legal position is clear and there is hardly any scope for judicial interference. There is no allegation of malafide against any individual officer and it has also not been established by the applicant that the order is in violation of any mandatory policy provisions. While referring to the show cause notice,



Learned proxy counsel for respondents submitted that the applicant was guilty of grave negligence on his part as the data to be observed and collected at the Mawi site is very important and sensitive in nature and any wrong inferences can result into disastrous consequences. Because of this reason, the respondents felt that the applicant was not the right person to be permitted to continue at Mawi site and thus this order of transfer.

5. The legal position in respect of matters of transfer is very clear and oft repeated in a catena of cases by the Apex Court. The transfer is only a condition of service and it is for the competent authority of the Department to decide as to where and how best the services of an employee are required to be utilized. A Govt. servant in a transferable post has no vested right to remain posted at one place or the other. Unless it is established that the order of transfer is arising out of any malafide on the part of authority or if it is in violation of statutory rules or is a result of a colourable exercise of power, the Courts are well-advised not to interfere in the orders of transfer. In the case of Shilpi Bose & Others Versus State of Bihar & Others, AIR 1991 SC 532, it was observed by the Hon'ble Supreme Court that "If the courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest".

6. Having regard to such clearly settled legal position, I do not find any reason to interfere in the

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(5)

transfer order and consequently in the impugned relieving order. The fact that the applicant stayed at Mawi site only for about a year, by itself, cannot become a ground for cancelling the transfer order when the same has been issued in the public interest and after taking note of the gross negligence on the part of the applicant. It is best left to the competent authority of the Department to decide the appropriate course of action once such a negligence has come to notice. If the respondents, in the circumstances of this case, have decided to shift the applicant from Mawi side, no fault can be found with such action.

7. This OA is, therefore, dismissed as devoid of any merits. No order as to costs.


(A.P. Nagrath)
Member (A)

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