

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.1375/2002

M.A. NO.1688/2002

This the 20th day of November, 2002.

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

Arab Singh,
Executive Engineer,
'U' Division, CPWD,
CGO Complex,
New Delhi-110003.

... Applicant

(By Shri H.K.Gangwani, ^{bro y} Advocate)
for Ms. Late Gangwani.
-versus-

1. Union of India through
Secretary, Ministry of Urban Development,
Nirman Bhawan, New Delhi.
2. Director General (Works),
CPWD, Ministry of Urban Development,
Nirman Bhawan,
New Delhi.

... Respondents

(By Shri K.R.Sachdeva, Advocate)

O R D E R

Applicant was working as Executive Engineer, 'U' Division, CPWD, CGO Complex, New Delhi, having come on transfer to Delhi in December, 2000. It is alleged that after putting in one year and four months in Delhi, applicant has been transferred twice while several of his colleagues are in Delhi for the last more than ten years.

2. Vide Annexure A-3 dated 29.1.2002, respondents issued an O.M. regarding postings and transfers in the grade of Executive Engineer (Civil) and calling for options for further postings on completion of tenure. Vide Annexure A-4 dated 18.4.2002 applicant was transferred to another office in Delhi. He made a

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representation dated 24.4.2002 (Annexure A-5) thereagainst but instead of retaining applicant in his previous office, vide Annexure A-1 dated 16.5.2002 applicant was transferred to Imphal. Applicant has challenged these orders alleging that the impugned order is arbitrary, discriminatory, male fide, punitive and against the transfer policy of respondents.

3. The learned counsel of applicant stated that whereas the impugned order Annexure A-1 related to his transfer in the grade of Executive Engineer, in the meanwhile he has been reverted to the post of Assistant Engineer on 28.8.2002 vide office order No.180/2002 and as such cannot be implemented. The learned counsel stated that the post of Executive Engineer is a group 'A' post which has an all India transfer liability and if he had to be transferred out of Delhi zone, fresh orders were required to be passed.

4. The learned counsel next contended that vide transfer guidelines the normal tenure of stay of the officers at a station is 3-4 years (except in difficult areas, where it is three years) but applicant has been transferred after a period of one year and four months. The learned counsel referred to a large number of officers mentioned in paragraph 4.6 of the OA who had been staying in Delhi for about ten years or more in the same office at the same station.

5. Thirdly, the learned counsel alleged that applicant was not transferred in public interest; extraneous considerations had lurked in while

transferring him out to the distant Imphal. He alleged mala fide intention on the part of respondents in transferring applicant, inasmuch as instead of accommodating him in the same office, by way of punishment, harassment and mala fide intention, he was transferred out to Imphal. The learned counsel stated that applicant belongs to a Scheduled Caste and vide DOPT O.M. dated 24.6.1985, Ministries and Departments have been cautioned that no harassment and discrimination should be caused to employees of Scheduled Castes and Scheduled Tribes in transferring them to far off places and insignificant positions. The learned counsel relied on the following :

- (1) JT 1995 (2) SC 498 : **State of Madhya Pradesh v. S.S.Kourav & Ors.**, wherein it was held that it is for the administration to take appropriate decision in matters of transfer and such decisions shall stand unless they are vitiated either by mala fides or by extraneous considerations.
 - (2) 1994 (28) ATC 246 (SC) : **N.K.Singh v. Union of India & Ors.**; and (1998) 3 SCC 303 : **State of U.P. & Anr. v. Ashok Kumar Saxena & Anr.**, wherein it was held that interference by judicial review is justified only in cases of mala fides or infraction of any professed norms or principles; where career prospects remain unaffected and no detriment is caused to the government employee, challenge to the transfer must be aschewed.
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6. On the other hand, the learned counsel of respondents contended that in the OA, no mala fides have been alleged against respondents. He further stated that the Director General (Works) has full powers to order transfers/postings of Assistant Engineers as per office memorandum dated 27.2.1998 which relates to regionalisation of transfer/posting of Assistant Engineers. Thus, there cannot be any objection to the issuance of the impugned orders by the Directorate General. The learned counsel stated that the transfer orders in question do not violate any statutory rules and even if some guidelines may have been violated, guidelines are not mandatory and have to be followed only ordinarily and not invariably. He stated that on the representation of applicant, applicant was heard personally by the Secretary in the presence of other officers and a decision was taken to transfer him to Manipur. He further stated that there were allegations of poor performance and financial irregularities against applicant, and as such, he had been transferred in public interest. The learned counsel of applicant stated that applicant had never been issued any memorandum regarding poor performance or financial irregularities and as such the present transfer of applicant was clearly punitive, mala fide and not simpliciter.

7. The learned counsel of respondents relied on order dated 4.1.2002 in OA No.2762/2001 : **Ved Prakash v. Union of India**, in which it was held that transfer is an incidence of service and Court cannot interfere with the same unless it has been issued with mala fide intention or in violation of statutory rules. The learned counsel

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further relied on 2002 (1) AISLJ 86 (SC) : **National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan & Anr.**, in which it was held that transfer is an incidence of service and none has right to continue at one particular place forever. The learned counsel of respondents also relied on the cases of **S.S.Kourav** (supra) and **N.K.Singh** (supra) to state that the Tribunals are not appellate forums to decide on transfers of officers on administrative grounds, and that the transfer orders do not get vitiated unless they have been issued by mala fides or by extraneous considerations.

8. I have also perused the file in which representation of applicant against his transfer was dealt with. It is stated therein that the matter was discussed in the chamber of Secretary, Urban Development, wherein senior officers were present. After hearing, the Secretary decided that applicant may be posted to North-East.

9. Respondents have not denied that applicant was transferred from one office to another local office in Delhi against which he made a representation. The Secretary heard applicant on his representation and decided to post him to North-East. Clearly, this order has been made arbitrarily without stating as to what points were made by applicant and why instead of retaining applicant in the original local office in Delhi or maintaining the earlier transfer to another local office in Delhi, he was transferred to the distant Imphal. Government instructions dated 24.6.1985 directing the senior officers to desist from any act of

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discrimination against the members of SC/ST communities and transferring them to far off places have also been given a go bye. It is not denied that as per the government policy, the normal tenure of stay at a particular station is 3 to 4 years. Even if applicant had been guilty of poor performance or some financial irregularities, no administrative action is stated to have been taken against him and he was initially transferred to another local office in Delhi but modifying the transfer order to transfer to a distant place like Imphal certainly smacks of annoyance and is not based on any public interest. It is true that applicant had been reverted to the post of Assistant Engineer but as per memorandum dtd 27.2.1998 powers of transfer of Assistant Engineers can be assumed by Director General. Although originally, Annexure A-1 was passed on 16.5.2002 when applicant was ~~Assistant~~ ^{Executive} Engineer, he was reverted on 28.8.2002 but re-promoted on the same date. I do not agree with respondents that allegations of mala fides are not there. Applicant has alleged mala fides in the OA.

10. From the facts and circumstances of the case, it is apparent that transfer orders of applicant were changed from a local office in Delhi to Imphal at the behest of the Secretary, Urban Development who did not state any reasons or public interest in changing the place of posting of applicant in this manner. Obviously, in the present case, applicant had been transferred within one year and four months of his posting. These transfers, I find, are certainly against the professed norms and have been issued with mala fide intention

h ☐ Correction made vide order in RA No.39/2003 dt. 5.2.2003.
It is directed to hold the current charge of the post of Executive Engineer (C) with immediate effect on the same date.

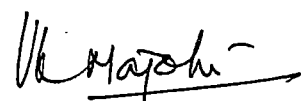
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warranting interference by judicial review. Reliance can be placed on the cases of **S.S.Kourav** (supra), **N.K.Singh** (supra) and **Ashok Kumar Saxena** (supra). The ratio in the case of **Shri Bhagwan** (supra) is not applicable to the facts of the present case. That related to a person who had been at one place for long number of years. In the present case, applicant had been ^{in Delhi} only for a year and four months.

11. Having regard to the reasons and discussions made above, Annexure A-1 is quashed and set aside directing respondents to consider retaining applicant in any local office in Delhi at least for the remaining period of normal tenure.

12. The OA is allowed in the above terms. No costs.

13. MA No.1688/2002 also stands disposed of.


(V. K. Majotra)
Member (A)

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