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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1128/2002

Monday, this the 9th day of September, 2002

Hon'ble Shri S.A.T. Rizvi, Member (A)

N.P.C. Kaushik
s/o Shri Gulab Chand
Sectional Officer (Hort)
Quarter No.2, Type III,
CPWD Office,
CRPF Camp, Jharoda Kalan
New Delhi - 72

.....Applicant

(By Advocate: Shri K.B.S. Rajan)

Versus

1. Union of India through
the Secretary
Ministry of Urban Development
Nirman Bhawan,
New Delhi - 11
2. The Director General of Works
Central Public Works Department
Nirman Bhawan, New Delhi
3. The Director of Horticulture
CPWD, I.P. Bhawan,
New Delhi
4. Shri Jaivir Singh
Sectional Officer,
Office of Ex. Engineer (P & A)
Bhubaneshwar Central Circle
CPWD, Plot No.17/3, Surya Nagar
Bhubaneshwar, Orissa

...Respondents

(By Advocate: Shri R.N.Singh for respondent Nos. 1 to 3 -
None for respondent No.4)

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ORDER (ORAL)

In this OA, the applicant, who is a Sectional Officer (Horticulture), has challenged the Office Order dated 23.4.2002 (A-1) by which he has been transferred from Delhi to Bhubaneswar. The prayer made is that the aforesaid order be quashed and set aside insofar as it relates to the applicant on the ground that his transfer is not bonafide and nor is it in accordance with the prescribed norms. The further plea advanced is that the respondent-department has followed a pick and choose policy in the matter of transfer of the applicant.

2. I have heard the learned counsel on either side at length and have perused the material placed on record.

3. The guiding principles for the transfer of Sectional Officers (Hort.) have been placed on record at A-R-1. According to the provisions made in it, a Sectional Officer can stay in a Sub-Division for three years and in a particular Division for a total period of five years at Delhi. The applicant has remained posted at Delhi from 1987 onward. His case is, therefore, covered by the aforesaid provision. Accordingly, I find that the applicant has not been transferred out from Delhi against the guiding principles laid down by the respondent-authority.

4. In the Office Memorandum dated 14.1.2002 placed at A-2, the policy of transfer followed in respect of Sectional Officers (Hort.) has

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been somewhat more clearly stated. The said Office Memorandum, inter alia, provides for giving of options by the Sectional Officers at the time of transfer. According to it, an officer can indicate three choices at the time of exercising his option. Along with the said Office Memorandum, the list of longest stayees has also been circulated which includes the name of the applicant as well. There is a provision in the said Office Memorandum to the effect that the options exercised by the Sectional Officers are, in no way, binding on the administration and that transfers and postings shall be done on the basis of administrative feasibility.

5. The applicant's case is that in the list of longest stayees (A-2), there are three Sectional Officers, namely, S/Shri Satbir Singh, S.P. Sisodia and A.K. Deshwal, who have remained posted at Delhi from 1983 but have not been transferred out. Further, at the time of giving options, the applicant had indicated three possible locations to which he could be transferred by the respondent-authority. These locations are Dewas, Nagpur and Maneser, the last name^d being located close to Delhi. The contention raised on behalf of the applicant is that while the applicant's request for transfer to Maneser has not been considered favourably by the respondent-authority, one Shri Adesh Kumar, also figuring in the list of longest stayees, has been transferred to Maneser even though he had not exercised his option in favour of that location. For these reasons, according to the learned counsel appearing on his behalf, the impugned transfer order stands vitiated as arbitrary and

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based on an improper consideration of the options exercised by the applicant.

6. The learned counsel appearing on behalf of the respondent Nos. 1 to 3 submits that the applicant was not the only Sectional Officer who had opted for transfer to Maneser. There were three others who had similarly opted for posting at Maneser by way of transfer. However, in the event, none of the Sectional Officers, who had opted in favour of Maneser, could be transferred to ~~that~~ place and instead the respondent-authority has found it proper to transfer the aforesaid Shri Adesh Kumar to Maneser. He has further submitted that at present only one Sectional Officer is posted at Maneser with the only other post of Sectional Officer at Maneser likely to be occupied by the aforesaid Shri Adesh Kumar. The order transferring Shri Adesh Kumar to Maneser has, however, not been acted upon yet. The reason is that the respondent-authority is presently considering whether a second post would at all be necessary at Maneser. His submission is that if after a fuller consideration of the matter the respondent-authority decides to retain only one post of Sectional Officer at Maneser, the question of Shri Adesh Kumar proceeding to Maneser will simply not arise. A final decision in this regard is likely to be taken by the respondent-authority at an early date.

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7. As regards the applicant's contention that those placed higher than the applicant in the list of longest stayees have been left out, the learned counsel appearing on behalf of the respondent Nos. 1 to 3 submits that of the three Sectional Officers named by the applicant in this behalf, S/Shri Satbir Singh is the General Secretary of the CPWD Sectional Officer (Horticulture) Association and cannot, therefore, be transferred out of Delhi in terms of the DOP&T's Office Memorandum dated 19.8.1988 (A-R-5). The other Sectional Officer named by the applicant, namely, Shri S.P. Sisodia is working in the Parliament House and for this reason he too cannot be transferred. The Lok Sabha Secretariat has, in its letter of 12.4.2002 (A-R-8), clearly stated that in view of the changed security scenario, it will not be proper to shift Shri Sisodia from the Parliament House Complex. The third Sectional Officer, namely, Shri A.K. Deshwal has been retained in Delhi in view of the letter received from the Chairman, House Committee, Lok Sabha dated 5.4.2002 (A-R-9) wherein it has been requested that Shri Deshwal be allowed to continue in the same Division for another one year. Thus, according to the learned counsel, it is not as if Shri Deshwal has been permanently exempted. He has, in this context, drawn my attention to the provision made in the Office Memorandum dated 14.1.2002 (A-2) which clarifies that transfers of Sectional Officers shall be made on the basis of administrative feasibility.



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8. In relation to the options exercised by the applicant for his transfer outside Delhi, no vacancy arose at Nagpur, whereas the vacancy at Dewas stood filled, leaving only Maneser in respect of which submissions have already been made on behalf of the respondents and are summarized in paragraph 6 above.

9. The learned counsel for the respondent Nos.1 to 3 has also pleaded that Sectional Officers, including the applicant, have been transferred not by a single authority/person, but by a Committee of four officers, two of whom are Directors in the Ministry. Sectional Officers have All India transfer liability. The applicant has remained posted at Delhi for close to fifteen years. There is no whisper of malafide in the transfer order issued by the respondents in respect of as many as sixteen Sectional Officers (A-1). The impugned orders have been issued after a proper and fair consideration of the claims of the various Sectional Officers in accordance with the policy invogue. There is no force, in these circumstances, in the various pleas advanced on behalf of the applicant.

10. In support of his contention that transfer orders can be successfully challenged only on the basis of malafide and/or on the ground of having been issued in contravention of statutory rules, the learned counsel appearing on behalf of respondent Nos. 1 to 3 has placed

reliance on Mrs. Shilpi Bose and others Versus State of Bihar and

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others, decided by the Hon'ble Supreme Court on 19.11.1990 and reported in AIR 1991 SC 532, Union of India and others Versus S.L. Abbas decided by the Supreme Court on 27.4.1993 and reported in (1993) SCC 357 and the State Bank of India Versus Anjan Sanyal and others decided by the same Court on 12.4.2001 and reported in 2001 (3) SC SLJ 270. Copies of the aforesaid judgments have been supplied for my perusal during the course of hearing. I have perused the same and find that the law laid down by the Supreme Court in the aforesaid cases is clear. Transfer is an incidence of service and cannot be treated as a punishment. The only ground on the basis of which a transfer order can be successfully challenged is the ground of malafide and/or the ground of the order being contrary to a statutory rule. No malafide has been alleged in the present case and no statutory rule has been placed before me to show that the same has ^{not} been followed by the respondent-authority by transferring the applicant. Transfers are made in the exigencies of public service and as clarified by the respondent-authority in the Office Memorandum dated 14.1.2002 (A-2), transfers and postings are carried out in the light of the administrative feasibility. In the aforesaid cases, the Supreme Court has also held that orders of transfers should not be quashed and set aside even in those cases in which it is found that the transferring authority has not followed the guidelines/executive instructions governing transfer.

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11. For all the reasons mentioned in the preceding paragraphs and having special regard to the law laid down by the Supreme Court in matters of transfer, *I do not find any merit in the present OA which is dismissed.* However, in the peculiar circumstances of the case, I am inclined to make the following observations for the consideration of the respondent-authority.


The applicant had opted for transfer from Delhi to Maneser. Three other persons have similarly opted for the same location. However, the respondent-authority chose to transfer and post one Shri Adesh Kumar at Maneser, even though Shri Adesh Kumar had not opted for the aforesaid location. This being the case, the applicant will have liberty to file a fresh representation for the consideration of the respondent-authority. The learned counsel appearing on behalf of the respondent Nos. 1 to 3 has, on the basis of instructions received by him from the Departmental Representatives present in the Court, submitted that while one person already stood posted at Maneser as Sectional Officer (Horticulture), the respondent-authority is yet to decide whether the only other post of Sectional Officer at Maneser shall have to be retained. The transfer order of Shri Adesh Kumar has not been acted upon for the reason that he is yet to be relieved from wherever he stood posted prior to transfer. If the respondents finally decide to retain only one post of Sectional Officer at

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Maneser, Adesh Kumar's transfer to that place will have to be reviewed. If, on the other hand, the respondents decide to retain the second post at the place, they should, in all fairness, consider the claim of the applicant along with those of others for a possible posting at Maneser. I can only hope that the respondents will not lose much time in taking a proper decision in the matter and will do their best to arrive at a final decision within one month.

12. There shall be no order as to costs.


(S.A.T. RIZVI)
MEMBER (A)

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