

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

O.A./~~XXX~~ No. 703/1996

Decided on: 21-8-96

Shri Trilok Chand ....Applicant(s)

(By ~~Shri~~ Mrs.Anita Gupta Advocate)

Versus

U.O.I. & Another ....Respondent(s)

(By Shri K.R. Sachdeva Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI

1. Whether to be referred to the Reporter <sup>7</sup> or not?

2. Whether to be circulated to the other Benches of the Tribunal?

  
(K. MUTHUKUMAR)  
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 703 of 1996

New Delhi this the 21<sup>st</sup> day of August, 1996

**HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)**

Shri Trilok Chand  
S/o Late Shri Hazari Lal  
R/o E/19E MIG Flats DDA,  
Maya Puri,  
New Delhi.

...Applicant

By Advocate Mrs. Anita Gupta

Versus

1. Union of India through  
Secretary,  
Ministry of Urban Development,  
Nirman Bhawan,  
New Delhi.

2. Director General (Works),  
C.P.W.D.,  
Nirman Bhawan,  
New Delhi.

..Respondents

By Advocate Shri K.R. Sachdeva

ORDER

**Hon'ble Mr. K. Muthukumar, Member (A)**

The applicant, who is an Executive Engineer in the Central Public Works Department (CPWD) and presently working in the office of the Appropriate Authority of the Income-tax Department is aggrieved by the order No.59 of 1996 of the respondents dated 25.3.1996 (Annexure-E) transferring him from the post of Executive Engineer in the Appropriate Authority of the Income-tax Department, to the post of Executive Engineer, MIS, NDZ-IV, CPWD New Delhi against an

existing vacancy. The applicant submits that he has joined his present posting in the office of the Appropriate Authority in October, 1994 and will be completing 3 years by the end of year 1997 and by December, 1997, he will be retiring from Government service. The mains grounds on which he feels aggrieved over the impugned order, are as follows:-

- (i) The respondent No.2 has issued the transfer order without any application of mind.
- (ii) There has been no complaint against him in his present posting.
- (iii) The transfer has been ordered on a false complaint on a matter which is already subjudice before appropriate court of criminal jurisdiction.
- (iv) Although the applicant has not completed his tenure of 3 to 4 years in the present posting, as provided in the C.P.W.D. Manual, he has been transferred before the completion of his tenure and the transfer has been made within 2 years of his retirement, which is against the transfer policy and that by the transfer order, he is being sent to a post relating to Management and Information System in which he has no experience.
- (v) The applicant also submits that the order has been made on the basis of certain complaints of a brother of his deceased daughter-in-law, who is respondent No.2. It is submitted by the applicant that the said daughter-in-law of the applicant having married to his son and after 10 years of married

life, committed suicide after consuming insecticide on 4.1.1996 and died on 5.1.1996. The applicant had been enlarged on anticipatory bail by the Hon'ble High Court and the case is pending before the Session's Court of Tis Hazari. This matter was included in the complaint of his deceased daughter-in-law's brother which, the respondents seem to have accepted and had ordered his transfer and, therefore, contends that his transfer has been motivated by extraneous considerations and it was not in public interest.

2. The respondents contend that the posts of Executive Engineers in the Incometax Department are encadred in the CPWD and the postings and transfers of the officers are ordered by the respondent No.2, whenever a vacancy arises and when the Ministry of Finance (Department of Revenue) desires a change in incumbency. The respondents submit by their letter dated 11.3.1996, Annexure R-4 that the appellate authority of the Income-tax Department desired that the applicant may be withdrawn from the Appropriate Authority for the reasons mentioned therein and this request was considered by the respondent No.2 and the applicant was transferred in public interest. It is also submitted on behalf of the respondents that the applicant has been transferred locally in Delhi itself and hence, the provisions of C.P.W.D. Manual has not been violated and the transfer has been made

on administrative grounds in public interest. Since the applicant is an Executive Engineer, he can be posted to any charge including the charge of Management Information System and the applicant can have no grievance about this and cannot plead that he should not be posted to any other unit than the Income Tax Department. In view of these submissions, the respondents have strongly opposed the prayer of the applicant for quashing the impugned transfer order of the respondent No.2 and allow the applicant to continue to work in the present post.

3. When the matter came up for admission, notices were sent to the respondents and as an ad interim measure, the respondents were directed not to give effect to the transfer order and to relieve the applicant from the post, if he had not already been relieved. As stated by the applicant this interim order was continued and after couple of adjournments to facilitate the learned counsel for the respondents to file certain additional affidavits, the matter was taken up for hearing at the admission stage itself as the question involved was a short one.

4. The learned counsel for the applicant argued that the transfer order had been brought about merely on the basis of some extraneous considerations and had nothing to do with any administrative or public interest. He cites the demi official letter written by the Member (R&A) of C.B.D.T. to the

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respondent No.2 which would clearly show that the transfer order had been brought about on extraneous considerations. In the aforesaid D.O. letter, the FIR registered against the applicant and subsequent enlargement on bail by the Delhi High Court has been reported to and the respondent No.2 had also been intimated that " the further action would be taken by the police authorities against the applicant which would necessitate the decision of the disciplinary proceedings" and it was on this ground that the CBDT had requested for reversion of the applicant to the CBDT. The learned counsel for the applicant argued that no further evidence is required to show that this entire transfer order has been made on extraneous considerations and no public interest or administrative interest is involved in this case. The learned counsel also argued that just because there was an FIR registered against the applicant and that he had taken anticipatory bail and this would necessitate the initiation of disciplinary proceedings against the applicant by the cadre authority, this could hardly be a ground for ordering the transfer of the applicant particularly when he had not completed 3 to 4 years tenure in the said post. The learned counsel, therefore, argued that the whole action of the respondents was arbitrary and for that reason alone, the transfer order would not stand legal scrutiny.

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5. I have heard the learned counsel for the parties and have carefully perused the record.

6. The learned counsel of the applicant relied on the decision in Avinash Chander and Another Vs. Union of India & Others, 1993 (3) Vol.49 SLJ 484 to contend that the transfer order was arbitrary. It was held in the aforesaid case that the transfer made on a ground of personal enmity and the enquiry committee was appointed to look into the transfer of the applicants in that case, and this was held to be arbitrary. Citing this case, the learned counsel argued that the transfer was motivated on the basis of some complaints initiated by the brother of the deceased daughter-in-law. This decision has no application in this case as the respondents in their reply have totally denied the allegations and have held that the allegations made by the applicant against the officers in the office of the respondent No.2 are vague and not specific. From the records it is seen that the respondent No.2 had called for the comments of the applicant through the Additional Commissssioner of Income Tax, Appropriate Authority, which was also supplied by the applicant. There is nothing on record to suggest that these complaints formed the basis of the Appropriate Authority's action in reverting the applicant from the Appropriate Authority. The learned counsel for the applicant then referred to the decision in Ramadhar

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Pandey Vs. State of U.P. and Others, SLR 1993(4) vol.90 page 349 to contend that the transfer was not made in public interest and in the absence of any indication to that effect, the impugned order of transfer cannot be supported. This decision is also of no help to the applicant as it has been made clear in the counter-affidavit as well as in the impugned order that the orders of transfer of the applicant and various other officers were made in that order in public interest.

7. The learned counsel for the respondents referred to the decision of the Apex Court in N.K. Singh Vs. U.O.I. & Others, (1994) 6 SCC 98 and argued that the ratio in the aforesaid judgment fully covers and there is no scope for interference in the order of transfer where there is no mala fide or any infraction of any professed norm or principle and particularly where career prospects of the applicant remains unaffected and no detriment is caused. The learned counsel argued that in fact under the instant case, the applicant has not been affected at all by this transfer inasmuch as he has been transferred only within the same station and within the same capacity and, therefore, his grievance against the transfer is only imaginary. The transfer has been necessitated on ground of administrative exigencies particularly when it was found that the applicant was absent for sometime and although he rejoined, there

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was a prospect of his having to face departmental proceedings if so considered necessary by the Cadre Controlling Authority and, therefore, in the interest of smooth administration and in the interest of uninterrupted work, the Appropriate Authority considered it necessary to place the service of the applicant at the disposal of the respondent No.2 and this decision was not based on any mala fide consideration or arbitrariness. There is some force in the contention of the respondents in this regard.

8. There is no allegation of any mala fide against the respondents. In ordering the transfer of the applicant, the respondents have not displayed any lack of application of mind and transfer order cannot be said to have been made merely on the basis of some complaint against the applicant and cannot be said to be arbitrary also. It is an admitted position that the applicant has been holding a post in the cadre although working with Appropriate Authority although the said Authority is not the cadre controlling authority. If the Appropriate Authority had taken into account the circumstances of the applicant and had requested the respondent No.2 for his replacement, this would not amount to any malice or prejudice as the Appropriate Authority was quite within its powers and discretion to take into account the interest of the work in his jurisdiction and this transfer order can on, no ground be held to

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be stigmatic. It is also an admitted position that the applicant has been transferred only within the same station and even in the guidelines, it is stated that the normal stay of the officer in the particular station is 3 to 4 years and the applicant has not been disturbed from the station because of his posting. No Government servant can have a vested right to a particular post in the cadre and so long as the transfer order is not based on any mala fide or arbitrariness, it is not appropriate for the Courts or Tribunals to interfere with the administrative decision of the respondents.

9. In the light of the ~~above~~ foregoing, this application lacks merit and is, therefore, dismissed. In the circumstances, there shall be no order as to costs.

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(K. MUTHUKUMAR)  
MEMBER (A)

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