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Central Administrative Tribunal
Principal Bench

OA-879/96

New Delhi, the 4th September, 1996.

Hon'ble Shri R.K. Ahooja, M(A)

Shri R.K. Saini
S/o Sh. SR Saini,
H.No.128, Pocket B-8,
Sector-4, Rohini
Delhi-1985.

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Applicant

By Advocate: Sh. G.D. Gupta

vs

1. Union of India: through
Secretary,
Ministry of Water Resources,
Shram Shakti Bhawan,
New Delhi.

2. The Chairman,
Central Water Commission,
Sewa Bhawan,
RK Puram,
New Delhi.

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Respondents

By Advocate: Sh. Madhav Panicker.

ORDER

Hon'ble Shri R.K. Ahooja, M(A)

who

The applicant/ is a Junior Engineer of
CWC was posted in Delhi in February, 1986 after
serving for nine years at various places^{e.g.} Varanasi
Rajpur, Bijnore etc. In 1995 CWC announced that
offices of Upper Ganga Circle and Upper Yamuna Circle
were being shifted to Dehradun and Noida respectively

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and officers and staff were also being transferred out accordingly. The option were invited from officers who were willing to be posted at the places mentioned in the Circular intimating the change of location of transferred offices. The applicant gave his willingness for transfer to Yamuna Circle at NOIDA. Earlier also in response to a letter issued in 1993, the applicant had given his option for posting of his choice if transferred out of Delhi.

The respondents, however, giving no consideration to the preferences, given by him, transferred him on 18.7.95 to Upper Ganga Basin, Lucknow from where he was further transferred to Rudraprayag. The applicant then represented to the Chairman, CWC on the ground that transfer was done during the mid-session of the academic year, that his options given in 1993 and the latest one in February, 1995 were not taken into account and also the transfer policy enunciated in 1993 by the Department had been contravened in as much as those had longer stay than him in Delhi had been retained in Delhi while the applicant had been transferred out. Pending decision on his representation, the applicant was allowed to continue in Delhi. While no

reply to the representation was given, vide office order dt. 4.4.96 modifying the earlier order of transfer, the applicant was ordered to be posted to office of Chief Engineer (NTB) Vadodara (Gujarat). Against this order of transfer, the applicant has approached the Tribunal.

2. The respondents stated in the reply that ^{certain} transfers became inevitable with the shifting of two circles to Dehradun and NCIDA. Therefore, it was decided to transfer the employees with comparative longer stay in Delhi and the applicant happened to be one of them. They submit that the transfer was therefore in public interest and Central Govt. employees holding a transferable post is liable to be transferred from one place to another in the country. The applicant has ^{therefore} no legal right to insist for his posting to the place of his choice.

3. I have heard the learned counsel on either side. The learned counsel for the applicant drew my attention to the Transfer Policy applicable to Group 'C' personnel, (Annexure A3 issued in November, 1993), which lays down that ^{should} Group 'C' personnel not be normally transferred from one station to another

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except to meet the contingencies listed in Clause-III of the Policy. The learned counsel argued that the post of Junior Engineer held by the applicant is a Group 'C' post and since the case of the applicant does not come within any of the contingencies e.g. adjustment of surplus staff, mutual transfer, promotion or any administrative requirement, the applicant transfer in the first place out of Delhi is contrary to the Transfer Policy. I find no force in this argument. It is an admitted fact that some offices of the CWC have been shifted out of Delhi to NOIDA and Dehradun and if necessary some staff have also been transferred out of Delhi. It has also been stated by the respondents and the same is not denied by the applicant that there are more than 600 Junior Engineers under CWC of which the number of posts in Delhi is only 14. Clearly, therefore, CWC is an organisation where no permanent posting of Group 'C' staff as Junior Engineer can be made indefinitely in Delhi. For the same reason, the applicant cannot make a point of grievance of the fact that he has not been transferred to a place of his choice while efforts are made to adjust employees according to their preferences yet

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keeping in view the administrative requirement there cannot be a hard and fast rule that the officials must be adjusted only on the basis of their preferences. In such cases, administrative requirements and public interest take precedence over the personal preferences of the employees.

4. There is, however, another aspect of this case, in my view, of which note has to be taken is clause-3 of the Transfer Policy in which it is laid down that: when transfer becomes inescapable it should be done in certain order, namely, persons with longest period of posting at one station will be transferred first. In other words, the policy will be 'first come first go'.

The applicant specifically represented to the respondents that there were certain other Junior Engineers who had longer stay in Delhi compared to him but had not been disturbed.

The names of such officials were also given by him.

These are mentioned at Annexure A9 along with a copy of his representation. The respondents have denied this allegation and asserted that the Junior Engineers cited by the petitioner have no longer stay than the petitioner and therefore they are not due for transfer.

This statement of the respondents is not borne out by the list furnished by them at Annexure-10 to

their reply in which the particulars of four J.Es. namely, S/Sh. S.N. Gupta, VK Malhotra, AK Puri and


N.K. Vij have been given. List furnished by the applicant however contains 13 names. Shri Madhav Panicker, learned counsel for the respondents submitted that out of the remaining names, S/Sh. Y.R. Sardana, A.P. Kandiya, N.P. Chaurisiya and A.K. Mathur have longer stay than the applicant but he had been informed by the Department that they would also be considered for posting outside Delhi in the next round of transfer to be made in due course. Shri Madhav Panicker, was however not able to clarify as to why the above four Junior Engineers who are having a longer stay than the applicant could not make an issue on this point. The respondents themselves laid down the Transfer Policy in 1993 in which it is mentioned the principles of 'first come first go' has been adopted. They have categorically stated in their reply that on shifting of the two circles to Dehradun and NOIDA, it was decided that employees having longer stay in Delhi should be transferred out of Delhi and that applicant was one of them. They have also stated in para-8 of their reply that transfer orders issued in 1995 were framed keeping in view the Transfer Policy of CWC. They deny that the Transfer Policy has been infringed. They have gone to the extent of asserting in para-11 of the reply on merits

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that the Junior Engineers cited by the petitioner have no longer stay than the applicant, hence they are not due for transfer. Once, it is established that the Junior Engineers with longer continuous stay in Delhi have been omitted from the transfer order, the transfer of the applicant cannot be considered in accordance with the provisions contained in the Transfer Policy. Since no other public interest or administrative exigency for the transfer of the applicant has been cited, the transfer of the applicant out of Delhi is clearly discriminatory.

5. The Hon'ble Supreme Court held in Union of India vs. H.N. Kirtania (JT 1989 (3)SC 131) that the transfer in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of malafides. Since the present case is a clear violation of Transfer Policy of the respondents and is clearly discriminatory in as much as J.Es. with longer stay have been retained in Delhi and the applicant has been purportedly transferred

only on the basis of comparative longer stay in Delhi, I consider it a fit case for intervention. Accordingly, the impugned orders of transfer dt.18.7.95 and modified vide order dt.4.4.96 transferring the applicant to Vadodara are set aside. The respondents, however, will be free to transfer the applicant in accordance with the Transfer Policy if he has longest continuous stay in Delhi in accordance with the criteria adopted by them as has been stated in their reply, but they must inform the applicant of the reasons so that he has an opportunity to represent, if need be. No order as to costs.


(R.K. Ahooja)
Member (A)