

Central Administrative Tribunal
Principal Bench: New Delhi

OA 1923/97

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New Delhi this the 5th day of November 1997.

Hon'ble Mr R.K.Ahooja, Member (A)

S.S.Nirmal
S/o of Late Shri Leela Dhar
R/o 1/4018, Ram Nagar Extn.,
Loni Road, Shahdara
Delhi - 110 032.

...Applicant.

(By advocate: Mr Hori Lal)

Versus

Union of India through

1. Secretary
Ministry of Works, Housing
& Urban Development
Nirman Bhawan
New Delhi.
2. The Director General (Works)
C.P.W.D.
Nirman Bhawan
First Floor
New Delhi.
3. The Chief Engineer
PWD Zone II (D.A.)
M.S.O.Building
Third Floor
New Delhi.
4. Shri P.K.Agarwal
Assistant Engineer (Planning)
P.W.D. Zone II, Third Floor
M.S.O.Building
New Delhi.

...Respondents.

(By advocate: Mr K.C.D. Gangwani)

O R D E R

By Mr R.K.Ahooja, Member (A)

The applicant who is an Executive Engineer (Civil) serving in C.P.W.D. and employed in P.W.D. Delhi Administration in Division No.11, Tihar Jail Road, New Delhi since 13.5.96, is aggrieved by an order of transfer (Annexure-G) transferring him from P.W.D. Division 11, New Delhi to SW, PWD Circle II. The case of the applicant is that in C.P.W.D., the posting of Executive Engineers is by rotation, viz, three years in

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field and three years in planning. The applicant had served for about three years in planning at Calcutta under the appropriate authority, Valuation Cell from April 1993 to December 1995 and thereafter he was posted to Delhi in Planning Division on transfer. But after he filed a representation dated 30.1.1996, his posting order was changed on 10.5.1996 and he was posted as E.E., P.W.D. Division 11, New Delhi (Annexure-D). The applicant states that he has served for one year and two months in the present Field Division. He has come before this Tribunal with the prayer that the impugned transfer order dated 7th August 1997 be quashed and the respondents be directed to either retain the applicant in PWD Division No.11 or post him to any other Field Unit in P.W.D. or C.P.W.D. in Delhi or New Delhi to enable him to complete his field tenure of three years.

2. Respondents have filed a reply. They say that the applicant has not stated the full facts of the case. They submit that the applicant has not been transferred out from the present station of posting, namely, New Delhi and that his transfer from one Division to another is made in public interest. Transfers are made on the recommendations of "Postings/Transfers Committee", and the provision regarding a tenure of three/four years is normally observed, but an officer with All India Service liability cannot claim a posting of his own choice. It is further stated that in order to improve the performance of PWD Division 11, Chief Engineer had desired the shifting of the applicant from PWD Division.

The matter was duly considered by the "Posting/Transfers Committee" on 2.8.97, and after considering all the aspects of the case, the impugned transfer order was issued.

3. In the rejoinder filed by the applicant, he has refuted the claim of the respondents that the transfer has been made in public interest. He has also alleged that the transfer has been made in the interest of Respondent No.4 which indicates malafide.

4. I have heard counsel on both sides. Mr Hori Lal, learned counsel for the applicant vehemently argued that the transfer was actuated by malafide as the work of the applicant was satisfactory. On the other hand, respondent No.4 Shri P.K. Aggarwal who was earlier working as Assistant Engineer had been given field assignment on ad-hoc promotion as E.E. He pointed out that it could not be believed that the replacement of the regular Executive Engineer by an ad-hoc promotee was with a view to improve the functioning of the Division and in public interest. Mr K.C.D. Gangwani, on the other hand, pointed out that though the posting in a particular division normally does continue for three years, there was no bar for premature transfer if this was in public interest.

5. I have carefully considered the rival contentions. The scope of judicial review in matters of transfer is limited and unless it can be shown that

transfers are actuated by malafide or are contrary to the policy guidelines or it is a case of an attempt to victimise an honest officer, there should not be interference by the Court. In the present case, the applicant has been transferred within the same station i.e. Delhi. It is also seen that the transfer has been made at the behest of a committee constituted by the Department. A letter of the Chief Engineer shows that the applicant had not been able to, in view of the report of the I.G. (Prisons), contribute to the proper functioning of the Division. The mere fact that he was being replaced by a promotee can in itself be no proof that malafide is involved in the transfer. Even though as per policy guidelines, transfers are made after three/four years, this rule is to be followed normally and the respondents are not barred from making transfers earlier if the same is in public interest. Transfer is a general condition of service and an employee has no choice in the matter. The applicant has in fact an All India transfer liability. However, his station of posting has been maintained at Delhi and, therefore, the impugned order of transfer would not involve any disturbance in his family affairs. Counsel for the applicant has also pointed out that the applicant has three years to go before his retirement. I am also not inclined to view with favour the suggestion of the learned counsel for the applicant that a direction be given to the respondents to post him to any Field/Division instead of the Planning Division. It is upto the respondents to make use of the services of the applicant and the hands of the Executive cannot be

tied to give a particular type of posting to an officer since it is the supervisory officer of the applicant who knows best his potential and talent.

6. In the light of the above discussion, OA is dismissed without any order as to costs.

R.K. Ahooja
(R.K. Ahooja)
Member (A)

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