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CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 847 of 1997

New Delhi, dated the 6th June, 1997

HON'BLE MR. S.R. ADIGE, MEMBER (A)

Shri Mahesh Narayan,
S/o late Shri M.P. Sahu,
R/o 419, Nanakpura,
New Delhi-110021.

.. APPLICANT

By Advocate: Shri K.K. Dubey

VERSUS

1. Union of India through
the Secretary,
Ministry of Urban Affairs & Employment,
New Delhi.
2. The Director General (Works),
C.P.W.D.,
Nirman Bhawan,
New Delhi.
3. The Superintending Engineer (Coord.
Circle Civil)
C.P.W.D.,
I.P. Bhawan,
New Delhi-110002.
4. Shri S.P. Singh,
Superintending Engineer,
Delhi Central Circle-6,
C.P.W.D., East Block-I,
R.K. Puram,
New Delhi-110066.
5. Shri Ganesh Chander Kavi,
Executive Engineer,
'M' Division,
C.P.W.D., East Block-I,
R.K. Puram,
New Delhi-110066.
6. The Executive Engineer (Hqr.),
Delhi Central Circle 6
C.P.W.D., East Block-I,
R.K. Puram,
New Delhi-110066.

.. RESPONDENTS

By Advocate: Shri S.M. Arif

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J U D G M E N T

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

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Applicant impugns the transfer orders dated 7.3.97 (Ann. A-1) and dated 12.3.97 (Ann. A-2) as well as relieving order dated 20.3.97 (Ann. A-3) transferring him from 'M' Division to 'S' Division in the same C.P.W.D. Circle in R.K. Puram, New Delhi.

2. Applicant's case is that he was working as J.E. in 'M' Div., CPWD since 1.12.95. He contends that about a year ago, while posted in 'M' Div. he had been got transferred at the instance of R-3 (Superintending Engineer [Coord.]) arbitrarily and against rules and upon his approaching the hard case committee, and upon his representation, that committee ordered for retention of the applicant in Circle 'M' but he could join the post only after 75 days due to the highhandedness of R-4 (Shri S.P.Singh, S.E. [Circle-6, C.P.W.D, R.K.Puram, New Delhi]). Applicant alleges that R-4 became annoyed with him and started preparing conspiracy to harass the applicant by one way or the other. He alleges that during his tenure in 'M' Div. as J.E. he was asked to prepare the Justification for annual repairs and maintenance of various type of quarters at Sector 5, R.K.Puram, New Delhi for the year 1996-97 under the head of replacement of damages, and he prepared the justification according to the prevailing market rate but as R-5 (Shri G.C.Kavi, E.E. 'M' Div.) and the A.E. were interested in allotting the said work to their own men, Applicant was asked

to change the said justification and prepare the same at very high rate to which he did not agree. It is alleged that thereafter R-5 and A.E. themselves prepared the justification at very high rate, and allotted the work to their men. It is further alleged that R-4 was also interested in allotting the work to those men, and complained to higher authorities regarding the alleged highhandedness and irregularities on the part of the applicant. It is alleged that the transfer order is not issued in accordance with the relevant rules and guidelines, and is arbitrary, illegal and malafide and hence Tribunal's intervention is prayed for.

3. Respondents in their reply have challenged the contents of the O.A. They state that the applicant has not been transferred from one station to another, but ^{merely} ~~instead~~ was shifted from Sector V to Sector I, in the same colony i.e. R.K. Puram. They state that the transfer was necessitated in the administrative interest to facilitate enquiries into the charges levelled against the applicant of having illegally handed over possession of General Pool quarters to a contractor, and further state that the applicant's presence in the same Sector, might ~~be~~ ^{be} prejudiced the investigation. It has also been stated that the applicant's behaviour with the residents of Sector V, R.K. Puram, under the enquiry office where he was posted, was rude and bad, and a large

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number of residents gheraoed the enquiry office against his behaviour. It has also been stated that as many as 154 residents sent their representation to MOS, Urban Affairs and Employment, and M.Ps have ^{also} written to the DG(W) to shift the applicant from Sector V, R.K. Puram enquiry office where he was working. The reply which has been filed on behalf of all the Respondents including R-4 & 5 contains a denial of charges of any malafide in the transfer order, and states that the applicant was not performing his duties diligently and efficiently, and the DG(W) has full powers to transfer the applicant.

4. I have heard Shri K.K.Dubey for the applicant and Shri S.M. Arif for the Respondents.

5. The first ground taken is that the impugned transfer order is void and has been issued without jurisdiction. In this connection Shri Dubey invited my attention to the impugned order dated 7.3.97 (Ann. A-1) ^{which} ~~and~~ was soon after followed by impugned order dated 12.3.97 (Ann. A-2), the only difference between the two orders is that the second order states that the transfer order was in the public interest. Shri Dubey contended that this order was purported to have been issued with the permission of S.E., but he contended that C.P.W.D. O.M. dated 10.4.92 (Ann. A-3) forwarding revised guidelines (Ann. A-4) for transfer of JEs, ^{aid down} ~~was~~ ^{was} ~~debated~~ ^{LTR} that ~~this~~ transfer which ~~was~~ ordered before completion of normal tenure could be effected

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only by S.E. (Coord.), and in the present case the orders of the SE (Coord.) had not been taken. When Respondents' counsel invited my attention to the S.E. (Coord.)'s letter dated 5.3.97 (Page 76 of the O.A.), Shri Dubey alleged that this letter had not been issued, before the impugned order dated 7.3.97 (Ann. A-1) had been issued, and was some how manufactured thereafter. He also contended that this letter dated 5.3.97 advising R-4 to transfer applicant within the same Circle was not enough, and the transfer order itself had to be issued over the signature, or at any rate with the approval of the SE (Coord.).

6. SE (Coord.) letter dated 5.3.97 is in reply to R-4's letter dated 20.2.97 stating that he had received complaints from the residents of Sector V Enquiry Office against the applicant that he had sub-let a Govt. quarter to a contractor, and as there was substance in the complaints the matter required investigation, for which applicant's transfer was necessary in administrative interest. It is in reply to that letter that S.E. (Coord.) by his letter dated 5.3.97 advised R-4 to transfer the applicant to any other appropriate place within the Circle and accordingly he was transferred from Sector V to Sector I within R.K. Puram itself. No materials have been shown to me to establish that the letter dated 5.3.97 was subsequently manufactured, or that the transfer guidelines (Ann. A-4) require that the transfer order

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itself must carry the signature of SE (Coord.). The fact that SE (Coord.) advised R-4 to transfer the applicant is enough proof to show that it not only had his approval, but it was ordered as per his direction contained in his letter dated 5.3.97. The second order dated 12.3.97 merely made explicit, what was implicit in the first order dated 7.3.97, namely that the transfer was being made in the public interest. Hence this ground fails.

7. The next ground taken is that R-4 has no jurisdiction to transfer the applicant, which power is vested only with the S.E. (Coord.) or D.G. (W). We have already noticed the transfer order was issued as per S.E. (Coord.) directions. In so far as D.G(W)'s approval is concerned, I note from the photo copy of the office note put up by Director (Admn.), ~~the~~ CPWD, to the DG(W), enclosed with S.E. (Coord.) letter dated 5.3.97 (Page 77 of the O.A.), that upon receipt of references from two M.Ps enclosing copies of representations made by the President, Central Govt. Employees Residents' Welfare Association regarding mis-behaviour by applicant with residents of Sector V, R.K.Puram, the matter was placed before D.G(W) and applicant's transfer was fully with the knowledge and approval of the DG(W). Hence this ground also fails.

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8. The next ground taken is that the impugned transfer order was passed due to malice and grudge on the part of R-4, against whom various allegations have been made by applicant. In this connection Respondents have enclosed a copy of letter dated 20.2.97 from the President, C.G.E.R.W. Association, Sector V, R.K. Puram, supported with the signatures of 154 residents, alleging rude and bad behaviour of the applicant and his use of uncivilised language in dealing with them. That apart, my attention has also been drawn to the ^{two} letters dated 4.3.97 of S/Shri Somjibhai Damor and K.D. Sultanpuri, both Members of Parliament addressed to D.G.(W) regarding the indifferent, rough and rude misbehaviour of the applicant and his irresponsibility in redressing the legitimate grievances of the residents of Sector V, R.K.Puram whom he is required to ^{serve} ~~serve~~. To believe that all these letters of complaint were written at the malafide instance of R-4 is to strain ^{my} ~~our~~ ^{reliable} credulity. Clearly therefore, the applicant's transfer was ordered in the public interest because of his failure to discharge his duties satisfactorily. No evidence has been furnished by the applicant's counsel that applicant's transfer was malafidely initiated at the instance of R-4 because of the latter's alleged interest in awarding

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contracts to some particular individuals to which applicant objected. In this connection Shri Dubey also stated that the contents of letter dated 20.2.97 from the President, C.G.E.R.W. Association showed that this transfer was malafidely instigated by R-4. I find it difficult to accept this reasoning. All that the letter indicates is that the office bearers of the Association appeared to have broached the issue with the R-4, who informed them that if they reduced their complaint into writing, steps would be taken to see that applicant was moved elsewhere. This cannot be construed to mean that R-4 was instrumental in getting applicant transferred out of malice or grudge. Hence this ground also fails.

9. The next ground taken is that applicant has been transferred prematurely, which is contrary to rules. Firstly the O.M. dated 10.4.92 ^{13/4} ~~was~~ only in the nature of executive guidelines, and do not have the force of statutory rules. Secondly as per guidelines (O), the D.G. (W) has the power to deviate from them in the public interest, and in the present case not only has applicant been transferred in the public interest, but the transfer has been ordered with the full knowledge and approval of DG(W). Thirdly the transfer itself is only from one Sector to another, ⁱⁿ ~~with~~ the same R.K. Puram colony. Hence this ground also lacks merit.

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10. The next three grounds namely that the transfer is malafide, is ^{unmaintainable} in law, and has been done by exceeding the powers given to the prescribed authorities, are a ~~mere~~ repetition of what have already been discussed in the preceding paragraphs, which have been found to have no merit.

11. Applicants' counsel has cited various CAT rulings in support of his arguments, and has furnished photo copies of the same which are taken on record.

12. However, on the point of transfer the Hon'ble Supreme Court's ruling in UOI Vs. H.N. Kirtania JT 1989 (3) SC 131 is extremely apposite, and fully applicable to the facts of the present case.

"....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."

13. In the present case the applicant's transfer has been ordered in the public interest; there has been no violation of statutory rules; and no cogent and reliable evidence has been furnished to establish applicant's assertion that the transfer order was tainted by malafides, on the part of R-4. Furthermore, I notice that there has been no breach even of the executive guidelines.

14. In this connection I further notice from the photo copies of the respondents' notings at Page 77 of the O.A. appended with

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a copy of SE (Coord.)'s letter dated 5.3.97, that some other J.E. had taken charge from applicant by 18.3.97, and by Memo dated 26.5.97 applicant has been chargesheeted on various allegations of misconduct, including subletting of Govt. quarters within his jurisdiction to unauthorised persons, highhandedness, rude behaviour etc., and under the circumstances, if in the interest of proper inquiry into these allegations as well as in the public interest, Respondents consider applicant's transfer to some other Sector necessary, ~~in the public interest~~, their consideration cannot be faulted.

15. The O.A. is therefore dismissed.
No costs.

S.R. Adige
(S.R. ADIGE)
Member (A)

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