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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 2099/1994

New Delhi, this 12th day of December, 1994

Shri C.J. Roy, Member (J)

S.S. Tuteja
905, Type II, NH IV, Faridabad .. Applicant

By Shri Rajeev Sharma, Advocate

versus

1. Union of India, through the
Secretary, M/Urban Development
Nirman Bhawan, New Delhi
2. The Director General(Works)
CPWD, Nirman Bhawan
New Delhi
3. The Supdt. Engineer (Coord)
Circle (Civil), CPWD
1, Prashar Bhawan, New Delhi
4. The Executive Engineer
Faridabad Central Division I
CPWD, NH IV, Faridabad .. Respondents

By Shri M.M. Sudan, Advocate

ORDER

The applicant, working as UDC in the Faridabad Division of CPWD, is aggrieved by the order dated 8.9.94 by which he has been transferred to Delhi Central Circle. He also stands relieved from the Faridabad Division with effect from 9.9.94. He says that this order is in modification of the transfer order 11.2.94 by which one Shri Nem Nath Sharma was promoted as UDC and posted to the place, where the applicant is now transferred. However the said Sharma did not proceed to Delhi and managed to continue in Faridabad itself and he is asked to take the place of the applicant. The applicant made several representations, the last one being 21.9.94 but the same has been rejected by letter dated 6.10.94 without assigning any reason. In the circumstances he has filed this

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OA to allow him to work at Faridabad itself by quashing the impugned order.

2. The respondents have filed their reply stating the applicant has no right to continue in the same place for quite a long time. They say the applicant has been working in Faridabad ever since he joined duty and the transfer is made as per Rules. In so far as Shri Nem Nath Sharma is concerned, they say that he is to retire in another four years and as per Rules he is not to be disturbed unless he requests for. They further say that the applicant was informed several times to report for duty at the new place of posting which he has failed to do. They also say that the applicant promised to hand over charge on 22.10.94 but failed to do so, with the result the respondents are forced to issue the order dated 24.10.94 to prevent him entering the office.

3. The applicant has filed his rejoinder.

4. I have heard the learned counsel for the parties and perused the records and also the departmental file leading to the transfer.

5. The applicant attacks the transfer on the ground of malafide against the Respondent No.4 (Executive Engineer) and also that the transfer is in violation of rules laid down. On malafide he alleges that to accommodate Shri Nem Nath Sharma in place of the applicant, he is transferred from Faridabad to Delhi. The applicant was posted at DCC, Delhi initially and he was posted at Faridabad in 1971. By order dated 11.2.94, Shri Nem Nath Sharma, LDC, Faridabad Dn., was promoted and posted at DCC, Delhi with the condition that he,

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alongwith others, would be relieved within a week without waiting for their substitutes and if any of them are not willing they should give it in writing, otherwise their promotion will cease to operate after a month. The applicant alleges that Shri Sharma being the leader of the Union ~~and~~^m having influenced by the superior officers got himself posted at Faridabad and he has not observed the said rule of joining within a week of his promotion. By not giving any consent or willingness to the promotion, the applicant alleges the order dated 11.2.94 ceased to have its effect after a month. But the said Sharma joined only on 9.9.94 after a lapse of more than six months. Any order is supposed to issue in compliance of the earlier order but in the next order a presumption is drawn. The point of presumption is in favour of Shri Sharma to accommodate him in place of the applicant. The order dated 8.9.94 says that the transfer and posting are made on public interest but at the bottom it says "at their own request". Therefore it can not be argued that the transfer of Shri Sharma is in public interest.

6. Annexure V OM dated 28.5.92 says that "in case any modification/or cancellation is necessitated in respect of Group C should be after seeking prior approval of ADG by the Supdt. Engineer(Coord.)". In the transfer order of Shri Nem Nath Sharma dated 11.2.94 and the order dated 8.9.94, it is not mentioned that the prior approval of the competent authority, i.e. Additional Director General was taken. However, the learned counsel for the respondents draws my attention to the transfer order in Hindi and the note dated 23.6.94 (R-7, page 53-54) of the DG(W) saying that "It is

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stated that being a appointing and controlling authority, SE(Coord), Civil Circle is competent to settle such issues in accordance with existing rules". However, I feel, competency to do the modification before issuing of order dated 8.9.94 is also mandatory.

7. With regard to the applicant's contention that the transfer can not be effected in the middle of academic year, Rule 2 of the transfer Rules says as under:

"All transfers should be carefully planned within reasonable space of time. To avoid dislocation of work, a large number of officials of one office are not transferred out simultaneously. As far as possible the transfers should take effect after the end of the financial year/academic year. Transfers during the rest of the year should be ordered only to the extent it is absolutely necessary from administrative point of view and on account of transfer/closure/operating of the Divisions/sub-divisions and retirement/death/resignation of Officers."

8. The applicant's counsel contends that the applicant is transferred in order to help Shri Nem Nath Sharma. But the respondents' counsel says that Shri Sharma is on verge of retirement and and he is not to be disturbed as per Rule 19(g) of CPWD Manual which says as under:

"Staff who have attained the age of 53 years shall ordinarily not be liable to transfer from one station to another under the normal tenure rule except when (i) the transfer is made to a station nearest his home town; (ii) the person concerned volunteers for such transfer, and (iii) he would have been transferred on the basis of length of stay at that station but for his attaining the age of 53 years. This exemption does not, however, apply where transfer is to be made on administrative considerations. This is also applicable to Circle Office Superintendents."

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9. Besides it is also stated at 19(b) that "transfers from one Circle to another in the same station or in another station, if required, or where need arises to fill up a post outside a popular station, when such a post has fallen vacant due to some reasons, shall be made on the basis of longest continuous stay of individuals in all grades, the longest stayee being transferred first."

10. However, it is seen from Annexure RR-1 that there are many persons who are long stayees than the applicant. Thus the applicant claims that he is not the longest stayee as per the Rule as he was lastly transferred on 20.11.92. He says that according to Rules, Ghaziabad, Delhi, New Delhi and Faridabad are under one region and he has been transferred on a pick and choose basis.

11. In reply, the counsel for the respondents says that the DCC-II has got 5 regions, Division I & II both at Faridabad, and three at Delhi. Circle is headed by Supdt. Engineer and the Division is headed by Executive Engineer and all these divisions are under the overall control of Supdt. Engineer. Therefore the Supdt. Engineer is competent to effect the transfer.

12. Having considered all the aspects, I feel it is a fit case to dispose of with the following direction.

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13. The applicant is directed to give fresh application, in support of his claim stating all the points and his inability to join at Delhi, within 15 days from the date of receipt of this order. The respondents are directed, on receipt of the said ~~appeal~~ ^{representation} _{by}, to dispose it within a period of two months with a reasoned order. If the applicant is still aggrieved, he is given liberty to approach the Tribunal again. With this, the OA is disposed of. No costs.

/tvq/

C. J. Roy
(C.J. Roy)
Member (J)

12/12/94