

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

M.A.No.1697/94 in
D.A.No.1218/94

New Delhi, this the 4th day of Jun '94.

HON'BLE SHRI P.T.THIRUVENGADAM MEMBER (A)

1. Shri Vijay Pal Singh
s/o late Shri BR Singh
o/o the Superintending Engineer
Valuation, Income Tax Deptt.
11th Floor, Rohit House,
Tolstoy Marg, New Delhi.
2. The Central Public Works
Department Junior Engineers
Association (India)
through its Secretary (NZ)
A Wing Ground Floor
IP Bhavan, IP Estate, New Delhi.Applicants
(By Advocate Shri J.P.Verghese)

Vs.

1. Union of India, through:
Secretary,
Ministry of Urban Development,
Nirman Bhavan, New Delhi.
2. The Director General (Works)
CPWD, Nirman Bhavan, New Delhi.
3. The Superintending Engineer,
(Coordination Circle Civil)
IP Bhavan, IP Estate, New Delhi.Respondents
(By Advocate Shri Madhav Panikar)

ORDER

HON'BLE SHRI P.T.THIRUVENGADAM MEMBER (A)

1. M.A.No.1697/94 for joining is allowed.
2. This D.A. has been filed for declaration that
the transfers issued vide office order No.112 of 1994
dated 30-5-1994 by Central Public Works Department (CPWD)
transferring 71 junior engineers are illegal and for
restoration of the earlier transfer order dated 6-5-94
in which 121 junior engineers figure.
3. At the outset I have to observe that the two
applicants in this D.A. are one Shri Vijay Pal Singh
a junior engineer who figures in both the transfer
orders mentioned above; and the other is CPWD Junior
Engineers Association through its Secretary. While
applicant No.1 may question the impugned orders as

far as these relate to his transfer, I am not convinced that the applicant No.2 which is an Association can question the transfer order in its entirety. The first transfer order involved 121 junior engineers and the second transfer order contains only 71 names. It is not necessary for me to go into whether all these 71 names figure in the earlier list of 121 junior engineers and also whether the Association (applicant No.2) is representing all those who figure in the two transfer orders. In the case of transfer, it is for the affected individuals to approach the Tribunal for establishing the rights. Hence, I am limiting the discussion of this case with regard to the two transfer orders as far as they relate to applicant No.1.

4. The first transfer order, namely, office order No.95 of 1994 was issued on 6-5-1994. The order reads as under:-

"Transfer and posting in respect of the under mentioned junior engineers (civil) are hereby ordered in the interest of public service with immediate effect.

Sl.No.1

.....

Sl.No.121.

The concerned controlling officers are requested to relieve the junior engineers (civil) who have to move first within 30 days of issue of this order and direct them to join in their new office of posting. The junior engineers (civil) posted in planning units will move first.

These orders supersede any previous transfer orders in respect of the junior engineers (civil) listed herein above."

5. It is admitted that applicant No.1 who figures at Sl.No.14 of the above order was transferred from 'A' Division to Income Tax Valuation. This applicant got himself relieved by Executive Engineer 'A' Division

on 10-5-94. Annexure 2 to O.A. is a copy of the office report issued by the Executive Engineer 'A' Division stating that Shri V.P.Singh, junior engineer "is hereby relieved" today i.e. 10-5-94 afternoon with the direction to join the office of Income Tax Valuation, New Delhi for further posting. This office report of the Executive Engineer 'A' Division is not contested by the respondents. In the same afternoon of 10-5-94, the applicant No.1 reported in the office of the Superintending Engineer Income Tax Valuation and submitted his joining report. Upto this point there is no dispute.

41 case of
6. This is the ^{case of} the applicant that after giving the joining report, in the office of the Income Tax Valuation, he became an employee of that office. Further office order No.112 of 1994 dated 30-5-94 transferring him from 'A' Division to S.S.W.(N2) is null and void since he was no more in 'A' Division on the date of issue of the later transfer order.

7. It is, however, the stand of the respondents that after issue of the office order dated 6-5-94, a number of anomalies in that transfer order came to their notice. Pending detailed examination of these anomalies and taking corrective action, the transfer order of 6-5-94 was kept in abeyance vide office memorandum of 10-5-94 as per the instructions given over the telephone by ADG on behalf of DG(W) on 10-5-94. Thus even though the applicant No.1 reported in the Valuation Cell on 10-5-94, his joining report was not accepted there. It was expected of the applicant No.1 to report back to the parent office and it is not known to the respondents as to where he was working after 10-5-94.

8. On being further queried, it was admitted on behalf of the applicant that he was not given any work by the Valuation Cell. Even his salary beyond 10-5-94 has not been allowed. However, the learned counsel

for the applicant persisted with his stand that the joining report had been submitted to the Valuation Cell and hence the latter transfer order of 30-5-94 showing the applicant as an employee of 'A' Division is not maintainable.

9. To arrive at the correct view the respondents were directed to produce the office record relating to the developments on 10-5-94. Both sides agreed that the record may be separately perused after reserving the orders at the final date of hearing, namely, 27-9-94. The records were submitted on 28-9-94 and the relevant file is numbered as 3(1)/94-JE(C)Reg.'A'Part 25. I find at page 49 an office order dated 10-5-94 issued by the Superintending Engineer Valuation Cell. This office order reads as under:-

"In view of instructions issued by Addl. Director General of Works on behalf of Director General of Works Central Public Works Deptt. Nirman Bhawan, New Delhi & conveyed by the Superintending Engineer Coordination Circle (Civil) CPWD IP Bhawan New Delhi-110002 vide his office memorandum No.3(1)/94JE(Civil)/Region 'A'/406 dated 10-5-94, to keep the office order No.95 of 1994 issued vide letter No.3(1)/94 JE (Civil)/Region 'A' 396 dated 6-5-94, in abeyance till further orders. Hence the joining report of junior engineers under transfer, vide SE(Coord)Civil letter of even No. dated 6-5-94, shall not be accepted.

The junior engineers, coming to join this Valuation Cell, are requested to report to their parental office or Superintending Engineer (Coord) Civil CPWD, IP Bhawan, New Delhi.

Sd/-
(J.J.Lal)
Superintending Engineer
11th Floor Rohit House
Tolstoy Marg New Delhi.

Copy to: Chief Engineer(Val), Income-tax
Dept. Rohit House, Tolstoy Marg, New Delhi.

Copy to: Superintending Engineer(Coord)Civil
CPWD.
Notice Board."

(b)

4
a
10. Endorsement on the above office order shows that a copy was meant for notice board. Page 79 of this file contains the joining report of applicant No.1. At the bottom of the report there is an endorsement by the Superintending Engineer Valuation Cell as under:-

"In view of instructions received from SE(Coord)Civil vide his letter No.3(1)/94- JE(Civil)Region 'A'/406 dated 10-5-94 the joining report of Shri VP Singh JE cannot be accepted."

11. On 28-9-94 the learned counsel for the applicant produced a copy of a letter dated 30-31-5-94 issued by Chief Engineer Valuation to SE(Coordination)Civil, CPWD. On scrutiny I find this letter is also available in the office file referred to above at p.No.50. Relevant portions of this letter are reproduced hereunder:-

"I am writing this letter to remove the confusion created by issue of transfer orders of JEs and then keeping these orders in abeyance. Although JEs of Valuation Cell all over the North Region are affected in these orders but for the sake of examples only a few names have been mentioned in the following narration:-

xx x x x
Some JE(C)s were transferred within Delhi vide order No.95 dated 6-5-94. However you conveyed the instructions of DG/ADC on telephone on 10-5-94 (F.N) to Shri J.J.Lal, SE(Val), Delhi followed by your letter dated 10-5-94 that the orders issued on 6-5-94 be kept in abeyance till further orders. Therefore SE(Val) New Delhi did not accept the joining report dated 10-5-94 FN of Shri VK Sharma from NSGP Circle-II and joining report dated 10-5-94 (A.N) of Shri VP Singh from A Division and issued on office order No.688 dated 10-5-94. Since your orders dated 6-5-94 have been kept in abeyance till further orders you should see that the interest of JEs/Shri VK Sharma and Shri V.P.Singh is not lost and they are not forced to go on leave from 10-5-94 till you send your further

instructions on your order dated 6.5.94.

x x x x

It will be better administratively if mass orders issued once are not kept in abeyance afterwards. This will avoid uncertainty and part order may remain unimplemented indefinitely."

12. A perusal of all the above records clearly brings out that the applicant No.1 submitted the joining report in the Valuation Cell but this was not accepted. Though I find from the office order dated 10-5-94 issued by the Superintending Engineer Valuation Cell that the junior engineers who were joining the Valuation Cell based on 6-5-94 orders were being requested to report to their parental office and a copy of this order was meant for notice board but how far the applicant was advised to go back to his earlier office is not clear. Equally, the action taken by the applicant on not being accepted by the Valuation Cell has not come out. It was his responsibility to check up the position, particularly when he was not assigned any work. In any case for the disposal of this O.A. where the legality of the later transfer order dated 30.5-94 is the only issue which is figuring, what is relevant to be seen is whether the applicant No.1 joined the Valuation Cell. Records clearly bring out that his joining report was not accepted and hence the first ground that the subsequent order of 30-5-94 showing the applicant being transferred from 'A' Division to S.S.W(NZ) Cell is impracticable from implementation point of view cannot be sustained.

13. It was then argued that the revision in transfer took place due to extraneous consideration based on interference by some other union. This ground has been denied by the respondents who have referred to annexure R.2 which is a note by the Supdt Engineer Coordination Circle to ADG CPWD. This ^{note} made out after issue of the earlier transfer order dated 6.5.94 brings out the reasons for a review of the same. Some portions of this note are reproduced as under:-

"Transfer/Posting Orders of 121 JEs(Civil)

from Field to Non-field and vice-versa were issued vide office order No.95 of 1994 dated 6-5-94. It was complained in the JE's Association that there are so many anomalies in the transfer order and the transfer order was kept in abeyance vide this office memorandum of 10-5-94 as per the instructions given over telephone by Shri Tawarmalani, ADG on behalf of DG(W) on 10-5-94. Subsequently, the ADG(S&P) asked me to verify the records and review/revise the whole transfer order.

The transfer order has been reviewed on the basis of following criteria:-

01. Only those JE's are to be transferred from Non-field to Field Unit who had completed 8 years as on 15-4-94.
- 0.2 The JE's who want retention in Planning Unit may be given such retention for a year.
- 0.3
- 0.9"

14. After going into the background necessitating the revision of earlier transfer order dated 6-5-94 I am convinced that there is no case for interference. It is now well established that courts or tribunals will interfere in transfer orders only if malafides are established or where there is an infraction of statutory provisions. No such grounds have been advanced.

15. In the circumstances the O.A. is dismissed. The applicant is however given liberty to make a representation regarding his transfer.

16. The interim orders already passed on 8-6-94 directing the maintenance of status quo are vacated.

17. No costs.

f. J. JL. 8

(P.T.THIRUVENGADAM)
Member(A).

1/1