

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 1318/94.

Date of decision. 3-12-94

Hon'ble Smt. Lakshmi Swaminathan, Member (J).

Raj Kumar Verma (MES 46006),
Upper Division Clerk,
Command Works Engineer,
29 J, The Mall,
Meerut Cantt.

... Applicant

(By Advocate Shri K.B.S. Rajan)

versus:

1. The Union of India through
The Chief Engineer,
Central Command,
Lucknow-226 002.

2. The Chief Engineer,
Bareilly Zone,
Sarvatra Bhawan,
Station Road,
Bareilly Cantt.

3. The Command Works Engineer,
29 J, The Mall,
Meerut Cantt.

... Respondents

(By Advocate Shri M.M. Sudan)

O_R_D_E_R

[Hon'ble Smt. Lakshmi Swaminathan, Member (Judicial)]

In this application, the applicant has impugned the transfer order dated 31.5.1994 whereby the applicant has been placed for posting from Meerut to Allahabad (Annexure A-1).

2. The brief facts of the case are that the applicant is working as an Upper Division Clerk with Respondent No.3 i.e. the Command Works Engineer, Meerut Cantonment since 1963. Since May, 1984, he has been ^{continuously} working at Meerut.

3. The applicant has impugned the transfer order

mainly on the ground that it violates the transfer policy as contained in the letter dated 30.12.1983 (Annexure A-2). He has also referred to the Army Headquarters Engineers-in-Chief Branch's letter dated 21st January, 1994 (Annexure A-4) regarding posting/transfer to tenure stations of Group 'C' and Group 'D' employees of the M.E.S. According to the applicant, these instructions of 21.1.1994 regarding posting to and from hard tenure stations have been violated. He has referred to the Warning List issued on 6th December, 1993 (Annexure A-3) in which 4 U.D.C.s (at S.Nos. 24, 34, 35 and 40) of the list annexed to this letter employed at Meerut were put in the Warning List. According to the learned counsel for the applicant, having regard to the provisions of para 2(b)(ii) of the transfer policy letter dated 21.1.1994, these Upper Division Clerks who have been put in the Warning List, should be posted out of Meerut to accommodate the persons who were to be accommodated after their hard tenure posting before the applicant can be transferred from Meerut as proposed to be done, under the impugned order. The applicant alleges that the respondents have arbitrarily and illegally with mala fide intention effected the impugned order of transfer in violation of the transfer policy dated 21.1.1994. This has resulted in the retention of these Upper Division Clerks

who are in the Warning List and who are serving at Meerut, and without any basis transferring those in the impugned list including the applicant.

Another ground taken by the learned counsel for the applicant is that the order of transfer relating to peace station cannot be resorted to as per para 6 of the policy letter dated 30.12.1983 except with the prior approval of the Engineer-in-Chief. This ¹²approval has not been obtained. Therefore, the order of transfer cannot be considered as on administrative grounds and is also illegal as it did not have the approval of the competent authority. The applicant also alleges that as per paragraph 16 of the transfer policy of 1983 the persons "reaching" the age of 55 years ~~ever~~ are not subjected to posting out. The applicant states that since his date of birth is 6.4.1940, he has completed 54 years and 3 months approximately and that the proposed transfer is illegal and violative of the guidelines on age factor.

4. The respondents, in their reply, have denied the above averments that the impugned order of transfer is illegal and have submitted that the case should be dismissed. The respondents, in their reply have stated that the policy letter on which the applicant relies viz. letter dated 31.12.1983 has been revised vide Army Headquarters, Engineer-in-Chief's Branch letter No. 79040/EIC(1), dated 25th February, 1991 (Annexure R-1). They have explained the reasons for preparing a warning list which is

to have ready panel of personnel for the purpose of posting to tenure stations when volunteers are not ready. They have stated that inclusion of one's name in the Warning List does not imply that the posting will be issued invariably. They have also clarified that posting/transfer of civilian subordinate staff from one station to another in MES is controlled by the Chief Engineer at Command level on the guidelines issued vide the aforesaid letter dated 25.2.1991. They have averred that as per this policy letter, the applicant has been posted out as per the impugned order dated 31.5.1994. Shri M.M. Sudan, learned counsel for the respondents pointed out that this order is a general order and does not pertain only to the applicant. It is neither arbitrary nor illegal.

5. The main contention of the respondents is that the Army Headquarter's letter dated 21.1.1994 as mentioned in para 4.6 of the application (Annexure A-5) is not a bonafide document. They have stated that para 2(b) of the said letter has not been followed in planning the posting of personnel by the Chief Engineer Headquarters Central Command. Shri M.M. Sudan has referred to the letter from the Army Headquarters, Engineer-in-Chief's Branch, New Delhi dated 8.8.1994 (Annexure R-2). In this letter, a specific mention has been made to this application and the letter dated 21.1.1994 relied upon by the applicant. The respondents have clarified that they have verified

and found that the above modified policy has not been issued by the Headquarters and the circumstances under which such a pseudonymous policy was issued is under investigation. They have also directed the Chief Engineer, Central Command, Lucknow to review and implement the posting as if such a modified policy had not been issued and the applicant asked to withdraw the case thereafter.

6. With regard to the age factor, Shri M.M. Sudan has referred to para 14 of the posting/transfer policy letter dated 25.2.1991, which, according to him, is a relevant policy. In this paragraph it is provided that persons having attained the age of 55 years are not to be posted out except at their requests to stations of their choice. Since the applicant had not attained 55 years at the time when the impugned transfer order was issued, there was no violation of any policy provisions. Shri M.M. Sudan relying on the judgments of the Supreme Court in Shilpi Bose & Others v. State of Bihar [AIR 1991 (78) SC 532-401] and Union of India & Ors. v. S.L. Abbas [1993 (2) SLR 585] and the decision of this Tribunal in S.C. Gulati v. UOI & Ors. (O.A. No. 1905/94 dated 10.10.1994) and N.N. Debnath v. UOI & Ors. (O.A.No.2081/94 dated 15.11.1994) (copies of the last two cases placed on record) submits that since the impugned transfer order does not violate any mandatory statutory rules nor has any ground of malafide being proved in this case against

..

any of the officers for issuing the same, the order is legal and valid and he has submitted that the application should accordingly be dismissed.

7. Shri K.B.S. Rajan, learned counsel for the applicant ^{lastly} has urged that even if it is assumed that the policy letter dated 21.1.1994 relied upon by the applicant has not been issued by the competent authority as stated by them in their letter dated 8th August, 1994 (Annexure R-3), even then till the January letter is cancelled, the same is valid and should be applicable.

8. I have considered the arguments of the learned counsel for both the parties and the records. It is settled law that the order of transfer can be challenged only on two grounds, namely, -

- (i) Violation of statutory rules; and
- (ii) Malafide.

In this case, there has been no allegation of violation of any statutory rules nor any proof of mala fide ^{concerned} against any officer. The respondents have stated in

their reply that the letter dated 21.1.1994 on which

the applicant heavily relies upon has never been issued. Therefore, the question of cancellation of a non-existent ^{document does not arise.} by the competent authority. The earlier transfer policy

guidelines issued on 30.12.1983 (Annexure A-2) filed

by the applicant has also been modified by the later

policy letter dated 25.2.1991 in which a reference has

been made to the earlier instructions/guidelines (Annexure

R-1). Therefore, the applicant's claims based on 1983/21.1.94

policy instructions/guidelines are of no avail.

9. In the facts and circumstances of the case, I find that there has been no violation of any statutory rules or relevant ~~guidelines~~ ^{or any} sufficient ground to held that the respondents have acted in any mala fide manner to warrant any interference with the impugned ^{order dt. 31.5.94} transfer. In this regard it would be sufficient to refer to one of the judgements of ^{the} Supreme Court, referred to above (Union of India v. S.L. Abbas - Supra) in which the Supreme Court has held as follows:-

" Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made is violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject."

10. In view of the above, since the respondents have neither violated the transfer policy guidelines or acted in a mala fide manner, this application lacks merit and is dismissed. The interim order dated 28.6.94 which has been extended from time to time is vacated.

No costs.

Lakshmi Suaminathan
(Smt. Lakshmi Suaminathan)
Member (J)