

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1224/89.
T.A. No.

198

DATE OF DECISION 25.8.1989.

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Shri Naresh Kumar Malik Applicant (s)

Shri P.P. Khurana Advocate for the Applicant (s)

Versus

- (1) Union of India through the Respondent (s)
Secretary, Min. of Works, Housing (now Urban Development).
- (2) Superintending Engineer, Co-ordination
Electrical Divn., CPWD IP Bhavan
- (3) Executive Engineer (E), Hot Mix Advocate for the Respondent (s)
Asphalt Plants Divn., CPWD, IP Bhavan, N. Delhi.

CORAM (4) Superintending Engineer, Central Stores Circle,
CPWD, Netaji Nagar, New Delhi.
Shri P.H. Ramchandani, Sr. Standing Counsel, for respondents.
The Hon'ble Mr. B.C. Mathur, Vice-Chairman (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

This is an application under Section 19 of the
Administrative Tribunals Act, 1985, filed by Shri Naresh
Kumar Malik, Junior Engineer (Electrical), C.P.W.D., at
present working in the Hot Mix Plant Division, C.P.W.D.,
I.P. Bhavan, New Delhi, against the impugned order of
transfer dated 14.6.1989, posting him at Ludhiana.

2. The brief facts of the case, as stated in the
application, are that the applicant joined the C.P.W.D.
as Junior Engineer (Electrical) on 25.7.1974 and has been
working in the Hot Mix Plant Division from 13.1.1984,
under the control of the Executive Engineer (Electrical),
Hot Mix Division (respondent No. 3). The Superintending Engineer

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(Co-ordination), CPWD (respondent No. 2), who deals with the transfers of Junior Engineers, had transferred the applicant from the Hot Mix Plant, New Delhi, to the President's Estate, New Delhi, and as the applicant had made a representation and the transfer order was cancelled. The applicant is basically a Mechanical Engineer and was working in a Division which was suitable for Mechanical Engineers, namely, Hot Mix Asphalt Plants Division. There are a number of Junior Engineers, much senior to the applicant, working in various Divisions and transferring him to a post on which he has no expertise, cannot be in public interest. The Assistant Executive Engineer recommended his case on 21.1.1989 stating that the sudden transfer of the applicant will hamper the important Government works. The Executive Engineer, thereafter, wrote to the Superintending Engineer (respondent No. 4) recommending the applicant's retention under him in the interest of work. In April, 1989, respondent No. 2 issued general orders of transfer in respect of 76 Junior Engineers (Electrical), but these were not circulated to the Divisions and no transfers and postings took place in pursuance of the said orders (Annexure A-4 to the application) and the applicant and others covers in the said order, were never relieved from their postings and joined at the next places of postings. On 14.6.1989, respondent No. 2 directed one Shri Gurmeet Singh, Junior Engineer (Electrical) to relieve the applicant on the assumption that he had already been transferred

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to the Food Storage Division, Ludhiana, on the basis of the orders dated 4.4.1989. The applicant maintains that the contentions and justifications raised by respondent Nos. 3 and 4 against the earlier order of transfer of the applicant from the Hot Mix Division, were in existence and he was not, therefore, liable to be transferred. Making a forceful plea that frequent transfers were disturbing the functioning of the Hot Mix Division, respondent No. 3 informed respondent No. 4 that the applicant could not be relieved in the interest of Government work. However, the Superintending Engineer (Coordination) (respondent No. 2) is insisting on his relief. The case of the applicant is that there are many persons with longer stay and much more senior to the applicant, who are not being disturbed and he is being singled out for discriminatory treatment, that the transfer order in the mid session will disturb the whole family, and that the applicant, being a diploma holder in Mechanical Engineering, and being employed in a job involving expertise in Mechanical Engineering, would be a mis-fit on the Electrical side. He has also stated that he has been allowed to undertake higher studies in advance computer course recently, which he has done only for three months so far, whereas the duration of the course is two years. The applicant has already deposited huge amount with the Institute (I.C.S.), and his transfer will mean that the entire money would be wasted.

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3. The respondents, in their reply, have stated that the normal tenure of a Junior Engineer is about four years, whereas the applicant has been in Delhi for 14 years. The orders of transfer issued by respondent No. 2 are according to the seniority of stay of the transferees. It has been clarified that there is no difference between Mechanical and Electrical Diploma holders in the C.P.W.D. They are recruited through the same channel and a common seniority is maintained for both Mechanical and Electrical Junior Engineers.

The applicant was transferred alongwith others in April, 1989 and these orders were duly circulated. There is an endorsement at the bottom of the order dated 4.4.1989, showing that this was circulated to all Executive Engineers concerned. Earlier, the applicant was transferred within Delhi involving the work of mechanical type but the same was cancelled only on the representation of the applicant. He has not been singled out but as a large number of Junior Engineers have since been relieved and others are in the process of being relieved, it cannot be said that the applicant has been given discriminatory treatment. It has also been stated that the permission granted to the applicant for pursuing the advance computer course does not mean that he will not be transferred when exigencies of service so required.

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4. The learned counsel for the applicant, Shri P.P. Khurana, insisted that the respondents in their counter have stated that the applicant was the senior-most Junior Engineer working in Delhi and this is a false statement as at least, 10 persons, named in the rejoinder filed by the applicant, are senior to him in Delhi and the transfer is, therefore, clearly arbitrary and mala fide. The transfer of the applicant cannot be in public interest although the transfer order says so, because as stated by respondents 3 and 4, his retention in the Hot Mix Division at Delhi would be in public interest. Besides, no public interest can be served by shifting the applicant to a job of which he has no expertise. He said that it is clearly pointed out by respondent No. 3 that the circular dated 4.4.1989 transferring a number of Junior Engineers was not received in their office and now, the transfer will mean disturbance of children's education as at this stage, it is not possible to get admission in schools at Ludhiana.

5. Shri P.H. Ramchandani, Sr. Central Government Standing Counsel, said that it should be appreciated that there is not one but at least three transfer lists issued on 4.4.1989, 12.5.1989 and 9.8.1989. In fact, Government have taken a policy decision that those Junior Engineers who have been continuously serving in Delhi for more than 10 years should be posted out. It may be true that the applicant may not be the senior-most Junior Engineer in Delhi but he is among the senior-most Junior

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Engineers who have been in Delhi for more than 10 years. The Superintending Engineer (Co-ordination) is getting lists of such persons from various Divisions and those who have been in Delhi for more than 10 years and have not yet been transferred, would also be shifted very soon. He said that if the transfer of the applicant is stayed on the ground that there are more senior people than him at Delhi, a large number of Junior Engineers who have put more than 10 years' service in Delhi but are junior to the applicant, will also resist their transfer and the policy of the Government that persons who have done 10 years in Delhi, should be moved out of Delhi, will be jeopardised. He also said that since a very large number of Junior Engineers are involved, the Government, in its Office Memorandum dated 12.7.1989, have constituted a 'Hard Case' Committee where the cases involving great hardship would be considered. This Committee has already rejected representations of 25 Junior Engineers, after consideration, but the applicant has not made any representation to the 'Hard Case' Committee and come to the Tribunal. Shri Ramchandani emphasised that the court may not interfere with the policy decision of the Government that persons who have overstayed in Delhi should be moved out, otherwise this will create a lot of administrative problems. He cited two cases of the Supreme Court to back his plea that transfer is an incident of service and unless it is clearly arbitrary, it should not be interfered with by courts. In the

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case of Union of India & Ors. vs. H.N. Kirtania,

Judgments Today 1989 (3) SC 132, the Supreme Court

has held that Central Government employees working on

the transferable posts, are liable to be transferred

from one place to the other in the country and such

transfers should not be interfered with unless there

are strong and pressing grounds rendering the transfer

order illegal. The Supreme Court has held that such an

officer has no legal right to insist for his posting

at any particular place of his choice. Transfer of a

public servant made on administrative grounds or in

public interest should not be interfered with unless

there are strong and pressing grounds rendering the

transfer order illegal on the grounds of violation of

statutory rules or on ground of mala fides. Shri

Ramchandani said that in this case, there is no mala fide

as the Superintending Engineer is only following the

Government policy of transferring Junior Engineers who

have been in Delhi for more than 10 years. In another

case of Gujarat Electricity Board and another vs.

Atma Ram Sungamal Poshani - Judgments Today 1989 (3) SC 20,

the Supreme Court has held that transfer is an incident of

service and the transferee can, at best, make a

representation against the transfer order for consideration

by the appropriate authorities but he cannot refuse to

go on transfer.

6. Shri P.P. Khurana, learned counsel for the applicant, took objection to Shri Ramchandani's arguing outside his pleadings. He said that in the written counter filed by the respondents, it has been clearly stated that the applicant is the senior-most Junior Engineer in Delhi, which is incorrect and nowhere, it has been mentioned that there has been a change in policy saying that persons over 10 years stay in Delhi would be moved out. He also said that in the office of the applicant itself, there is a more senior Junior Engineer who has not been transferred so far and, as such, the present transfer of the applicant is clearly arbitrary or without any rationale. He said that the applicant, who is a handicapped person and who has joined the computer course, should be allowed to continue in Delhi, if not for long, at least till April or May, 1990 so that he is not disturbed in his children's education, medical treatment and pursue the computer course, at least for some time.

7. I have gone through the pleadings and the arguments on both sides. While it is true that in the counter, it has been mentioned that the applicant is the senior-most Junior Engineer in Delhi, it is also a fact that he has been in Delhi for 14 years continuously and cannot claim to remain in Delhi for any length of time. If the transfer is made in public interest, as stated by the Sr. Standing Counsel for the respondents, it will be very difficult to interfere with the same, especially

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when a very large number of Junior Engineers have been transferred in pursuance of a policy decision taken by the Government. In the circumstances, the transfer order cannot be interfered with and has to be rejected.

8. In view of the statement made by the learned Sr. Standing Counsel for the respondents, that a 'Hard Case' Committee has been constituted to go into the hardships involved in the large scale transfers of Junior Engineers, the applicant may make a representation before this Committee but it will be for the competent authorities to take a decision in such matters. I will leave this matter to the authorities to decide.

9. The application is disposed of accordingly. Parties to bear their own costs.

B.C. Mathur
(B.C. Mathur)
Vice-Chairman.

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