

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1439 of 1989 198
T.A. No.

DATE OF DECISION 4.8.1989

All India MES Civil Engineers Association Applicant (s)

Shri M.C. Juneja Advocate for the Applicant (s)

Versus
Union of India & Others Respondent (s)

Mrs. Raj Kumari Chopra Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. B.C. MATHUR, VICE- CHAIRMAN.

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 the President, All India MES Civil Engineers Association and Shri H.S. Kohli, General Secretary of the same Association against impugned orders dated 7.7.1989 passed by Respondent No. 4, Garrison Engineer, R&D, Delhi, against the applicant No.2 not being allowed to rejoin duty although his transfer has been deferred by the Chief Engineer, Western Command, MES, Chandimandir, Respondent No.2. The learned counsel for the applicant stated that the present OA may be restricted to applicant No.2 who is the affected party.

2. The case of the applicant, Shri H.S. Kohli, is that he is the General Secretary of the All India MES Civil Engineers Association which has been allowed by the Army Headquarters all the concessions and facilities extended to recognised associations, for redressal of grievances of Government servants represented by the Association. According to the Government of India,

Ministry of Home Affairs, Memo No. 27/3/69-Est (E) dated 8.4.69 (Annexure A-4 to the application), the Chief Executive/General Secretary of the Association is entitled to be granted the facility of posting in an office at the headquarters of the Association and as such he is entitled to remain at Delhi/New Delhi/Delhi Cantt. The applicant continues to hold the office of the General Secretary until next elections of Office Bearers due in August, 1989. Respondent No. 2 issued orders for his transfer to Bhatinda on 17.4.89. The Association represented to Respondent No.2 for deferment of the move till next elections in August 1989, with copies to Respondent Nos. 3 and 4, but Respondent No. 4 issued movement order in respect of the applicant on 19.4.89 without waiting for the decision from Respondent No.2 on the representation of the Association. When copy of the Movement Order was given to the applicant, he wrote on the reverse of the Movement Order that in view of the Association's letter to the Chief Engineer, Western Command, and since there was no reply, therefore, as advised by his Association, he was unable to accept the Movement order and proceeding on leave till a decision is received by the Association.

3. Respondent No. 4 struck off strength (SOS) the applicant on the issue of the order itself, namely, 19.6.89 without any advances of TA/DA and pay while in respect of another person, Shri Ram Lal, the SOS was fixed a few days later and he was also allowed TA/DA etc. as normally admissible under the rules. In two other cases, the orders were issued more than a year ago, but they have not been struck off/^{the} strength so far. According to the applicant, the action of Respondent No. 4 in striking him off the strength on 19.6.89 without waiting for the decision of Respondent No. 2 is malafide and ^{discrimina-} tory, intended to damage the prestige of the Association and demoralise its constituents. Respondent No. 2 deferred the move of the applicant till 30.8.89 vide a Telex Message (Annexure A-8 to the application). On receipt of the telex message, the applicant reported himself for duty to Respondent no. 4 on 6.7.89, but he was not allowed to rejoin duty on the ground that he

had already been struck off the strength. It has been pointed out by the applicant that in his letter dated 30.6.89 (Annexure A-12) addressed to Respondent No.4, the CWE (P) Bhatinda had stated that the applicant was borne on the strength of Respondent No.4 and that the move had been deferred by Respondent No. 2 who had issued the original order of transfer. The claim of the applicant is based primarily on the consideration that his transfer from Delhi to Bhatinda is denial of the vested right to the Chief Executive/General Secretary of the Association and is not only infringement of Ministry of Home Affairs Memo dated 8.4.69, but also a blow to the fundamental right enshrined in Article 19(i)(C) of the Constitution of India relating to formation of Associations or Unions because no Association or Union can function without its Chief Executive being available at headquarters. Thus the transfer order infringes the fundamental right of the applicant.

4. The respondents in their reply have mentioned that the applicant has been working in Delhi since 1979 and has been transferred to Bhatinda in his due turn in the administrative interest and exigencies of service in accordance with the guidelines/policy on the subject. As transfer is an incident of service and it is for the administration to decide how to deploy their employees, the courts should not interfere in such matters. The applicant's name was struck off from the pay rolls of Respondent No. 4 on 19.6.89^{and} was relieved forthwith on the same day and he handed over charge to his successor on that very day, but filed an application nearly one month after handing over charge praying that he be allowed to continue in his post till 31.8.89. The applicant did not reveal this vital fact of handing over charge to the Tribunal and got an order dated 21.7.89 from the Tribunal that he should be allowed to continue in his old post till 31.8.89 with all financial benefits attached thereto and thereafter allowed to proceed on transfer alongwith necessary advances.

5. According to the respondents, transfer of the applicant is not a service matter as the applicant has exploited the name of the Association which under the relevant rules of the Employees' Association do not permit individual personal cases to be taken up by an Association. The Association can take up only a general cause before a court of law. The applicant who has been in Delhi since 3.10.79 had been working with Respondent No. 4 since 15.5.86 and the order of transfer to Bhatinda dated 12.4.89 clearly shows that two years of protection upto 31.5.89 had already been given to the applicant. Only after availing this two years' protection, he was to move by 15.6.89 to Bhatinda. Accordingly, his successor reported to the Garrison Engineer, Respondent No. 4, on 16.6.89 and he was relieved on 19.6.89 after handing over his charge to his successor, Shri Ranjit Singh. It has been stated in the counter filed by the respondents that the applicant was holding a sensitive appointment dealing with contractors and matters connected with drafting of tenders and finalisation of bills and rates etc. The tenure of a Surveyor Assistant Grade-1 at Garrison Engineer's office is for a period of 2-1/2 years as per the policy and as the applicant had completed three years, he has no right to continue in that post any further.

6. ^{Mr R.K. Gupta states} ~~that~~ ^{however} Respondent No.2, ~~however~~ showed a lot of consideration and grace to the applicant by attaching him at CE RC PO (Annexure R-II to the counter). This order was issued on 6.7.89. The applicant was fully aware that Respondent No.2 had agreed to the Association's request to allow applicant to be at Delhi till 31.8.89 but this fact was concealed and ^{he} misguided the court stating that applicant No. 2 was "stranded" and thus got an order to rejoin duty. The CE RCPO's office where the applicant is attached for duties upto 31.8.89 is very near his house in Sarojini Nagar. As regards TA/DA on transfer, the same would be paid to the applicant when he applies for the same and this is not automatic. The applicant is using the Association to pressurise Respondent No. 4 to rejoin duties in order to achieve his goal to continue in the sensitive appointment

which cannot be allowed. It has been said that in obedience to the court's order, the applicant has been allowed to attend office from 21.7.89, but no charge has been given to him because already the duties are being carried out by his successor with effect from 19.6.89. The learned counsel for the respondents said that the applicant had handed over charge to Shri Ranjit Singh on the 19th June, but he misrepresented facts to the court by concealing this material fact. The applicant^{AV} was filed one month after handing over his charge when his successor was already working in that office and the applicant knew about his successor, Shri Ranjit Singh, working ⁱⁿ his place. He could not be allowed to work in the same post till 31.8.89 and having already got two years protection, he cannot claim any further relief. She emphasised that it is not a service matter but a matter of Association and Union activities cannot be considered as a service matter as defined in Section 3 of the Administrative Tribunals Act. She said that the Chief Engineer has already allowed the applicant to continue in Delhi till August, but he must not be allowed to continue here after August under any circumstances. The learned counsel for the respondents also stated that when the correct position was intimated to the Chief Engineer, Respondent No. 2, that the applicant had already been struck off the strength of the Garrison Engineer, he cancelled his earlier orders and allowed SOS on 30.8.89 but agreed that he may remain in Delhi till August 30, 1989 without financial benefits and allowed to continue at Delhi till 30.8.89.

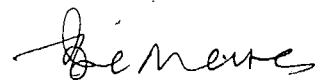
7. The learned counsel for the applicant said that there has been no concealment of any fact by the applicant. He has never handed over charge of his post to anyone as prescribed under the rules. He said there is no handing over report by the applicant as is done normally. Respondent No. 2 had issued the message in Annexure 8 on 26.6.89 which was received by the applicant only on the 6th July. As such, he immediately reported for duty, but he was not allowed to join. The applicant moved the court on 13.7.89 as he was waiting for a reply from

the competent authority before that. Annexure R-II was received by the Association on 17.7.89 as proved by the postal marks on the envelope and, therefore, he had no idea about this message till the time he had filed the OA. The learned counsel for the applicant, Shri Juneja, also said that the tenure for a sensitive post is three to four years as prescribed by the Chief Engineer and not 2-1/2 years. He also pointed out that when an individual who is protected against transfer is to be moved, it requires the approval of the Engineer in Chief as is clear from the guidelines. He said that transfer is a service matter and the Association is not meant for purely private work of its members but for redressal of the grievances of Government servants who are its members. He said that the right of the applicant to stay in Delhi has been recognised by Respondent No.2 by staying deferment of his movement till 31.8.89 and since the applicant has a vested right to be posted at the headquarters, he cannot be moved out. He further said that keeping him at Delhi while showing him against the post at Bhatinda the applicant would lose financially as he would not get HRA at Delhi rates and there will be no TA/DA for Bhatinda and no DA for working at Delhi. He will also have to vacate the house within two months of the transfer and there is hardly any time left for this. He said that Respondent No.2 has passed orders of transfer on being pressed by Respondent No. 3. He said that the applicant has been posted to Bhatinda on repatriation but as he was not on deputation, the question of repatriation would not arise. He also said that he has not been paid any salary for the month of July although the same has been paid for the month of June.

8. I have gone through the pleadings and carefully considered the arguments on both sides. There are guidelines that Chief Executive/General Secretary of the Unions be granted the facility of seeking transfer to the headquarters of the appropriate head of administration as far as possible. The word "as far as possible" does not give a legal right to a General Secretary

to continue at the headquarters of the Association under all circumstances although by convention such facilities are allowed to General Secretaries of recognised Unions/Associations. It is not necessary to go into the question whether the applicant is the General Secretary of the recognised Union, but the relevant point is whether a General Secretary has a right to remain in Delhi indefinitely. The applicant has been in Delhi for about 10 years and in the office of the Garrison Engineer, R&D, for three years. It is not disputed that the applicant is holding a sensitive post. If the guidelines are to keep a person on a sensitive post for three to four years, the respondents can move a person when a person has worked for about that period. The present transfer order is in exigencies of service. It is also not open to an employee not to comply with the orders given by the competent authority and to write that he is unable to accept the movement order pending decision on the Association's representation and that he would proceed on leave till a decision was taken. A Government official has to apply for leave in a proper way and the same has to be considered by the competent authority. I, therefore, hold that the respondents have a right to transfer the applicant in public interest and that there is no need for the court to interfere in this matter. However, since the Chief Engineer - Respondent No. 2 - has already agreed to let the applicant continue in Delhi till 31.8.89 and according to the revised orders, he has been allowed to remain in Delhi on the strength of Bhatinda, the intention appears to be to let the applicant remain in Delhi till the end of August. As such, it is directed that he may not be moved out before August 31, 1989. It would be also unfair to deny him the financial benefits. It is, therefore, directed that while the transfer order of the applicant to Bhatinda should stand, his headquarters may be kept at Delhi till 31.8.89 in the office of CE, RCP, New Delhi, and he must report there immediately. He would be entitled to retain his house at Delhi and also get HRA etc. as if his headquarters are at Delhi till 31.8.89. The respondents may also disperse

the salary of the applicant for the month of July, 1989, immediately. His salary for the month of August should also be paid to him on time. The application is disposed of accordingly. There will be no orders as to cost.


(B.C. Mathur)
Vice-Chairman