

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 923/89 198
T.A. No.

DATE OF DECISION 20-9-1989

Shri O.P. Verma Applicant (s)

Shri Sant Lal Advocate for the Applicant (s)

Versus
Union of India and others Respondent (s)

M.B. Verma Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.V. Krishnan, Administrative Member.

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 application is directed against the orders of the Director General (Works) Central Public Works Department, New Delhi. (Respondent No.2) transferring the applicant from Construction Division X, New Delhi to Srinagar Construction Division.

2. The brief facts giving rise to this grievance are as follows:-

2.1 At the relevant time, the applicant was an Assistant Engineer (Civil) under Respondent No.3. He was transferred, in public interest with immediate effect, along with many others, by an order dated 6-5-1987 (Annexure A-I) of Respondent No.2 from New Delhi to Srinagar, as stated above.

2.2. The applicant sent a representation dated 1-6-1987 (Annexure A-4) against the order, though respondents allege that the letter does not appear to have been received

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and he
by them. Nevertheless, nothing was heard ~~of~~ continued
on his post at New Delhi.

The applicant adds that Shri V.K. Seth who
was to take over charge from him at New Delhi by the same
order, was also accommodated in some other part.

2.3. However, by his order dated 3-4-1989
(Annexure A-2), the Respondent No.2 posted Shri K.K. Mittal
Assistant Engineer, to the Construction Division X, New Delhi
vice the applicant, who, it was stated therein, already stood
transferred by the earlier order dated 6-5-1987, i.e.
Annexure-1. The Chief Engineer was directed to relieve
the applicant with a direction to report to Srinagar
Construction Division.

2.4. The applicant made a representation dated
5-4-1989 (Annexure A-5) to Respondent No.2 against the
transfer on compassionate grounds of being ~~requested~~ to
look after his father aged 85 years and his being due to
superannuate on 31-9-1991. He also requested Respondent No.3
not to effect the transfer till his representation was disposed of.
However, the Executive Engineer directed the applicant on
24-4-1989 (Annexure A-3) to hand over charge to one
Shri S.C. Mittal by 25-4-1989.

2.5. Apprehending the implementation of his
transfer, the applicant approached this Tribunal with
the application to quash the orders at Annexure A-1, A-2
and A-3.

3. The main grounds on which the transfer is
assailed, are as follows:-

- i) The original order dated 6-5-1987 (Annexure-1)
was not in public interest but based on
extraneous considerations.

ii) The order dated 6-5-1987 had become inoperative as soon as Shri V.K. Seth, who was to have relieved him at Delhi, was accommodated elsewhere.

iii) The transfer is malafide, as the Executive Engineer was annoyed by the complaints he had made against Shri M.K. Sinha, Junior Engineer, Civil.

iv) Another officer, similarly placed, Shri J.R.Guru, was transferred by the same Annexure I order out of Delhi, but he has since been retained in Delhi.

v) It is improper to transfer him when he has to retire in 1991.

vi) The authorities have not considered his request that he be retained in Delhi on compassionate grounds, as he has to look after his old father and he had lost his mother recently.

4. The respondents have filed a detailed reply, asserting that the applicant is not entitled to any relief and his application has to be rejected. This will be considered presently.

5. I have heard the learned counsel on either side and perused the records carefully.

6. The ground mentioned at (iii) to (vi) in para 3 supra may be disposed of first before the more weighty grounds urged are considered.

6.1 The plea of malafide has not been established by the applicant. He has not made it clear how his complaint against one Junior Engineer has provoked

Respondent No.2 to pass the impugned order Annexure-A-2.

6.2 The Respondents have explained that as Shri J.R. Guru is one of the office bearers of the C.P.W.D. Junior Engineers Association, his transfer out of Delhi was cancelled. The applicant therefore cannot compare his case with that of Shri Guru.

6.3. The ground at (v) and (vi) of para 3 supra are not for this Tribunal to consider. They are matters which have to be addressed to the Respondents, who alone can pass suitable orders.

I am therefore of the view that the transfer cannot be assailed on these grounds.

7. The only two grounds which have substance are at S.No. (i) and (ii) of para 3 supra. It is surprising that a person who was transferred from New Delhi in May 1967 was allowed to remain at New Delhi till April, 1989/ too, not on the direction of this Tribunal but on the volition of the Respondents themselves. It is on that basis that these grounds have been urged for consideration.

8. In their reply, the Respondents have made the following statements:-

"The applicant had been in Delhi since 1973. In 1987 he had completed 14 years in Delhi and as such being one of the longest stayees in Delhi and ordered to be transferred to Srinagar Central Division, C.P.W.D. vide this Office Order No.113 of 1987. However, he could not be relieved for joining duty at Srinagar immediately as it was considered necessary in the Public interest to utilise his service at Delhi upto March, 1988. The applicant should have got relieved for joining duty at Srinagar in April, 1988

but notwithstanding that the transfer orders issued in May 1987 were still valid, he managed to remain in Delhi till first week of May, 1989.

"The applicant had requested the Executive Engineer, Construction Division X that he may not be relieved pending decision on his representation dated 4-5-1989. He was however, deemed to have been relieved from Construction Division No.X on 4-5-1989 AN as his substitute reported for duty on/been informing Executive Engineer concerned that he was preparing handing over notes and showing sites to his successor, yet he proceeded on medical leave w.e.f. 5-5-1989 (FN) without actually handing over charge."

9. It is necessary to underline the fact that the applicant was transferred by the order dated 6-5-1987 (Annexure 1) stating that the Respondent No.2 had decided on the transfers and postings referred to therein "with immediate effect in public interest" (emphasis supplied). It is strange that nothing was done to relieve the applicant till April 1989, i.e. for nearly two years. This was not due to the representation made by the applicant on 1-6-87 (Annexure A.4). For, the respondents do not appear to have received this representation.

10. The Respondents have stated/that the applicant could not be relieved "immediately" i.e. upto March, 1988. In other words, though the transfer was made with immediate effect in ~~the~~ public interest by an order dated 6-5-1987, he could not be released "immediately" i.e. not within a week, a fortnight or a month but for fully 11 months. Comment on the genuineness of the transfer "in the public interest" is superfluous. It is clear that there ~~was~~ no genuine need for the issue of the Annexure 1.

Order of transfer in so far as it concerns the applicant.

11. It is not merely that the applicant could not be relieved "immediately" but that "it was considered necessary in the public interest to utilize his services at Delhi upto March, 1988." This being the case, the applicant should not have been transferred at all in the first instance by the Annexure I order. It is, therefore, legitimate to draw a conclusion that the Annexure I order, in so far as it concerns the applicant, had been passed, to say the least, without application of mind.

12. The Respondents, it needs to be noted incidentally, have stated that no oral/written orders were issued for retention of the applicant in Construction Division X, New Delhi." In that event, it is not clear ~~how~~ the applicant was retained till March, 1988, "in public interest" despite the transfer order. Whatever be the case, there can be no denial of the fact that the applicant was transferred out of turn by at least about a year.

13. The laxity shown by the Respondents in ~~not promptly~~ relieving the applicant after March, 1988 i.e. after he was retained in New Delhi upto the end of March, 1988 in the public interest, is another matter that is not properly explained. It is stated that the applicant should have got himself relieved to go to Srinagar but managed to remain in Delhi till the first week of May, 1989. One cannot make out whether this statement has been made ~~in all seriousness~~. It was naive to expect the applicant to seek to be relieved from New Delhi to join at Srinagar. If there was a genuine need to fill up the vacancy at Srinagar, the Respondents should have taken effective steps, to push out the applicant from New Delhi, which they miserably failed to do. This circumstance also suggests that

there was no need to fill up the post at Srinagar. Thus, much thought does not appear to have been paid in ordering the transfer of the applicant by the Annexure I order.

14. In these circumstances, it is not open to the Respondents to place reliance on that Annexure I transfer order and, relieve the applicant in May, 1989 to join his duties at Srinagar. It is true that the order itself has not been rescinded and therefore it is technically alive. But as shown above, the order has been passed without any application of mind, and therefore it cannot be sustained. The conduct of the Respondents shows that there was no need at all to issue the order dated 6-5-1987 in so far as it directed the transfer of the applicant immediately in public interest to Srinagar. If the need to fill up the post at Srinagar had arisen afresh and there was a need to transfer the applicant, the respondents ought to have passed a fresh order. They cannot rely for this purpose on an order which is demonstrably shown to have been passed without proper deliberation.

15. In the circumstances, the Respondents cannot contend that the transfer has been made in the exigencies of service and in the interest of administration nor can they contend that is a case where an individual's interest has to be sacrificed in the large public interest. Their reliance on the judgements in B. Varda Rao vs. State of Karnataka 1986 (4) - S.C.C - 131), Kamlesh Trivedi Vs. I.C.A.R (1988 (7) ATC(PB) 253), Pown Raj Vs. Supdt. of P.O. (1989 (2) SLJ 28), Hardesh Kumar Vs. State of Himachal Pradesh (1989(1) ATR 143), Babu Jain Vs. U.O.I. (1988 (6) ATC 196) and Dr. Rameshwar Prasad Vs. Secretary of Health (1989 (1) SLJ 416) will be of no avail, considering the circumstances of the present case.

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16. For the aforesaid reasons, the order dated 6-5-1987 (Annexure A-1), in so far as it concerns the transfer of the applicant from New Delhi to Srinagar, is quashed. As a sequel, the order dated 3-4-1989 (Annexure A-2), in so far as it directs that the applicant should be relieved and asked to report for duty at Srinagar, and the order dated 24-4-1989 asking him to take over charge are also quashed.

17. It is however made clear that this order does not preclude the Respondents from transferring the applicant afresh, if so advised.

18. With the aforesaid directions, this application is allowed. There will be no order as to costs.


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(N.V. KRISHNAN)
MEMBER (A)