

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

Regn. No. OA-1561/88

Date of decision: 10.10.1988

Shri Baljit Singh

Applicant

vs.

Union of India

Respondents

PRESENT

Shri R.L. Sethi

Advocate for the applicant.

Shri M.L. Verma

Advocate for the respondents.

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Hon'ble Shri B.C. Mathur, Vice-Chairman.

This is an application under Section 19 of the Administrative Tribunals Act, 1985 against impugned order No. A-20013/1/86-SDO (HQ)/1838 dated 3.8.1988 passed by Respondent No.2, namely, Deputy Director (PCP), Central Water Commission, New Delhi, regarding transfer of the applicant.

2. The brief facts of the case mentioned are that the applicant was appointed as a Jeep Driver on work-charged basis on 1.8.1972 in connection with work of Irrigation & Power Pavilion at the International Trade Fair, 1972. On conclusion of the Trade Fair, the applicant was continued in the Training Cell of the then CW&PC from 1.6.1973. The Training Cell and the PCP SDO (HQ) constitute one independent unit at the Main Commission and has a distinct entity where the applicant is currently employed since 1.6.1973. The applicant has been transferred from the office of the SDO (HQ), PCP Directorate, C.W.C., New Delhi, to the Central Stores Division, PIO, CWC, New Delhi, which is against the declared policy of transfer within the C.W.C. It has been laid down in CPWD Manual that no transfer of work-charged employees shall be made from one unit to another except in certain circumstances none of which apply in the case of the transfer of the applicant. The details are given in Rule 11.01 of the CPWD Manual Volume III (1984) (Annexure A-6 to the application).

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3. The case of the applicant is that since he is a work-charged employee, he cannot be transferred from one unit to another and as such the order of transfer should be quashed. It is also stated that the transfer will have the effect of placing the applicant at the bottom of the seniority list of circle-level work-charged staff which is not permissible under the normal operation of rules. The transfer order of the applicant has been made in public interest, but the applicant has stated that the reason of 'public interest' is not tenable. He has cited the case of K.K. Jindal Vs. General Manager, Northern Railway & Others, decided by the Principal Bench, where it has been held that once a policy is enunciated, any action not conforming<sup>%</sup> it would prima facie be unsupportable and a very strong case would have to be made out to justify the deviation from the declared policy.

4. The applicant has alleged malafide against Respondent Nos. 2 and 3 as the applicant had incurred their displeasure by not submitting to their will of mis-using Government vehicle for their personal and private visits.

5. The respondents in their reply have stated that the transfer is purely in public interest and the application had become infructuous as the applicant has submitted his joining report on 17.8.1988. This fact was suppressed by the applicant when he obtained ex parte stay orders from the Tribunal on 23.8.1988. As such, the application should be dismissed. In an order of the Supreme Court in Welcome Hotel Vs. State of A.P. 1983 S.C. 1015 it has been held that if a material fact is suppressed from the court, no relief can be given to the applicant. It has been stated that the transfer of the applicant is not outside Delhi, but from one unit to another unit and in the same building.

6. The main justification for the transfer of the applicant is that the applicant was working as a Jeep Driver with the Security Officer of the Commission. SDO (HQs) assists the Security Officer in his job and they have to check the security arrangements of

the offices at odd hours as well as on holidays. For performing this duty, the availability of vehicle is essential. The applicant is the only driver in the unit and he is staying at a far off place near Rewari in Haryana and is not available at Headquarters after the close of office or on holidays. He cannot be called for duty in case of emergency at a short notice. In the reply of the respondents it has also been stated that the applicant was asked to shift to Delhi, but inspite of repeated advice to him, he has not done so and, therefore, it became necessary to get a Delhi-based driver from the Central Stores Division of the PCP Directorate and transfer the applicant to the Central Stores Division. According to the transfer policy, transfer could be effected with the consent of the Chief Engineers of both the organisations and the present transfer order has the approval of both the Chief Engineer (CMO), CWC and Chief Engineer (P&I). It has been clarified that the order of transfer will not disturb the seniority of the drivers and this has already been clarified in office order dated 16.8.1988 which is in partial modification of the earlier order dated 3.8.1988.

7. The learned counsel for the applicant has argued that the transfer has been ordered because of the personal grudge of the respondents as the applicant was not willing to use the jeep for private work of the respondents and their relatives. He also said that once he is transferred, he might be sent out of Delhi because of the grudge against him. He also denied that the applicant was ever asked to shift to Delhi and, in fact, the applicant has shifted to Delhi for quite some time and as such there could be no reason for his transfer.

8. Shri M.L. Verma, counsel for the respondents, on the other hand, argued that the transfer is purely in public interest and the interests of the applicant are safeguarded completely. He does not lose in seniority and is not to be transferred out of Delhi.

9. It is perhaps not necessary to go into the question of his giving a joining report on 17.8.1988 and the circumstances under which he did not join the post, but it is relevant that the transfer is an incident of service as held by the Supreme Court in *B. Varadha Rao Vs. State of Karnataka and Others - 1986 ATC SC 559*.

10. It is true that the CPWD Manual lays down that normally transfer from one unit to another unit cannot be made for work-charged employees and as such under normal circumstances, this transfer could not have been made. However, Rule 11.01 (ii) does allow transfer of an employee from one unit to another in public interest. Although it has been not been specified that such a transfer is temporary, I feel that these are the guidelines which have been considered by the two Chief Engineers. As there are four drivers available with the Central Stores Division, PIO, CWC, and one one with the SDO (HQ), PCP Directorate, it would certainly be useful to have someone who is available in Delhi all the time. It was brought out that the applicant has some lands at Pataudi - about 40-50 KMs away from Delhi - and he goes there on weekends to look after his lands. Technically, it may be true that transfer from one unit to another should not be made, but I feel that these are not mandatory provisions, specially when the transfer does not create any disability to the applicant. His seniority is not affected and he is not transferred away from his previous place of posting, ~~at New Delhi~~. It is not the case that by such a transfer the applicant suffers in any way. The applicant's reason that he is being transferred by the respondents who had a grudge against him, even if it is accepted, perhaps it would be in the interest of the applicant not to work under such respondents. These are administrative matters and I would like to leave it to the Chief Engineers to decide where they would like to utilise the services of the applicant in the best interests of the work.

11. In the circumstances, the application is rejected. There will be no orders as to cost.

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