

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. OA 1710 of 1988

Date of decision: 3.1.1989

Shri G.R. Pathrabe

Applicant

Vs.

Union of India

Respondents

PRESENT

Shri Randhir Jain, counsel for the applicant.

Shri M.L. Verma, counsel for the respondents.

CORAM

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

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Shri G.R. Pathrabe, Executive Engineer, C.P.W.D., against impugned Office Order No. 190 of 1988 contained in order No. 28/3/88-EC-1/84 dated 23/26th August, 1988 (Annexure 'E' to the application) passed by Shri G.C. Tangri, Deputy Director of Administration, C.P.W.D., transferring the applicant from Nagpur Central Division-II, to E.E. (HQ) Assam Central Circle.

2. The brief facts of the case, as stated in the applicant's application, are that the applicant joined the Central Engineering Service as Assistant Engineer on 11.1.1965 and was promoted to the post of Executive Engineer from 29.10.1979. He has an unblemished record of service and has discharged his duties with honesty, sincerity and devotion and was awarded Sainya Sewa Medal in 1969-70. That during his career in the C.P.W.D. the applicant has been transferred from place to place. He worked as Asstt. Engineer Const. Division, New Delhi, from 11.1.65 to 15.1.1967, was deputed to Army under compulsory liability Scheme in operational area from 16.1.67 to 15.1.71 (6 months at Madras and Pune for training, then 1½ years at Lucknow and two years in the field area of J & K during emergency), Asstt. Surveyor of Works at Nagpur from 16.1.1971

8

to 12.9.73 and was posted at Nepal from 21.9.73 to 31.8.77, at Nagpur from 9.9.77 to 17.10.79, at Calcutta from 29.10.79 to 15.3.84 and as Divisional Incharge of Nagpur Central Division No.II from 16.3.1984 onwards. According to the principles laid down in the CPWD Manual governing the transfer of officers, normally a tenure of 3-4 years is to be observed for posting at one particular station and that transfers are to take effect after the end of the financial year or the current academic session. The applicant had to leave for Bombay on 28.8.88 in connection with official duties after intimating the S.E., CPWD, Nagpur, and had to stay at Bombay upto 31.8.1988, as per the original programme.

3. On 27.8.1988 a telegram was received at the Divisional Office, Nagpur, from one Shri Tirunavikkarasu saying that he was taking charge from the applicant on 29.8.88. Since the telegram was in personal capacity, without referring to any official order, and no order was received at the Divisional office, the applicant proceeded to Bombay as per his programme and could return from Bombay only on the night of 1.9.1988. During the applicant's absence to Bombay, Shri V. Tirunavikkarasu gave a letter to the S.E. making false and baseless allegations and asking to assume charge. Although no orders transferring the applicant had been received at Nagpur, nor any written order made by the S.E., still Shri Tirunavikkarasu unilaterally assumed charge in a thoroughly unlawful manner. A copy of the charge report is at Annexure-D. In the charge report Shri Tirunavikkarasu has made a false note that the applicant's whereabouts were not known, whereas the applicant was attending the offices of Chief Engineer/Sr. Architect/S.S.W. at Bombay. In support of this, the applicant has filed copies of programme of function held at Bombay on 30.8.1988 to bid farewell to Shri A.C. Panchdhari then Chief Engineer and two official communications (Annexure 'E' to the application).

Don

8-

4. On his return from Bombay, the applicant learnt about the impugned transfer orders which were received at Nagpur on 1.9.1988 and at Bombay also after 31.8.88. Although the applicant had not known about the impugned transfer order till 2.9.1988, he got some idea about his being transferred from the telegram of Shri V. Tirunavukkarasu and promptly made a representation against the same which was recommended and forwarded by the S.E., N.C.C., to C.E. West Zone Bombay on 28.8.1988. The applicant has alleged that the respondents at Nagpur are acting in a malafide manner to harass him. Although he had gone to Bombay in connection with official business with full knowledge and permission of the S.E., still Shri Tirunavukkarasu was allowed to assume charge saying that the applicant's whereabouts were not known and that too without receipt of any official transfer orders. The impugned transfer orders have been made to accommodate Shri V. Thirunavukkarasu who had been transferred to Trivandrum Central Circle on promotion only on 29.7.88. The impugned order transferring the applicant is contrary to all norms of administrative justice and made in flagrant disregard of the legal provisions and is liable to be quashed and set aside. The grounds urged by him are that before making a transfer order, a prior readiness notice is invariably given to the officer concerned, transfers are normally made at the end of the financial year or the current academic session and that no transfer can be order^{ed}/mid-term which can ~~only~~ ^{be} ordered only when necessitated due to some specific project or on account of death, retirement etc. and that he has ^{two tenures each of} already done ^{more} than four years in hard areas and cannot now be posted to hard area again.

5. The respondents in their reply have stated that the application is misconceived and is not maintainable under law and that no cause of action has accrued in favour of the applicant against the respondents. The applicant has

V

been holding a transferable post and no legal right is vested in the public servant to claim "not to be transferred" and that the transfer is not a stigma or a penalty. The matters of transfer are outside the purview of the courts and Tribunals as the administration is the best judge to utilize the services of the Government servants. Posting and transfer are matters primarily within the discretion of the competent authority and the scope of the interference by the courts is very limited. They have cited the cases of E.P. Royappa Vs. State of Tamil Nadu - 1974 (1) SLR 497 - and R.K. Gupta Vs. U.O.I. 1882(2) SLJ (F.B.)(1) - where it has been held that so long as the transfer is made on account of exigencies of the administration and is not from a higher post to a lower post with discriminatory preference of a junior for the higher post, it would be valid and will not attract articles 14 and 16 of the Constitution of India. They have also cited the case of C.K. Chack Vs. Dy. Director General 1988 (2) SIJ (MAD) 330 where it has been held that transfer in administrative interest can be ordered irrespective of the age of the employee. The transfer of the applicant is in the exigencies of the service and for the administrative reasons and as such there is no malafide - Nirmanda Bardhan Vs. G.M. NEF Ly. 1986(2) ATR 94 and B. Vardha Rao Vs. State of Karnataka 1986(4) SCC 131.

6. According to the respondents, the applicant is an officer of average performance and has been called upon to improve his performance ever since he joined the Nagpur Central Division No.II (Annexures R-4 to R-13). The respondents do not deny the details of postings except posting in Nepal and Calcutta. The posting at Nepal is a posting in a foreign country and there is a big clamour for going to Nepal and officers willingly volunteer themselves because of lot of facilities and allowances in that posting. Similarly, Calcutta posting is not considered as hard area. Besides, the applicant had gone to Calcutta on promotion from A.E. to E.E.

7. As E.E., Nagpur Central Division No.II, his work load was sought to be built up by transferring maintenance work from Nagpur Central Division No.1, but the applicant refused to take over maintenance load with the result the Chief Engineer had shown his displeasure in writing (Annexure R-9) and the S.E., Nagpur Central Circle, had also called his explanation (Annexure R-8).

8. On 27.8.88, the applicant went to the residence of S.E. and asked permission to meet CE personally at Bombay for his retention at Nagpur for some more time as he had learnt about his impending transfer from Nagpur. Since the C.E. was not available ^{over phone,} the S.E. directed the applicant to contact the C.E. and only then go to Bombay and that even if he went to Bombay, he must return on or before the 30th August to clear all rebate bills of contracts and pay^{ment} of W.C dues. On the 28th, the applicant again met the S.E. and got his application for retention forwarded from SE. The applicant was again instructed to come back before 30th August 1988 and also go to Bombay only after CE's permission, which the applicant did not take. The applicant's intention was to plead personally for his retention at Nagpur. The applicant was well aware of his transfer after he received a telegram from Shri V.T. Arasu on 27th August which was sent to him to remain in readiness to hand over charge. Annexure "G" is a clear proof that he was aware of the fact of his transfer. On receipt of the telegram, he should have remained at Nagpur to hand over charge to his successor, but instead he rushed to Bombay for pleading his case for retention at Nagpur and did not take the permission of CE before leaving Nagpur even though specifically^{to} instructed by S.E., Nagpur. Telephonic instructions were given to the applicant through the CE's P.A. to return to Nagpur even before 30th August, 1988. Even the C.E. personally told the applicant on 29th to go back to Nagpur immediately, but the applicant did not return even on 30.8.88, as promised by him, and there was no alternative for his successor but to assume charge of

12

the Division. It is amply clear that the SE contacted the applicant on telephone for returning to Nagpur immediately for handing over charge and the Chief Engineer at Bombay also instructed him through P.S. to return to Nagpur for handing over charge. This fact is amply proved by the statements of various officers enclosed as Annexure R-1 to R-3.

The applicant has come to the Tribunal without exhausting all the channels and has not even waited for decision on his representation dated 27.8.88. The respondents have prayed that the applicant should not be given any relief as he has tried to flout all rules and regulations for his personal interests and that the application may be dismissed.

9. I have carefully gone through the application, the reply by the respondents and the rejoinder as well as the arguments put forward by the learned counsel for the applicant and ~~the~~^{pr} respondents.

10. The main case of the applicant is that his transfer from Nagpur to Guwahati is against the guidelines prescribed in the C.P.W.D. Manual, that he has been transferred to accommodate another officer, Shri V.T. Arasu, and that he has been singled out to be posted in a difficult area which he has already done twice whereas 55 others who have been transferred alongwith him have been given soft postings even though his Superintending Engineer had suggested his posting at Nagpur itself in a different office. Shri V.T. Arasu was transferred to Trivandrum on 29.7.88 on posting, but he did not comply with that order and has been posted to Nagpur in place of the applicant. It clearly shows that his transfer is malafide to accommodate Shri Arasu at Nagpur. The learned counsel for the applicant stated that various documents have been fabricated later on as it would be noted that instead of writing the month August, the dates on various documents are 29/9, 30/9 and 31/9. According to the applicant, Guwahati is a hard area and he quoted from Swamy's Handbook of 1988 which shows that Assam is a remote

Ban

13

locality for Central Government officers where some concessions are allowed. He also said that Nepal was a hard area as his family was not allowed to go there for a year and a new Division had to be opened there.

11. Shri M.L. Verma, learned counsel for the respondents cited three cases in favour of the respondents.

These are:

1. 1988(7) ATC 253 - Kamlesh Trivedi Vs. ICAR -
decided by the Principal Bench of the Tribunal.
2. 1988(6) ATC 196 - Babulal Jain Vs. U.O.I. -
decided by the Jabalpur Bench of the Tribunal.
3. 1988(6) ATC 218 - Man Mohan Singh Vs. U.O.I.-
decided by the Allahabad Bench of the Tribunal.

In these judgments it has been held that where transfers are in exigencies of service, the courts should not interfere. He said that most of the transfers in the present case were on promotion. Shri Verma said that as the applicant had praised his ^{own} work, therefore, it became necessary to reply in the counter that he was an ordinary officer, otherwise there was no need of saying it. He said that transfer was not a penalty and that there was a vacuum at Guwahati from where an Executive Engineer had been transferred on promotion and it had to be filled up by someone. The transfer of the applicant was, therefore, in public interest and exigencies of service.

12. Shri Randhir Jain, learned counsel for the applicant, ^{said} that nothing adverse had been communicated to the applicant at any time and that Annexures 3 to 15 had been filed for the purpose. He said that the applicant had no fancy for the Construction Division at Nagpur and he was quite willing to go to the Valuation Division at Nagpur as suggested by his Superintending Engineer. He also quoted K.K. Jindal's case where a transfer, which was punitive in nature, was considered bad. If there were complaints against the applicant, he could not be transferred out, but proceedings should have been started against him.

14

Transfer was, therefore, a short cut method of avoiding proceedings. According to the C.P.W.D. Manual, transfers should be avoided during mid-academic session except on administrative reasons. He also cited the following three cases which establish that administrative instructions are required to be followed by the administrators themselves and that administrative action should be just and fair:

1. AISLJ 1983(1) 45 - Y. Ganga Raj and others Vs. The Railway Board and Others - A.P. High Court.
2. 1984 Maharashtra Law Journal 627 - Seshrao Nagrao Umap Vs. State of Maharashtra & Others - Bombay High Court.
3. ATR 1986 (1) CAT 304 - K.K. Jindal Vs. G.M., Northern Railway & Others - decided by the Principal Bench.

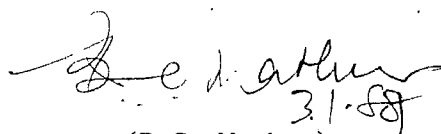
He also cited the case of Kamlesh Trivedi Vs. ICAR cited by the respondents which does not go against the applicant.

13. I am of the opinion that there has been no malafide in this case. The Superintending Engineer has nothing to do with the transfer order of the applicant. Had he been prejudiced against the applicant, he would not have forwarded his application to the Chief Engineer for adjusting him at Nagpur itself. It is also not made out how the Superintending Engineer or the Chief Engineer or anyone else was interested in getting Shri Arasu at Nagpur. There seems to be no application from him for getting a posting at Nagpur. It is not known why his transfer order for Trivndrum was cancelled, but that is an administrative matter to be decided by the respondents. The applicant has stayed at Nagpur for about four years whereas a normal tenure of an officer is three years or so, although many officers may remain at one place for a longer period. If there was a vacuum at Guwahati and the respondents feel that the post at Guwahati must be filled up, someone has to go and if

Don

the respondents feel that the applicant was the right person to be sent there, this may not be questioned by a court of law. It is on record that the applicant was asked to come back to Nagpur from Bombay by the 30th August, 1988 and when he did not come, the Superintending Engineer might not have known whether he was still in Bombay or had gone to Delhi to plead his case. I see no malafide in the transfer and as the position at Guwahati had to be filled up, the transfer of the applicant appears to be routine. In the circumstances, the transfer order cannot be ^{held to be void} ~~violated~~ and the application is liable to be rejected. In the circumstances, the application is dismissed with no orders to costs.

13. There is no doubt that the applicant would be inconvenienced due to his transfer during the mid-session of his children's education. It is, however, left to the respondents to decide whether they would like to keep the applicant at Nagpur for sometime more or ask him to proceed to Guwahati immediately.


(B.C. Mathur)
Vice-Chairman