

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

OA No. 28/87

DATE OF DECISION 31.1.1990

Shri S.M. Verma

Applicant

Versus

Union of India

Respondents

Shri M.L. Verma

Advocate for the Respondents

CORAM:

The Hon'ble Mr. T.S. Oberoi, Member (J)

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

(of the Bench delivered by the Hon'ble Mr. I.K. Rasgotra, Member (A)

Shri S.M. Verma, Executive Engineer, CPWD filed this application on January 5, 1987 seeking relief against the impugned order No. 28/3/86-EC I Vel.6 dated 11.12.1986 issued by Director General (Works), CPWD, New Delhi.

2. The facts of the case are that the applicant was posted to Guwahati, Assam as Executive Engineer (Valuation), Income Tax Department on 13.6.1983. The tenure postings in the North Eastern region are regulated in accordance with OM No. 20014/2/83-E.IV dated 14th December, 1983. The Executive Engineer (Valuation) works under the administrative control of the Inspecting Assistant Commissioner of Income Tax, Range-II, Guwahati while the general supervision in technical matters etc. is provided by the Superintending Engineer (Valuation), Income

Tax Department, Calcutta. The applicant completed his three years tenure in July, 1986 when his transfer orders were issued by the respondents vide order No. 179 dated 10.7.1986 for posting him as Executive Engineer (Inventory Control), New Delhi, simultaneously transferring Shri Srichand-II (on promotion from New Delhi to Guwahati vice the applicant). The posting order of Shri Srichand-II to Guwahati was subsequently cancelled by the respondent vide order dated 1.9.1986. Subsequently no orders were issued for a substitute vice Shri Srichand-II. The applicant met with an accident while proceeding on duty to a station outside Guwahati on 6.2.1985 and therefore requested for permission to stay for some more time in Guwahati vide his letter dated 3.5.1985 addressed to DG(W), CPWD. He continued to be on leave consequent to the injuries sustained in the accident till 28.8.1985 and resumed duty on 29.9.1985. At this point of time the applicant requested Superintending Engineer (Valuation) Calcutta on 4th September, 1986 to arrange to relieve him so that he can join his duty as Executive Engineer (Inventory Control), New Delhi at the earliest possible.

3. He was relieved from his duty in terms of Inspecting Assistant Commissioner, Income Tax, Range-II, Guwahati vide F.No. E-42(13)/86-87/R-II/1507 dated 17th October, 1986. On returning to Delhi he submitted his joining report to Chief Engineer/CDO, CPWD, New Delhi on 27.10.1986. Instead of allowing him to join duty the respondent issued an OM dated 27.10.1986 (page 23 of the paper book) stating:

"It is understood that Shri Verma has not been properly relieved from Guwahati. Shri Verma is advised to produce a letter from his administrative S.E., i.e. Superintending Engineer (Valuation), Calcutta about his relief."

In view of this direction of the DG(W), CPWD, Shri Verma, the applicant sought relief from the Tribunal. In the hearing on 27.1.1987 the Tribunal after considering the matter permitted the applicant to join as Executive Engineer (Inventory Control), CPWD in New Delhi as per the transfer order No. 179 dated 10.7.1986. It was also stated that "if any shortage is found in the matter of handing over the charge, the same will be considered at the time of final hearing."

4. The respondent's case is that the request of the applicant dated 4.9.1986 to the Superintending Engineer (Valuation) Calcutta was turned down vide Superintending Engineer, Calcutta's letter dated 16.9.1986 (page 48 of the paper book) with the direction that he should finalise the backlog of old pending cases due to the decision of the cost index of Shillong before he could be relieved on transfer. The Ld. Counsel for the respondent has therefore, pleaded that the applicant, could not have been relieved by the IAC (Valuation), Guwahati as the respective control of the Income Tax Department and the Superintending Engineer, Calcutta is defined in the Ministry of Finance's letter dated 30th October, 1973 (page 43 of the paper book). The relevant extract from this OM is reproduced below:

".....

Superintending Engineers, Executive Engineers, Assistant Engineers and Junion Engineers in the valuation cell would be under the Administrative Control of the respective commissioners. The following guidelines are issued for the information of all Commissioners and officers in the Valuation cell to avoid duplication of administrative functions :-

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- i) Postings to and transfers from the Valuation Cell of all Gazetted Engineering Officers will be done by the Engineer-in-Chief, C.P.W.D.
- ii) Postings to and transfers from the Valuation Cell of all Junior Engineers will be done by the respective Superintending Engineers (Co-ordination) in the CPWD.
- iii).....
- iv).....
- v)...
- vi)....
- vii)...."

It was further contended that the administrative control of the Income Tax Department is only in regard to routine matters and that the matter of relieving the Executive Engineers falls in guideline (i) above relating to postings and transfers.

5. The applicant has pleaded that letter of 16.9.1986 rejecting his request for being relieved was not received by him. He further contended that the said letter is issued from cost index file and could not have dealt with an administrative matter. We see merit in the argument of the applicant.

6. We have heard the applicant in person and the Ld. Counsel for the respondent and gone through the records carefully. We are of the view that the applicant was relieved by the IAC (Valuation) Range-II, Guwahati in accordance with transfer order issued by the DG (W), CPWD vide No. 179/86 dated 10.7.1986. Although the order of Shri Srichand who was to relieve Shri Verma was cancelled on 1.9.1986 but no substitute was posted vice him. Since the relief of the applicant was arranged in accordance with the orders of transfer issued by DG (W) by the IAC, Range-II, Guwahati no impropriety has been committed by the applicant or his immediate superior administrative officer, viz., IAC (Valuation), Guwahati in relieving him properly. The view taken by the DG (W) CPWD in not permitting him to resume duty on his submission of joining report on 27.10.1986 does not seem to appreciate the intention of the Government in fixing specific tenures for posting in the North East. Had the intent of the Government prescribing fixed tenures for North-East and providing incentives to such officers on transfer to

North-Eastern Region b.e.e.n. appreciated, the occasion for seeking relief in a matter like this from the Central Administrative Tribunal by the applicant would not have arisen. Since the Executive Engineer (Valuation) is not incharge of any stores or construction work etc. we observe that no shortages of any kind either have been reported or would have arisen.

7. Having regard to the above we allow the application and order and direct that the applicant be deemed to be on duty w.e.f. 27.10.1986 the date on which he reported for duty at New Delhi. We further direct that salary and allowances withheld from the date of reporting for duty to the 27.1.1987 be paid to him within a period of 30 days from the date of communication of this order.

There will be no order as to the Costs.

July 31/1/90
(I.K. Rasgotra)
Member (A)

July 31/1/90
(T.S. Oberoi)
Member (J)