

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1960/90
T.A. No.

199

DATE OF DECISION 16.11.1990.

Shri Balbir Chand Kalia ~~Petitioner~~ Applicant

Shri G.K. Aggarwal, Advocate for the ~~Petitioner(s)~~ Applicant

Versus

Union of India through the ~~Secy., Miny. of Urban Development~~ Respondent

& Others

Shri P.P. Khurana, Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

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

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The grievance of the applicant, who is working as a Junior Engineer (Civil) in the C.P.W.D., relates to his transfer from Delhi to the Border Fencing Division, C.P.W.D., Chogwan, Punjab by the impugned order dated 12.7.1990 at Annexure A-1 to the application. He has also challenged the order issued by the respondents on 8.8.1990 at Annexure A-2, wherein it has been stated that he may be relieved of his duties immediately for his posting, and that he will be reposted to Delhi after completion of the project so that the departmental enquiries against him could be taken up.

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2. The facts of the case in brief are as follows. The applicant was appointed as Junior Engineer (Civil) in C.P.W.D. in 1963. He worked in the Delhi Development Authority in 1968 to 1974. From January, 1977 to May, 1980, he was on deputation with the Mizoram Government in the next higher rank of Assistant Engineer.

3. Three vigilance cases were instituted against him during the period 1981-83. One case has been finalised in regard to which an appeal has been preferred by him. In the other two cases, the report has been received from the Central Vigilance Commission by the department.

4. Certain posts of Junior Engineers have been newly created in the new Divisionⁱⁿ in the Border Fencing Zone, C.P.W.D. in Punjab. The applicant is one among the Junior Engineers ordered to be posted there. He was relieved on 31.8.1990 from his office to join the post on transfer, but he is on leave and has not yet reported at the new place. His representation dated 30.7.1990 was turned down on 8.8.1990. He has stated that the Appointing and Disciplinary Authority of the applicant recommended that he might not be transferred. Despite that, his relieving order has been issued.

5. The applicant has stated that three Junior Engineers from the same Circle where he worked, volunteered to go to the Border Fencing Zone. According to him, the respondents have not framed any policy or guidelines for the postings of Junior Engineers to the said Zone. In view of this, he has alleged that the impugned transfer order is arbitrary and discriminatory. *OK*

6. The applicant has stated that he is 50 years old and that he is keeping an indifferent health. His wife is a chronic patient of renal problem and is undergoing regular treatment in Delhi for a few years. He has a college-going son and a school-going daughter. He is in Delhi since 1980, whereas there are others working in Delhi for a longer period. He had a hard-area posting in Mizoram from January, 1977 to May, 1980. He has contended that another hard-area posting is unjust because there are others who never went on a hard-area posting so far. The disciplinary proceedings against him are kept pending ever since 1981 and they would get further delayed by more than a year owing to the impugned transfer.

7. The respondents have stated in their counter-affidavit that 96 Junior Engineers (Civil) were required to be posted to the new Division~~s~~ for the important work of national security, i.e., border fencing in Punjab. Options were called for from the Junior Engineers for posting to this project. As the options of very few Junior Engineers were received, the transfer orders of more Junior Engineers were required to be issued. The respondents have denied that they have not framed any policy or guidelines in this regard. According to them, the Junior Engineers are being posted on the basis of their length of stay at stations like Delhi and other popular stations. They have contended that the applicant has been serving in Delhi since 14.5.68/^{except} for a period during 1977-1980, when he worked as Assistant Engineer in Mizoram on deputation. They have contended that as the applicant went on deputation to Mizoram from

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Delhi, the period of stay in Mizoram is to be considered as stay in Delhi itself. Thus, according to them, the period of his continuous stay in Delhi was reckoned from 14.5.1968. As he is one of the persons who have the longest stay in Delhi, he has been transferred to Punjab.

8. We have carefully gone through the records of the case and have considered the rival contentions. The applicant has produced an extract from the C.P.W.D. Manual ^Qon deputation at any particular station ^Qwhich provides, inter alia, that the period spent/will be treated as a period of stay at that station. He has also produced a copy of the circular issued by the C.P.W.D. on 25.4.1983, according to which, an official should normally not be transferred out under the control of another disciplinary authority till the finalisation of the disciplinary case against him.

9. The applicant has not alleged any mala fides against the respondents. His plea is that the respondents have not complied with the guidelines contained in the C.P.W.D. Manual inasmuch as the guidelines clearly provide that the period spent on deputation at any particular station, will be treated as a period of stay at that station. In view of this, the contention of the respondents that the period of stay of the applicant during the period 1977-80 should be treated as a period of stay in Delhi, is not maintainable.

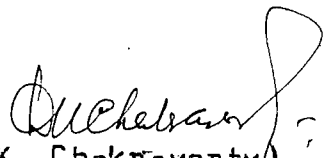
10. At the same time, we do not wish to quash the impugned order issued by the respondents. The ends of justice and fairplay will be met if the case is remitted to the respondents to consider the matter afresh in the light of the provisions contained in the C.P.W.D. Manual mentioned above and pass appropriate orders in regard to

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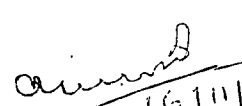
the posting of the applicant. They should also consider the direction in the circular issued by them on 25.4.1983 to the effect that an official should normally not be transferred till the finalisation of the disciplinary case pending against him.

11. The respondents are directed to take a decision in the case of the applicant as expeditiously as possible but in no event, later than one month from the date of receipt of this order. The application is disposed of at the admission stage itself on the above lines.

The parties will bear their own costs.


(D.K. Chakravorty)
Administrative Member

16/11/890


(P.K. Kartha)
Vice-Chairman (Judl.)