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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. OA 246/90

Date of decision: 30-4-90

Shri T. D. S. Tulsiani Applicant.

vs.

Director General,
C.P.W.D., New Delhi & ors. Respondents

CORAM: THE HON'BLE MR. P. K. KARTHA, VICE CHAIRMAN(J)
THE HON'BLE MR. D. K. CHAKRAVORTY, MEMBER(A)

For the Applicant Shri S.C. Luthra,
Counsel.

For the Respondents Mrs. Raj Kumari
Chopra, Counsel.

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?

(The judgment of the Bench delivered by
Hon'ble Mr. D. K. Chakravorty, Administrative
Member)

JUDGEMENT

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985 against the impugned order No.28/3/90-ECI/Vol.I/10 dated 8.2.90 transferring the applicant from DCC-IX New Delhi to Shillong.

2. The applicant is working as Executive Engineer in the C.P.W.D and is presently posted at the Head Quarter of Delhi Circle (DCC -IX, New Delhi). Prior to his present posting, he was posted under Shri H.S. Rastogi, Superintending Engineer (Respondent No.3). While working under him, the applicant pointed out some irregularities in the working of one Shri R.S.Malik, Asstt. Engineer and recommended his transfer.

It is alleged that respondent No.3 had some equation with Sh.R.S.Malik and instead of transferring Sh.Malik he wanted to get rid of the applicant. Respondent No.3

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is stated to have considerable influence with Respondent No.2 who happens to be the Chairman of the Transfer Committee. It is also alleged that Respondent No.3 does not have a good reputation and his service record is also not savoury and that is why he is being superseded for the next promotion of Chief Engineer. It is further stated that respondent No.2 in collusion with Respondent No.3 got the applicant transferred in the midst of academic session to Calicut, a far off place in South, vide order dated 3.1.89. On being aggrieved by the said order, the applicant represented and requested for cancellation of the same on various grounds, namely, that Respondent No.2 had been influenced by Respondent No.3 to recommend the transfer of the applicant; officers with longer stay at Delhi had not been transferred and a policy of pick and choose has been adopted; transfer was made in the mid-academic session and the applicant has school going children and that the applicant's wife was a working lady employed with the Delhi Administration.

3. After the applicant made a number of representations, nine months later the respondents cancelled his transfer, vide order dated 11.10.1989 wherein it is clearly stipulated that the applicant is allowed to remain in Delhi upto 30.4.90. Even after allowing him to remain in Delhi upto 30.4.90, the respondents, in violation of their own commitment, again transferred the applicant to a far flung area i.e. at Shillong vide order dated 8.2.90, which the applicant has called in question in this application. The applicant alleges that his transfer to Shillong is the result of his writing a letter to the editor of Indian Express which had appeared in its Delhi edition of 20-4-89 wherein he had highlighted the corruption rampant in the department. The applicant has also not received his emoluments for the period

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from January, 1989 to October, 1989. In his service career of 15 years he has undergone 18 transfers.

It is also averred by the applicant that he is not averse to going to Shillong after 30.4.90. He has challenged the impugned order on the ground that Government instructions envisage that, as far as possible, husband and wife should be accommodated at one station. The C.P.W.D., in conformity with those instructions, has laid down in O. M. dated 13/18-3-1987 that an employee should be given preference of one year in normal tenure over others whose spouses are not in service. It has also been laid down therein that the posting of officers outside the station of posting of his/her spouse may as far as possible, be done to the nearby stations which in this context would mean stations which can be reached from the original station by overnight journey of 12-14 hours by rail/road. The applicant submitted that he may be posted to a place nearer Delhi and not to the two farthest corners of the country.

4. The applicant prays that the impugned order dated 8-2-90 be quashed as being violative of the guidelines issued by the C.P.W.D because the posting has been done in colourable exercise of power.

5. This application filed on 12-2-1990 was heard on the same day and the respondents were directed not to implement the impugned order dated 8.2.90 till 26.2.90. When the case was taken up for hearing on 26-2-90, the prayer for interim relief was rejected since the applicant was again allowed to remain in Delhi upto 30-4-90 vide order dated 21-2-90 which the respondents had issued in the meanwhile.

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6. In the counter-affidavit filed on behalf of the respondents, a preliminary objection has been taken that

the application is pre-mature. It is stated that the applicant has not submitted any representation to the respondents against the order dated 8.2.90 but has come straight to the Tribunal. As such he has not exhausted the departmental remedies available to him under the service rules and the application should, therefore, not be entertained. Even otherwise, the applicant does not have any legal right to challenge his transfer which is an incident of Government service. The applicant was under order of posting to Calicut since January 1989 but he did not report for duty there and represented against the order. The respondents considered the same and he was allowed to remain in Delhi upto 30.4.90. The irregularities reported by the applicant against the working of Shri R.S.Malik, A.E. are under investigation. The allegation that respondent No.2 was the Chairman of the Transfer Committee is refuted by the respondents by saying that the transfer of an Executive Engineer is decided by the Director General(Works), C.P.W.D on the recommendations of the Posting/Transfer Committee consisting of two Chief Engineers and Director of Administration. The allegation of the applicant that he was transferred because of his pointing out irregularities in the department by way of writing a letter to a newspaper is denied. It is/stated that by this action the applicant has violated the provisions of the CCS(Conduct)Rules, 1964. It is also stated that since the appointment of the applicant on 2.1.75 mostly he has been in Delhi. As regards the payment of emoluments to the applicant for the period from January 1989 to October 1989, the respondents have stated that these are not admissible as the applicant did not join at Calicut. The applicant has already availed the benefit of one year preference over the normal tenure of 3-4 years on the ground of his wife's employment. This benefit cannot be granted again and again.

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7. We have heard Shri S. C. Luthra, the learned counsel for the applicant and Mrs. Raj Kumari Chopra, the learned counsel for the respondents. We have also perused the records of the case very carefully.

8. The prayer of the applicant in this case is for quashing of the impugned order dated 8.2.1990 or in the alternative " to order/issue directions to the respondents to post the applicant instead of Shillong to a place nearer Delhi and till such time or 30.4.90 whichever is earlier allow the applicant to remain in his present place of posting in Delhi." The impugned order dated 8.2.90 has already undergone a change by another order dated 21.2.90 issued by the respondents under which the applicant has been posted as SW,SSW(Aviation), New Delhi and has been allowed to continue in Delhi till 30.4.1990.


9. ^{the} In/light of the recent judgement of the Tribunal delivered by the Full Bench in OA No.27/90(Sh.8. Parameshwara Rao Vs. The Divisional Engineer & anr) dated 12-4-1990 the power to entertain a case where departmental remedies have not been exhausted has to be exercised in rare and exceptional cases and not usually or casually. We find considerable merit in the contention of the learned counsel for the respondents opposing the admission of the application.

10. In view of the above, the application is disposed of at the admission stage with the direction that the applicant may make a representation against the orders dated 8.2.1990 and 21.2.1990 within 15 days. The respondents are directed to dispose of the representation within one month from the date of receipt of a copy of the representation.

There will be no order as to costs.


(D. K. CHAKRAVORTY)
MEMBER

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(P.K. KARTHA)
VICE CHAIRMAN