

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

CP No.196/2004
in
OA No.1404/2004

New Delhi this the 10th day of September, 2004.

HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

Suresh Bhatia,
Assistant Engineer (Elect),
Coordination Circle, CPWD,
R.K. Puram,
New Delhi-110066.

-Applicant

(By Advocate Shri H.K. Gangwani)

-Versus-

1. Sh. N.N. Khare,
Secretary,
Ministry of Urban Development,
Government of India,
Nirman Bhawan,
New Delhi-110011.
2. Shri K.N. Agarwal,
Director General,
CPWD,
Ministry of Urban Development,
Government of India,
Nirman Bhawan,
New Delhi-110011.

-Respondents

(By Advocate Shri D.S. Mahendru)

ORDER

Mr. Shanker Raju, Member (J):

Applicant, who was working as Assistant Engineer (Electrical) with the CPWD in the OA has assailed an order dated 19.2.2004, whereby transferring him from Coordinate Circle 'E' to Chg CEC vice Sh. A.K. Malik, AE (P). This has been assailed on the ground that as per transfer policy laid down vide OM dated 14.2.2003 in rotational transfer the list of officers senioritywise is to be maintained and the longest stayee has to be displaced first.

In this view of the matter it is stated that number of Assistant Engineers (Electrical) who had already completed 10 years stay and are due for transfer are not transferred and the persons S/Shri Kulwant Singh, Rajpal Chopra, T.R. Garg, S.P.S. Saharan, K.L. Malhotra, S.C. Kumar, R.L. Pathak and others despite longer stay than applicant are not transferred or posted outside Delhi. This according to applicant is discriminatory violative of Articles 14 and 16 of the Constitution of India.

2. The learned counsel for applicant Sh. Gangwani relying upon the decision of the Apex Court in **S.G. Jaisinghani v. Union of India**, AIR 1967 SC 1427 contended that while exercising discretion the executive authorities should not transgress the rule of law and if the decision is without any rule and anti thesis of principles of equality.

3. Shri Gangwani further states that there are mitigating circumstances as applicant's aged mother is ailing and bed ridden and wife is also suffering from TB and heart ailment getting treatment in Delhi.

4. By an order dated 2.6.2004 while issuing notices in the OA it has been directed that in the event applicant is not relieved impugned order shall not be implemented.

5. In CP-196/2004 applicant alleges willful and contumacious disobedience on the part of respondents whereby on reporting to respondents on 3.6.2004 and in the wake that relieving order has not been communicated the respondents have refused applicant to join duty and had not paid him the salary. The learned counsel states that the relieving order dated 28.5.2004 had been manipulated by respondents which is apparent from the peon book as the relieving order has not been sent either by the registered

post, speed post or through special messenger or courier to be served upon applicant. In the order copy was circulated to seven different authorities but in the peon book first entry of despatch was numbering 812 whereas in the despatch register the entry given to the relieving order is 197. Serial No.812 was followed by 195, 196 and then by 197. This shows that handwriting which is different the despatch number has been inserted later on to manipulate the record. Moreover, it is stated that a communication dated 30.6.2004 had directed applicant to submit the keys of the almirah and drawers and it is vehemently contended that applicant was Drawing and Disbursing Officer had worked in the office on 3.6.2004 as he was on leave on 1st and 2nd June, 2004 he has not been called personally to hand over the charge.

6. Learned counsel for respondents Sh. D.S. Mahendru while commenting upon a letter written by the Additional Director General, Northern Range to the Chief Engineer on 3.8.2004 shows list of Assistant Engineers currently under transfer where applicant stands at serial No.1 it is observed that transfer/posting orders issued by coordinate circles are either not implemented or the persons are not relieved for several years. Non-implementing orders had been listed and this includes case of applicant. To this, learned counsel states that having regard to the policy of transfer of longer stayee first in the light of list produced and the orders remained unimplemented applicant would not be transferred till the longer stayee who has been transferred is not relieved of.

7. On merits, learned counsel for respondents contends that the transfer is as per the policy as applicant had remained for 15 years and name of eight officers shown are stationed at Delhi

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whereas applicant was under transfer. However, it is stated that except one who has been asked to remain as posted in Lok Sabha Secretariat the matter would be looked into.

8. On careful consideration of the rival contentions it is trite law that transfer which is an incident of service in administrative exigencies cannot be interfered with in a judicial review. However, if the transfer is punitive against the laid down policy and mala fide is to be interfered.

9. It is not disputed that the transfer policy envisages transfer of longer stayee first from the list appended and the averments made that the longer stayee than applicant has been laid down whereas applicant has been subjected to transfer the same offends transfer policy and in the light of decision in **Jainsingani's** case (supra) as the discretion has been exercised on whims and fancies against the rules of law cannot be sustained.

10. Having regard to the statement made by respondents that applicant would not be transferred till longer stayee than applicant are relieved, OA is allowed. Impugned transferred order is set aside. Respondents are directed to retain applicant at Delhi and thereafter law shall take its own course.

11. As regards CP, in view of setting aside of the transfer applicant is to be deemed on duty as he has been prevented from joining duty. The consequent effect of setting aside of transfer is that his relieving also is a nullity. Moreover, we find that on 2.6.2004 applicant was not relieved. Had it been done so, there would have been a chronological entry of the despatch to the different authorities at serial No.197 in the peon book. This appears to be an interpolation and does not inspire confidence. Moreover the handing over of the keys has been sought for from

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applicant only on 30.6.2004. In our considered view the respondents by relieving applicant have created an excuse and justification to avoid compliance of Tribunal's order. However, in the light of statement made by learned counsel for respondents we do not proceed further in the contempt but direct respondents to pay to applicant his salary from June till September, 2004. Accordingly notices are discharged.

12. Before parting with, we are constrained to show our ire towards the working of CPWD in the matter of transfers. It is shameful that despite transfer people had been managing not to be relieved without any stay from the Court. We hope and trust that in future a streamlined methodology would be adopted by respondents to ensure that in the matter of transfer the policy guidelines are meticulously adhered to and immediate compliance of the order takes place. A copy of this order be sent to the Director General, CPWD for information.

S. Raju
(Shanker Raju)
Member(J)

V.K. Majotra
(V.K. Majotra)
Vice-Chairman(A)

10.9.04

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