

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

Date of Decision: 27.11.92

OA 2696/92

R.P. YADUVENDU

... APPLICANT.

Vs.

DELHI ADMN. & ORS.

... RESPONDENTS.

CORAM:

HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicant

... SHRI S.K. SHUKLA.

For the Respondents

... MRS. AVNISH AHLAWAT,
SHRI V.K. RAO,
proxy counsel for
SHRI A.K. SIKRI.

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

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J).)

In this application, the applicant has challenged the transfer order dated 15.10.92 issued on behalf of the Chief Engineer-I(PWD) by Engineer Officer Shri N.K. Mittal; and the applicant has been transferred from PWD Division-I to PWD Division-15 in the same capacity and in the same zone. The applicant has prayed that the said order be quashed.

J

2. Shri R.L. Mahla has also moved MP 3385/92. The MP has been considered and the intervener has allowed to be impleaded as Respondent No.4. The newly added respondent No.4 has become a necessary party because he has been posted vice the applicant in PWD, Division-I. It is reported that the petitioner in the aforesaid MP has already joined in Division-I. This MP is, therefore, allowed and the learned counsel for the petitioner Shri V.K. Rao, who appeared as proxy for Shri A.K. Sikri, has been heard alongwith the other counsel of the parties,

3. The first contention of the learned counsel for the applicant is that the transfer order is malafide, arbitrary and in gross violation of the specific instructions issued in that behalf by way of OM dated 24.7.92, which has been reproduced in the body of the application. This OM is based on the transfer policy, laid down in the CPWD Manual, Volume-I. In reply to this face, the learned counsel for the respondents argued that the applicant has been transferred within the same zone. The transfer policy is, of course, to be observed by the administration but it is not mandatory. The matter has been considered by the Full Bench decision of Kamlesh Trivedi (Full Bench Judgement Volume-II, page 83). In this case, the transfer is not only within the same station but it is also within the same zone. In fact, the same policy

lays down that there has to be transfer from one place to another place after a stay of a period of 3 to 4 years at one particular place. The applicant has already stayed for more than 3 years in the Division-I, and this fact is not disputed. The applicant has only been shifted from the said Division to PWD Division-15. Shri Mahala has been posted in place of the applicant in Division-I. The service to which the applicant belongs has transfer liability. The transfer does not affect the applicant in his career as well. Thus, the first contention that there is a breach of the policy is not at all made out.

4. The next contention of the learned counsel for the applicant is that Shri Mahala has been unnecessarily favoured and within the period of $1\frac{1}{2}$ years he has been shifted from one place to another. The applicant cannot question the right of the respondents to take work at a particular place from its employees. The applicant has to show that he has been adversely affected by the transfer order by moving him before a particular period or that he has been transferred on the basis of certain complaints. This is not the case of the applicant. In fact, the applicant completed a tenure of more than 13 years and somebody has to replace him. If the respondents have posted Shri Mahala vice the applicant then he could not make out a case of unnecessary favour to Shri Mahala by the respondents.

5. The learned counsel for the applicant also argued that there are persons who are enjoying the benefits of stay at particular place of posting since, 1974 and he has been transferred which amounts to discrimination, violating the equality clause enshrined in Article 14 of the Constitution. Thus, it is argued by the learned counsel that the transfer order has been passed in colourable exercise of power and is, therefore, discriminatory. In fact, the applicant can only assail the order of transfer on established grounds i.e. if he is transferred repeatedly; if he is transferred on the basis of certain stigma attached to him; and lastly, that the tenure of stay at a particular place from where he has transferred has not yet completed. Though it is accepted by the administration that they shall treat everybody alike serving with them in its field in a similar capacity but at the same time the administration has a right to take work from its employees at a particular place and nobody can have a grudge on that account. Thus, there can be no comparison in the matter of transfer, as argued by the learned counsel for the applicant, with those who have not been transferred in spite of having completed 3 years period at a particular place of posting.

6. The respondents have taken a clear stand in para 4.2 of the reply that PWD is a department of the Government National Capital Territory of Delhi and the employees of this

L

department are subject to the territory of the Government of the Union Territory of Delhi. All Engineers from CPWD are posted in PWD of the Government of the Union Territory without deputation allowance. All the employees of the PWD are subject to the control of the Secretary, PWD and not to the control of the D.G. (Works), CPWD. It is further stated that if the applicant wants to revert back to CPWD he can very well do so. Further, it is also stated in the Memo of the Delhi Administration No. F-4/5/91-S-II dated 23.10.91 on the subject of transfers/postings of DASS Cadre officials, which is to implore all heads of the department should see that any employee who allowed to stay for more than three years at a particular place.

L learned counsel for the respondents argued that the applicant has completed more than 3 years in his present post and has thus exceeded the normal tenure of the posting in the sub-division. He was, therefore, rightly transferred by the Head of the Department i.e. Chief Engineer, Zone-I. Even the Director General(Works), CPWD, has issued a Circular dated 1.8.91 that normal tenure of a CPWD officer is 3 to 4 years and no officer should be allowed to stay for more than three years. A copy of this Circular has also been annexed with the reply (Annexure-2). Thus, the learned counsel for the respondents has made out a case that the transfer of the applicant by the impugned order has been effected on the basis

of the relevant memos issued by the Delhi Administration
by
as well as the Director General (Works), CPWD.

7. The scope of interference in the orders of transfer passed on administrative grounds is limited. In the recent decision of the Hon'ble Supre Court in M/s Shilpa Bese Vs. State of Bihar (AIR 1991 SC 532), the Hon'ble Supreme Court had held that the transfer order which are passed in the interest of administration or in the exigencies of the service should not be interfered with unless there is malafide. The same view has been taken by the Hon'ble Supreme Court in the case of UOI Vs. H.N. Kritania (JT 1989 (3) SC 131). In the present case, the applicant has been transferred from one division to another in the same zone, so it cannot be said that the transfer order is any way harsh or not in the interest of administration or in the exigencies of service.

8. Though the learned counsel for the applicant argued that transfer order is malafide but none of the respondents have been impleaded by name to show that any such respondents harbour any grudge or bias against the applicant so that he should have been in a position to explain what has been alleged against him. Merely showing that the transfer order is malafide will not make ^{to} so.

(11)

9. Having given a careful consideration to all these facts, the present application is totally devoid of merit and is dismissed leaving the parties to bear their own costs.

J. P. SHARMA
(J.P. SHARMA)
MEMBER (J) 27.11.52