

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

G.A. NO.3210/92

Date of Decision : 22.3.93

Shri Inderjeet Singh
Vs.

...Applicant

Union of India & Ors.

...Respondents

CORAM

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri S.K. Shukla, counsel

For the Respondents

...Ms. Pratima Mittal, proxy
counsel for Sh.K.C. Mittal,
counsel

JUDGEMENT

The applicant is working as Assistant Engineer in CPWD and his name appeared at Serial No.66 of the readiness list of the transfers drawn on 18.3.1991 and was asked options for stations to which the applicant wants to be considered for posting. The applicant on 12.11.1991 gave his consent and readiness for transfer outside Delhi and opted for posting in BFR Project, Rajasthan. Subsequently on 2.12.1991 he has given another option to be posted at Guwahati, Assam, in any division. By the Office Order No.17/92 dt.16/17.1.1992, the applicant was transferred to Valuation Cell, Guwahati from the present posting as Assistant Engineer in SSK Hospital, New Delhi. The applicant made a representation on 20.1.1992 that his transfer may be changed to any of the above divisions at Guwahati instead of Valuation Unit in Guwahati. On the basis of this representation, the impugned order dt.7/8.5.1992 was passed and the posting of the applicant was changed to Assam

...2...

Central Circle, Guwahati as ASW against the listed vacancy. In pursuance of this above transfer order, the applicant reported to the Superintending Engineer, Assam Central Circle, Guwahati on 25.5.1992, but as alleged he was not allowed to join for want of a clear vacancy. The applicant stayed at Guwahati and also as alleged, met the Chief Engineer at Shillong on 28.5.1992. Since the applicant could not get any favourable reply, so he sent a telegram on 3.6.1992 that since he has not been allowed to join in Assam Central Circle, so he is returning^{ed} to Delhi. In the meantime, Superintending Engineer, Assam Central Circle, Guwahati has written to the Chief Engineer, CPWD, Shillong on 4.6.1992 recommending that the applicant may be adjusted at Tura where a good number of major works are in progress and the applicant can be adjusted there. It appears that the applicant on 15.6.1992 wrote to the Director General of Works, CPWD, New Delhi that he has not been allowed to join at Assam Central Circle and so he is giving his joining report at Delhi. Thereafter by the Memo dt.24.7.1992, the applicant was again directed that he will be posted as ASW (C) in Assam Central Circle, Guwahati and the order dt.7/8.5.1992 still stands and he was directed to report to the Superintending Engineer, Assam Central Circle Guwahati for posting in Guwahati. The applicant made a representation against the aforesaid Memo dt.24.7.1992 on 29.7.1992 and again on 12.10.1992 and 23.10.1992 narrating certain difficulties which he faced on his posting to Assam Central Circle,

...3...

(14)

Guwahati requesting that he should be adjusted in Delhi or to a place near Delhi or at BFR in Rajasthan. The representation of the applicant was rejected by the Memo dt.3.11.1992 asking him to join at Assam Central Circle, Guwahati, failing which necessary action under the rules will be initiated against him. In the meantime, on the representation of the applicant dt.23.10.1992, he was requested to appear before the Director of Administration by the Office Memo dt.9.12.1992 issued by the Director General of Works, CPWD. The applicant again made a representation on 15.12.1992 narrating certain family circumstances wherein he stated that because of illness, he could not see the Director of Administration and requested that the order for his posting at Delhi in any sub division may kindly be issued.

2. The present application under Section 19 of the Administrative Tribunals Act, 1985 has been filed on 3.12.1992 which was again amended on 7.1.1993 in which the applicant has prayed for the following reliefs :-

- (a) Quash the impugned transfer order issued vide Order No.156 of 1992 (Annexure F) and subsequent directions dt.24.7.1992 (Annexure J) and dt.3.11.1992 (Annexure 1).
- (b) The period from the date of relief, i.e., from 1.4.1992 from SSK Div. to proceed to Guwahati, to join in Assam Central Circle till the date of further posting in Delhi may be declared as duty period.
- (c) The Director General Works, CPWD be directed to post the applicant in Delhi till his turn comes for outside transfer as per readiness list.

- (d) Director General (Works), CPWD be directed to disburse the salary of the applicant from the period 1.4.1992 to 30.11.1992 along with TA, DA amount incurred for performing the journey from Delhi to Guwahati and back.

3. The respondents contested this application and in their reply opposed the grant of the relief on the ground that though the applicant was transferred to Assam Central Circle, Guwahati, but he did not wait for his posting and rushed back to Delhi without any specific direction in that regard. In fact the Superintending Engineer, Assam Central Circle, Guwahati has issued the Memo dt.4.6.1992 adjusting the applicant at Tura in Assam Central Circle. But the applicant reported on 15.6.1992 at Delhi. In fact the applicant was earlier on his own option posted to Assam Central Circle, Guwahati as ASW. It is further stated that the applicant was only interested for his posting in field rather than to work in Planning. Even when the applicant was asked to clear the matter with the Director of Administration, the applicant did not care to see the Director of Administration. Thus it is stated that the applicant has no case and he cannot be posted on his own choice to the place of his own liking.

4. I have heard the learned counsel for both the parties at length and have gone through the record of the case. The first grievance of the applicant is that his name in the transfer readiness list is at Sl.No.66 and unless 65 persons above him are transferred, he could not have been picked up for transfer. The learned counsel for the

...5...

le

✓
applicant pointed out that there are 15 persons, who have got longer stay at Delhi and yet they have not been transferred, but the applicant has been picked up. In fact when the transfer readiness list was circulated, the applicant himself by his representation dt. 12.11.1991 and subsequent representation in December, 1991 and January, 1992 had requested that he should be given a posting at a place either in BRF, Rajasthan or in Assam Central Circle, Guwahati so that he maintains the allotted residence at Delhi to maintain his family at Delhi. The applicant, therefore, should not have any grudge on that account. The applicant at the earliest did not represent that he is not due for transfer or that the senior persons here are being retained. The applicant is, therefore, stopped from taking any such plea now.

5. The next contention of the learned counsel for the applicant is that the applicant has been harrassed unnecessarily and he has to join again willingly at Assam Central Circle, Guwahati, but he was not adjusted there. In view of this, it is argued that the applicant is not at fault. He waited at Guwahati till 3.6.1992 and since he was not allowed to join in the Assam Central Circle at Guwahati, so he has reported back at Delhi and gave the joining report on 15.6.1992. In this connection, it may be recalled that when the applicant was posted as ASW in Assam Central Circle, Guwahati, he has to remain there till further orders. In fact, on the very next date, i.e.,

17

4.6.1992, the Superintending Engineer, Assam Central Circle, Guwahati has written to the Chief Engineer at Shillong that the applicant should be adjusted at Tura, and by the time, the applicant as alleged, has left that place. In fact the applicant should have waited for further direction from the Director General, CIND, instead of rushing down again to Delhi and in this connection the letter dt. 4.6.1992 by the Superintending Engineer, Assam Central Circle to Chief Engineer is relevant. In fact the applicant has no sincere desire to join at any other place in Assam Central Circle and apprehending that he may be allowed to join at any other place in the same circle, he rushed down to join and reported his joining report on 15.6.1992. In fact after 15.6.1992 also, the applicant has not been constantly attending the said office in order to mark his attendance and to remain on duty. In such a case, the contention of the learned counsel for the applicant that the applicant has been unduly harassed and so he should be given a posting at Delhi, cannot be accepted.

6. The transfer order in no case can be said to be mala fide nor there is any evidence to demonstrate malice in fact. The transfer of the applicant has taken place in due course in the administrative exigency and in the interest of the administration. It cannot be said that the applicant has been picked up and chosen for transfer because it was the applicant himself who has given his option for posting

le

...7...

outside Delhi. Before making any representation in October, November and December, 1991, the applicant has never represented that his posting outside Delhi will be arbitrary or that because of some discrimination he has been shifted from Delhi. The guidelines prepared by the department are to be observed that at the same time it is the prerogative of the administration to consider the individual cases and adjust their employees as far as possible for taking suitable work from them at the new place of posting. The respondents in their counter have specifically stated that the applicant wanted field posting rather than posting in Planning Section. It is also averred that the applicant wanted field posting because there is no marking of attendance daily. The case of the applicant is also that because his children and family have to be looked after, so he wanted a posting at Guwahati or at Rajasthan. Be that as it may be, the order of transfer cannot be said to be mala fide or in any case to demonstrate malice in fact.

7. The applicant has not been able to substantiate that the impugned order of transfer was passed mala fide against him for an oblique purpose and/or for wrecking vengeance against him. It is a fact that the order of transfer causes a lot of difficulties and dislocation in the family set up of the concerned employee, but on that score the order of transfer is not liable to be struck down. In a transferrable post, an order of transfer is a normal consequence and personal

19

difficulties are matters for consideration of the department. Unless such order is passed mala fide or in violation of the rules of service or guidelines of transfer without any proper justification, the court and the tribunal should not interfere with the order of transfer. The applicant has made representations time and again and these representations have been favourably considered and even the Director of Administration has called the applicant by the Memo dt. 9.12.1992 to explain his difficulty, but the applicant himself ^{did not} chose to meet the Director of Administration for the reasons best known to him. Instead he has made a representation dt. 15.12.1992, a copy of which is ~~annexed~~ as Annexure N to the rejoinder. In fact this is a case where the applicant has been accommodated to the extreme and it cannot be said that the administration has been unjust or unfair to the applicant in not considering his grievance on account of his transfer.

8. In view of the above facts and circumstances, the present application is totally devoid of merit and is dismissed leaving the parties to bear their own costs.

AKS

J. P. Sharma
(J.P. SHARMA) 22.3.93
MEMBER (J)