

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.
OA.No.2295 of 1993

New Delhi this the 19th January 1994.

HON. MEMBER (JUDICIAL) SHRI C.J. ROY.

Shri O.P. Bhardwaj,
R/o No.60, Amrit Nagar,
New Delhi.

Applicant

By advocate Shri Rajeev Sharma

versus

Union of India through

1. The Secretary,
Ministry of Works and Housing,
Nirman Bhawan,
New Delhi.
2. Director General (Works)
C.P.W.D.
Nirman Bhawan,
New Delhi.
3. Dy. Director of Administration,
C.P.W.D.
Nirman Bhawan,
New Delhi.
4. The Chief Architect (C.P.W.D.)
Nirman Bhawan,
New Delhi.

Respondents

By Advocate Shri P.P. Khurana
with Shri George Paricken.

O R D E R (ORAL)

Heard the learned counsel for both parties.
This application is filed by the applicant praying for
the relief that the transfer made by the respondents
on 29.3.93 be declared as illegal, unconstitutional
and violative of transfer policy and other reliefs
like allowing him to work at New Delhi and to pass any
such order as deem fit and proper in the circumstances
of the case and in the interest of justice. The
applicant's prayer for grant of interim relief has
not been allowed.

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2. The respondents have filed their counter and the applicant has also filed his rejoinder. After perusing the documents on record, I propose to dispose of this case in the following manner. Before that, the brief facts of the case are that the applicant was appointed with the CPWD as an Assistant Architect/Draughtsman on 22.7.68. When he was in CPWD, he was posted for the first time at Nagpur. While working at Nagpur, he was selected as Assistant Architect in the Group-B post through the UPSC and consequently posted in MES in 1975 and his lien was maintained in CPWD in Group-C post. By virtue of another selection test through UPSC, he again joined the CPWD on 7.1.78. The applicant claims that there are guidelines issued by the department which are followed in respect of almost all the transfers made in connection with the Architects, which is filed at Annexure R-1. These guidelines of Architectural staff states that the normal tenure in remote areas shall be as per the Government of India orders. The transfers involving change in station after completion of the prescribed tenure are considered in the following order:-

- (i) Longest stayees - with no transfer in service career.
- (ii) Longest stayees - with one transfer in service career.
- (iii) Longest stayees - with two transfers and so on

3. These guidelines are followed strictly by the respondents in accordance with the averments made by the applicant. The applicant was transferred from New Delhi to Ita Nagar on 19.6.80 and on the basis of his representation, his transfer was cancelled by the

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respondents. The applicant quotes the instance of Shri Y.S. Sardar, an Architect, who was transferred out of station on 4.11.92 and on his representation on 29.9.92, the order of transfer was cancelled as per the transfer policy, the details of which is at Sl.No.1 at Annexure A-10 at page 25 of the paper book. He further states that once a person is transferred, he should not be disturbed again and the longest stayee should only be considered for transfer. Secondly, a person who suffered one transfer, should be considered and thirdly a person who has served for two transfers, should be considered and so on respectively as per the guidelines and the guidelines are strictly followed.

4. Here, when the applicant was initially appointed, he was posted at Nagpur and from there he was transferred to Bombay office, since the office at Nagpur was entirely shifted to Bombay. The applicant claims that the entire period of his service started from 1968 and his service put in the MES should also be considered as he had his lien with the CPWD. He also refers to the case of one Mrs. S.R. Gangry Dawar, who was transferred from Bombay to Madras on 16.6.92 but the same was kept in abeyance because it was against the transfer policy. Therefore, he avers that if the transfer guidelines are not followed, it amounts to violation of Article 14 of the Constitution of India. He further submits that his first representation was rejected with no reasoned order and his second representation is still pending with the respondents.

5. The respondents have stated in their counter that these guidelines are only directory in nature and not mandatory and that the applicant is borne on the cadre from the date he joined in C.P.W.D. after relieving from MES on 7.1.78 and he was selected as Assistant Architect by the UPSC for the second time in the C.P.W.D. Therefore he cannot be considered as a longest stayee. This averment of the respondents clearly shows that they are trying to justify the order/s issued by them following the guidelines. At the same time, they also state that the applicant is holding the post which has the liability to be transferred anywhere in India. Though, the respondents claim that all the persons are transferred in accordance with the guidelines, in my opinion, I feel that the transfer orders are not issued under Article 309 of the Constitution of India and they are not statutory in nature. The argument of the learned counsel for the applicant that the respondents by not abiding completely with the guidelines of transfer are in violance of the Article 14 of the Constitution of India is not acceptable. However, I see from the averments of the respondents that they have faithfully followed the guidelines except in the particular instance cited supra by the applicant, wherein, the transfer has been made from Delhi to Madras. The applicant has been relieved from duty to join the place of posting at Madras on 12.10.93 though the transfer order is served on 29.3.93. The transfer was later on kept in abeyance. The applicant questions how the transfer order of Smt. Gangri Dawar from

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Bombay to Madras issued in 1992 was given effect only in 1993. The respondents at para 4.10 of the counter admit that she is now being relieved to join at Madras office. The applicant in his rejoinder, has mentioned the names and details of 11 persons, who are the longest Delhi stayees than him and states that this is a clear violation of guidelines. The applicant also drew my attention to the fact that all these 11 persons are also Architects. In the gradation list shown to me, the names of those persons are shown at different serial numbers which tally with the serial numbers given in the rejoinder by the applicant. But it cannot be denied that some of the persons are also borne on the grade later than the applicant. It is not necessary for me to traverse this aspect since the gradation list itself is very clear about it.

6. It is no doubt true that the transfer which is made in administrative exigencies and in the public interest cannot be interfered by this Tribunal. The transfer can be interfered only when there are malafides, arbitrary, punitive in nature or a short cut to avoid departmental enquiry or against statutory rules. Therefore, I do not like to interfere in the transfer policy of the department. However, in view of the fact that the applicant has made a representation to the highest authorities and that there are certain vacancies as averred by the applicant, at the Delhi office even now. However, as a special circumstance of the applicant, in which he is placed, I feel it is a fit case to give a short reprieve to the applicant.

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7. The applicant is directed to file a representation to the respondents within a week of receipt of a copy of this judgement. After receipt of the representation from the applicant, the respondents are directed to dispose of the same in accordance with the law within two weeks from the date of receipt of the representation.

8. Till the disposal of the representation, the transfer is directed to be kept in abeyance.

9. OA is thus disposed of. No costs.

10. The Registry is directed to give a copy of the judgement within two days to both parties.

restm
(C.J. ROY)

MEMBER(J)

19.01.1994

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