

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH : NEW DELHI

D.A. No.2395 of 1993

19th Day of January, 1994.

Hon'ble Mr Justice S. K. Dhaqn, V.C. (J)

Hon'ble Mr. B. K. Singh, Member (A)

Shri M. M. Sharma  
S/o Shri Nebh Raj Sharma  
R/o 2628, Hudson Line  
Kingsway Camp  
DELHI 110 009

... Applicant

By Advocate Shri B. B. Raval

Vs.

1. Union of India  
Through the Secretary,  
Department of Telecommunication,  
Sanchar Bhawan,  
NEW DELHI

2. The General Manager (BD),  
Mahanagar Telephone Nigam Ltd.,  
IXth Floor, East Wing,  
Chanderlok Building,  
NEW DELHI 110 001

3. Shri D. V. S. Vaid,  
Assistant Engineer (C-1),  
Mahanagar Telephone Nigam Ltd.,  
(Duct. Construction (South)),  
30-31, Jeevan Vikas,  
Asaf Ali Road,  
NEW DELHI 110 001

... Respondents

By Advocate Shri V. K. Rao

ORDER

Hon'ble Shri B. K. Singh, Member (A)

This D.A. No.2395 of 1993 has been filed against  
order No.BD/2-20/TPr. & Posting/Gr.'C'/93-94 dated  
11th October, 1993. This is marked as Annexure 'A'  
of the Paper Book. The order has been issued by  
Shri B. S. Kapoor, Asst. General Manager (Duct. Engg. II),

Contd...2

(6)

posted in the office of Chief General Manager, M.T.N.L., New Delhi. This is Annexure 'B' of the paper book.

2. The applicant was appointed as Lower Division Clerk at Ganganagar on 9th May, 1978. The order of Appointment is marked as Annexure A-1. From Ganga Nagar, the applicant was transferred to New Delhi on 16th September, 1980. The applicant appeared in the Merit Rating Test on 18th May, 1991 and was declared successful (Annexure A-2 of the paper book). On promotion, he was posted as Work Clerk Grade-I in the scale of Rs.1200-30-1560-EB-40-2040 with effect from the date of joining in his respective unit. Copy of this order is marked as Annexure A-4 of the paper book. Subsequently, the applicant was transferred and posted in place of Shri R. M. Virdi, UDC under Superintending Engineer(C-S). This is Annexure A-5 of the paper book. On 19th February, 1992, the Assistant Engineer(C-HQ), M.T.N.L., New Delhi issued order No. SE(C-S)MTNL/ND/E-18/203-6 dated 19.2.1992 in compliance with the AGM(BDA) letter No.BD/2-20/LDC/ UDC/Tfr & Posting/91-92/37 dated 18.2.92 directing the applicant to report to Shri A. K. Bansal, Executive Engineer(DC-S) for further duties. This is Annexure A-6 of the paper book. The applicant was to report to the Executive Engineer, Shri A.K. Bansal

B

Contd..3

on 19th February, 1992 and vide letter No. EE(DCS)/  
S-1/91-92/58 dated 21st February, 1992, the applicant  
was further directed to report to Shri D.V.S. Vaid,  
Assistant Engineer(C-V) for further duties. This is  
Annexure A-7 of the paper book. Shri Vaid, vide  
letter No. AE(DCS-V)/ND/Staff/1-3 dated 9th March, 1992  
informed the Headquarters that the applicant had  
reported for duty on 19th February, 1992 (Forenoon)  
(Annexure A-8 of the paper book). The applicant was  
assigned the duty of typing work instead of accounts  
work for which he was posted.

3. The applicant submitted a representation in  
December, 1992 addressed to the Superintending  
Engineer, Telecom Civil Circle, New Delhi through  
proper channel requesting that either he be posted  
in place of Shri R. M. Virdi as per office order or  
he be repatriated to his parent Department. The  
Superintending Engineer(Civil) considered the  
representation of the applicant and transferred him  
to the office of the Executive Engineer(E), Telecom  
Electrical Division-II(T-II), New Delhi vide his  
order No. TP-II/SE(C)/TND/626-38 dated 29th January, 1993.  
By another letter No. STA-I/1-3/GM9BD)/Tfr.Non.Gaz./93/14  
dated 24th March, 1993 issued by the Administrative  
Officer(S-I) of the office of the Chief General  
Manager(Telephones), M.T.N.L., New Delhi, the applicant was

B

Contd..4

relieved with immediate effect to report to the office of the Executive Engineer (E) T-II, New Delhi (Annexure A-9 of the paper book). The applicant was not relieved by the Assistant Engineer, Shri D. V. S. Vaid and subsequently, to meet the functional requirements, the Superintending Engineer made promotion of Smt. Sulochana Gera, Works Clerk Grade-II and posted her to the office of the Executive Engineer (E) T-II against existing vacancy (Annexure A-10 of the paper book.). This order was served on the applicant through the office of the Assistant Engineer where he was posted. The Assistant Engineer, Shri Vaid issued an order No. AE(C-1)/DCS/MTNL/ND/Tp/93-94/105 dated 19th August, 1993 in pursuance of the cancellation order dated 24th March, 1993 ordering release of the applicant from his office on 19th August, 1993 with instructions to report to the office of Executive Engineer T-II, New Delhi. In that order it was mentioned that the applicant was being transferred on his own request, from M.T.N.L., New Delhi.

4. The Administrative Officer (S-1) M.T.N.L., office of the Chief General Manager, New Delhi issued Memo No. STA-I/1-3/GM9BD)/Tp/Non.Gaz/93/34 dated 23rd August, 1993 cancelling the relieving order dated 24th March, 1993. This order stated that the

B

Contd..5

applicant would continue to work under General Manager (BD), M.T.N.L., New Delhi.

5. The applicant has averred that he went to the office of the Assistant Engineer, Shri Vaid and he was not allowed to mark attendance. He also represented to the Superintending Engineer about the harassment caused to him by Assistant Engineer, Shri Vaid (Annexure A-12). He further filed representation against the respondent No.3 to the Superintending Engineer (Civil), Telecom Civil Circle, Curzon Road Barracks, New Delhi on 8th October, 1993 (Annexure A-13). He finally called on Shri B.S. Kapoor, Assistant General Manager (Duct. Engineer-II) in the office of the General Manager (BD), Chanderlok Building, New Delhi and stated full facts to Shri Kapoor and as a result of his personal interview with Shri Kapoor, a communication was issued vide letter No.BD/2-20/Tfr. & Posting/Gr.'C'/93-94 dated 11th October, 1993 addressed to the Executive Engineer (DC-S), M.T.N.L., 30-31, Jeevan Vikas Building, New Delhi on the subject of cancellation of transfer order of the applicant and directing him to continue in the office of the General Manager (BD) only. It was desired that order should be implemented immediately and compliance reported to his office. A copy of the order dated 23.8.1993 was also enclosed. In the meanwhile the matter came before the Hon'ble Tribunal and a Division Bench of this Tribunal passed an order dated 15.11.1993

B

directing the respondents to comply with the orders dated 23.8.93 and 11.10.93 if not already complied with.

6. Reliefs sought in the O.A. pertains to -

(i) Quashing of impugned order dated 19th August, 1993 at Annexure 'A' (ii) Directions to the respondents to order an enquiry against Respondent No.3, Shri D. V. S. Vaid and to suspend him for his misdemeanour and (iii) Award exemplary cost to the applicant and any other relief(s) deemed fit by the Tribunal.

7. A notice was issued to the respondents dated 15.11.93. The respondents filed their reply, contested the application and opposed the grant of reliefs prayed for.

8. We heard learned counsels Shri B. B. Raval for the applicant and Shri V. K. Rao for the respondents and perused the record of the case.

9. During the course of arguments, the learned counsels for the applicant narrated the tale of woe of the applicant in not being paid salary from September onwards and prayed to the Tribunal to issue a direction to that effect to the respondents to release the salary of the applicant for the months from September onwards.

B

Contd..7

10. The first relief sought for by the applicant regarding quashing of impugned order dated 19th August, 1993 at Annexure 'A', it has become infructuous since this order has already been cancelled by the respondents.

11. The second relief sought by the applicant regarding suspension of respondent No.3 on account of the harassment caused to the applicant, falls within the domain of the executive and as such no direction can be issued to the respondents in this regard. The applicant himself narrated his difficulties and problems to Shri B. S. Kapoor, AGM and consequently the order dated 11th October, 1993 cancelling the order of 19th August, 1993 and reiterating order of 23.8.93 was issued.

12. The power of transfer is an inherent administrative power and it has to be exercised judiciously in respect of the employees. The Tribunal can interfere only in an exceptional case where malafide is alleged and malice of fact or law is involved. Even where a Government servant has been engaged for a particular post, he does not acquire a vested interest in it, and it is open to the competent authority but not to a subordinate authority to transfer an employee in exercise of its power under Fundamental Rule 15

*B*

Contd...8

or corresponding rules. Shri Vaid is neither Head of the Department nor Head of office and he was not competent to exercise the power of transfer of applicant. The very fact that the applicant was not assigned any work by the Assistant Engineer and instead of work connected with the accounts matter, the applicant was asked to do typing work, shows prejudice on the part of the respondent No.3. His conduct in relieving the applicant on 19.8.1993 and depriving him of any work in his office and even removing his chair etc. shows prejudice on his part in regard to the applicant. The M.T.N.L. is competent to exercise the power of transfer in case of the transferred employees of Telecommunication Ministry, who are working in the M.T.N.L. But in the instant case, a perusal of the record shows that the employee has been subjected to frequent transfers and cancellations of these transfer orders. But the employee cannot be subjected to transfer by a subordinate officer like Shri Vaid and the learned counsel for the applicant has alleged malafide and there have been specific pleadings on the subject.

13. The act of a public authority in exercise of public power must, in order to be valid, be bona fide. No public body can be regarded as having statutory authority to act in bad faith or consideration extraneous to the issue or founded on alien or

D

Contd...9

(B)

irrelevant grounds. Though consideration of expediency cannot be excluded when a public body exercises its power of transfer but it is not open to the public body to introduce and rely wholly on irrelevant and extraneous considerations under the guise of expediency.

14. The learned counsel for the respondents raised a question of jurisdiction of the Tribunal since there is no notification under Section 14(2) of the C.A.T. Act, 1985 and as such he argued that the Tribunal has no jurisdiction to look into this matter. A perusal of the record shows that the applicant is a transferred employee of the Ministry of Telecommunications and it is not clear whether he has been absorbed in the M.T.N.L. The very fact that he wanted a repatriation to his parent Department and he filed a representation to this effect as a result of the harassment caused to him by Shri Vaid, shows that he is not yet absorbed in the M.T.N.L. The Telecommunications Ministry has diverted itself of its power only in case of some Metropolitan towns but this does not cover the entire country and as such the employees can go back to their parent Department and the Telecommunications Ministry's employees certainly have a right to approach the Tribunal and the Tribunal can look into their grievances and can find a remedy. Here the conduct of a public body is

(B)

under challenge in respect of an employee who is only a transferred employee and who still has a right to go back to his parent department and no arguments taken by the respondents that the transfer is their prerogative and that they are competent to transfer an employee for administrative reasons or in public interest would be sufficient if a malafide has been proved on their part. No reason has been given by the counsel for the respondents for subjecting the applicant to frequent transfers. The learned counsel for the applicant has also protested against the latest transfer of the applicant to Paschim Vihar Circle.

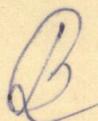
15. In the interest of equity, justice and fair play, the respondents should comply with their own orders dated 23.8.93 and 11.10.93 and direction of the Tribunal to that effect on 15.11.93 and cancel the present posting to Paschim Vihar or alternatively repatriate him to his parent cadre.

16. As regards salary the applicant would be treated on compulsory waiting with effect from 19.8.93 when he was relieved by an incompetent authority upto 18.10.93. This amount should be recovered from the salary of Shri D. V. S. Vaid against whom the charge of malafide has been proved and who had

B

Contd...11

exceeded his jurisdiction in exercising a power with which he was not vested. The period from 19.10.93 till the date of final orders for complying with the orders dated 15.11.93 or his repatriation may be adjusted against leave due. We order accordingly. A compliance report be sent to the Hon'ble Tribunal within a period of one month of the receipt of these orders. There will be no orders as to costs.

  
(B. K. Singh)  
Member (A)

  
(S. K. Dhaon)  
Vice Chairman (C)

dbc