

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the day 5th June 1997.

ORIGINAL APPLICATION NO. 1150 OF 1996.

CCRAM : Hon'ble Dr. R.K. Saxena, Member (J)

Hon'ble Mr. D.S. Baweja, Member (A)

Hamid Ahmad, S/o Shri Hasin Uddin,

R/o Kushwan, Post Office Manauri,

District- Allahabad.

.... Applicant.

(By Advocate Shri K.P. Singh)

Versus

1. The Union of India through Secretary,
Ministry of Defence, New Delhi.

2. The Engineer-In-Chief ,
Army Head Quarters, New Delhi.

3. The Chief Engineer,
Central Command, Lucknow.

4. The Commander Works Engineer,
Bamrauli, Allahabad.

5. The Assistant Garrison Engineer (I)
Military Engineering Service,
Manauri, Distrpt-Allahabad.

6. Shri A. Bhaduri,
Assistant Garrison Engineer (I),
District Allahabad.

..... Respondents.

(By Advocate Shri Amit Sthalekar)

O R D E R

Hon'ble Mr. D.S. Baweja, Member(A)

1. This application has been filed with a prayer to quash the transfer order dated 18.10.1996.
2. The applicant while working as Diesel Engine Stahi (DES) under Assistant Garrison Engineer (I) AGE (I) MES Manauri, Allahabad, has been transferred to Bihta in Bihar as per the impugned order dated 18.10.1996. The applicant made a representation against the same but his request to cancel the transfer order has not been accepted. This application has been filed on 3.10.1996, being aggrieved by the transfer.
3. The applicant has assailed the transfer on two grounds which were also reiterated during the transfer was in violation of the statutory rules by transferring the applicant from one seniority unit to another seniority

unit and seriously affecting his service conditions.

The second ground is that the transfer is by way of punishment with malafide intent of respondent no. 6. In addition of these two main grounds, the applicant has also assailed the transfer to tenure station in violation of the policy instructions laid down.

4. The respondents have strongly contested the application by filing two counter affidavits. One affidavit has been filed by Shri A. Bhaduri who has been made respondent no. 6 by name. The other affidavit has been filed by Shri A.K. Sharma, Commander Works Engineer, Air Force, Bamrauli, Allahabad. The respondents contend that the transfer order has been issued in public interest by the competent authority. It is also asserted that transfer has been done within the same Commander Works Engineer (CWE) area as Bihta is within the jurisdiction of C.W.I Air Force Bamrauli. The respondents deny that the applicant is any office bearer of the Union. The allegations of manipulating transfer by respondent no. 6 by using his influence with respondent no. 3 are strongly refused. In view of these pleadings in the counter reply, the respondents pray that applicant has no case and his

application deserves to be dismissed.

5. The applicant has contested the submissions of the respondents in the Counter reply of respondent no. 4 by filing rejoinder reply. No rejoinder reply for the Counter reply of respondent no. 6 has been filed.

6. Vide order dated 1.11.1996, it was directed to maintain status quo as on date till the next date. This interim order was extended from time to time.

7. We have heard Shri K.P. Singh and Shri Amit Sthalekar learned counsel of the applicant and the respondents respectively. The material on record has/also been considered.

8. Before we go into the merits of the case, we will review the judgements cited by the either party in support of their contentions. The applicant has relied upon the following judgements :-

- (a) Judgement of this Bench in O.A. no. 334/1986 "Kanhaiya Lal Aggarwal Vs. U.O.I" decided on 2.5.1988.
- (b) Judgement of this Bench in O.A. no. 1318/1991 "Sukh pal Singh Vs. U.O.I" decided on 14.2.1992.

The respondents seek the support of the following judgements :-

(a) Mrs. Shilipi Bose Vs. State of Bihar A.I.R 1991 Supreme Court 532.

(b) Chief General Manager (Telecomm) N.E. Telecom circle Vs. Rajendra Ch. Bhattachayee (1995) 2 SCC 532.

(c) Shri Kamlesh Trivedi Vs. Indian Council of Agriculture Research in O.A. no. 770/1987 decided on 27.4.1988 (Full Bench).

We have carefully gone through these judgements.

In the judgements of the Apex Court quoted by the respondents, while considering the individual cases of transfer, it is held that courts should not interfere with the transfer of a public servant holding transferable post made on administrative grounds or in public interest until and unless there are strong and compelling grounds rendering the transfer order improper and unjustifiable. These grounds being violating of statutory rules or colourable / malafide exercise of power. Keeping in view what is held by the Hon'ble Supreme Court in these judgements each case of challenge of transfer order has to be considered on its own merits to find out if any of the grounds detailed exist calling for judicial interference.

In view of this position obtaining, the ratio of the

decisions cited by the applicant can be of no help to his case directly. The present case has to be examined to identify whether the grounds advanced assailing the transfer order make it improper and unjustified.

9. We will now consider the grounds advanced by the applicant. The first ground is that there is violation of the statutory rules and the applicant has been transferred to another seniority unit and this seriously affecting his service conditions. The applicant has submitted that though Assistant Garrison Engineer AGE (I) Bihta (Bihar) comes under the jurisdiction of C.W.E, Air Force, Bamrauli for execution of the works and maintenance of services but the administrative control for promotion and seniority etc. comes under the C.W.E Ramgarh (Bihar). Apart from this the applicant has also averred that Bihta is tenure station and in terms of the policy instruction laid down vide letter dated 31.8.1994, he could not be transferred to tenure station being 57 years of age. The respondents on the other hand have maintained that Bihta comes within the same C.W.E area and there is no change in the seniority unit. The respondents also contend that Bihta comes under Chief Engineer, Central Command, Lucknow, and areawise division of all

C.W.Es has nothing to do with the State boundries.

After careful perusal of the supporting material brought on the record by the applicant, we are not inclined to accept the stand of the respondents.

The applicant has brought the policy instructions with regard to transfers vide letter dated 31.8.1994

(Annexure-A-16) on record. Further clarifications issued on these instructions have been also brought on record with the rejoinder reply filed with reference to objection Counter reply of the respondents at RA-3 and RA-4. The letters at RA-3 and RA-4 clearly bring out that the transfer and posting of the Industrial persons is controlled by the C.W.E within his area. If the contention of the respondents that the applicant was transferred within the same seniority unit is accepted then the transfer to Bihta should have been ordered by C.W.E as per the laid down rules.

In view of this , the need for transfer order to be issued by Chief Engineer, Central Command, Lucknow, is not understood. Since the transfer order has been issued by Chief Engineer, Central Command, , Lucknow, on public interest, it is obvious that the transfer is to another seniority unit outside the area of concerned C.W.E on administrative ground as covered in the instructions vide letter dated 31.8.1994. In

this letter it is also laid down for such transfers, Chief Engineer is required to inform Engineer-in-Chief to enable him to review the transfer orders.

The applicant has taken this plea that no information has been sent to Engineer-in-Chief and there is no controverting of the same by the respondents. In this view of the matter, we are constrained to hold the view that the applicant has been transferred to another seniority unit.

10. The applicant has also raised the plea that Bihta is a tenure station and his transfer is in violation of the laid down policy instructions for transfer to the notified tenure station. He has drawn our attention to para 12(g) of the letter dated 31.8.1994 which lays down that none will be retained at the tenure station beyond the age of 53 years. The applicant states that he was 57 years old at the time of transfer. The applicant has made this plea in the reply to the objection Counter reply filed by the respondents. The respondents have not controverted this submission.

11. It is well settled that departmental guidelines with regard to transfer are not statutory in nature and these guide lines do not vest any right on the

employee. However, the competent authority is expected to be fair and just in exercising his power in the matters of transfer and it should not exhibit arbitrariness or colourable exercise of power or malafide intent. In the present case, the respondents have asserted that the transfer of the applicant has been done in public interest. Except just making this statement, the respondents have not disclosed the reasons which prompted this transfer in public interest particularly so when the transfer is to another seniority unit and in relaxation of the guide lines for tenure station postings. The reasons for transfer may not be disclosed in the transfer order as to the concerned employee, but once the transfer order is challenged on the grounds of violation of statutory rules and malafide intent seeking judicial interference, the respondents are expected to disclose the basis of transfer in public interest so that Bench could satisfy itself that the transfer is on public interest and not for any other extraneous considerations. However, the respondents have chosen to be silent on this aspect.

12. Though the respondents have maintained silence, with regards to considerations necessitating transfer in public interest, but from the material brought on the record by the applicant, the reasons are quite discernible. The applicant has stated that he is an office bearer of the employees Union and in this capacity he has been complaining to high authorities against A.G.E (I) Manauri for not attending to the grievances of the staff, committing of the financial irregularities and misappropriation of Government property. A number of such letters have been brought on record. Writing of such letters is not specifically controverted by the respondents. There are also allegations against the applicant for misbehaviour with the A.G.E (I), claiming of false medical bills and remaining unauthorisedly absent. From the documents brought on record by the applicant, it is noted that his explanation for indiscipline had been called and for other issues some inquiry was being conducted. The respondents have on the other hand submitted that the applicant is not the elected office bearer of the union and in support of this have brought on the record documentary evidence at CA-3 and CA-4 of the Counter reply filed by Shri A.K.

Sharma C.W.E. The applicant has refuted this but has not brought any similar documentary evidence to substantiate his claim. In any way, we do not go into the merits of rival claims as this is not the issue before us but it appears that there are two factious of the union operating in the area. All these facts are a clear pointer to the fact that all was not well between the applicant and A.G.E (I) Manauri and the relations appears to be strained.

13. The applicant has alleged malafides against the A.G.E (I) Manauri who has been also made respondent by name. The applicant alleges that A.G.E (I) has managed to get him transferred to distant place by issuing his influence with the Chief Engineer, Central Command. Shri A. Bhaduri, A.G.E (I) Manauri, has strongly refuted the allegations of malafides by filing Counter affidavit. He has maintained that the transfer has been ordered by the Chief Engineer in the public interest. We are convinced by the grounds advanced by the applicant alleging malafides against AGE(I). If AGE (I) has managed transfer by issuing influence with the Chief Engineer then

he is also a party to malafide intent as the Chief Engineer has used his power for extraneous considerations. However, the applicant has neither alleged any malafidies against the Chief Engineer nor he has been made respondent by name. It appears that instead of tackling the applicant for his alleged misbehaviour with AGE (I), other irregularities and Union activities as detailed earlier by taking disciplinary action, the administrative tool of transfer has been utilised to get rid of the applicant from the scene to a distant place at the tag end of his service. Since the respondents have not disclosed the reasons for transfer in the public interest, we are compelled to take a view in the light of the above deliberations that transfer was actuated not in public interest but for other considerations. Under such circumstances, the transfer order cannot be sustained and the same deserves to be quashed.

14. In the premise of above discussions, we find merit in the application and the same

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is allowed quashing the impugned transfer
order dated 18.10.1996 and 14.10.1996. No
order as to costs.

MEMBER (A)

MEMBER (J)

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