

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

* * * *

Dated : This 6th day of September, 1996

Original Application No. 662 of 1996

District : Agra

CORAM:-

Hon'ble Mr. S. Das Gupta, A.M.

Sri T.P. Jain Son of Sri Sundar Lal Jain,
Superintending Engineer, working as
Commander Works Engineer, Military Engineering
Services, Agra and presently resident of House
No. SE-2, Station Road, Agra Cantt, District-Agra.

(By Sri Ashok Khare, Advocate)

..... Applicant

Versus

1. Union of India through Secretary,
Ministry of Defence, New Delhi.
2. Engineer-in-Chief, Army Headquarters
Kashmir House, Rajaji Marg, New Delhi.
3. Chief Engineer, Headquarters Central Command,
Lucknow Cantt.
4. Chief Engineer, M.E.S., Lucknow Zone,
Lucknow Cantt.
5. Brigadier A.K. Nagpal, Chief Engineer, M.E.S.,
Lucknow Zone, Lucknow Cantt.
6. Colonel Ashok Kumar Dutt, Colonel 'Q'
Headquarters I Corps, Mathura.
7. Sri Hira Lal, Superintending Engineer,
M.E.S., Inspection Bungalow, Agra Cantt.

(By Sri N.B. Singh & Km. Sadhna Srivastava, Advocates

..... Respondents

Bl.

ORDER

- 2 -

By Hon'ble Mr. S. Das Gupta, A.M.

Under challenge in this OA filed under Section 19 of the Administrative Tribunals, Act, 1985, are an order no. 70001/SE/16/96/E-1A dated 12-6-1996 issued by respondent no.2 transferring the applicant from the post of CWE Agra to that of SO-1, Chief Engineer Eastern Command, Calcutta and an order no. 70001//E-1A dated 12-6-1996 also passed by the respondent no.2 by which the place of posting of Sri Hira Lal has been changed from Kanpur to Agra and that of Sri Ganga Sahai from Allahabad to Kanpur. The applicant has sought quashing of both these orders and a direction to the respondents not to interfere in the working of the applicant as Commander Works Engineer (CWE for short) Agra and to pay him his regular monthly salary on the said post regularly every month. A direction has also been sought commanding the respondent no.1 to consider and decide the representation of the applicant dated 8-3-1996 addressed to the Secretary, Ministry of Defence, complaining against the alleged misbehaviour of Colonel Ashok Dutt.

2. The applicant is a civilian officer in the Military Engineering Service. A graduate in Civil Engineering, he was appointed initially as a Superintendent Grade-I (B&R) MES. On being selected by the Union Public Service Commission in 1969, he was appointed as Asst. Executive Engineer on 12-2-1969. He was promoted as Executive Engineer in July, 1980 and thereafter by an order dated 7-4-1995, he was promoted as Superintending Engineer and posted as CWE Agra on transfer from the office of the Chief Engineer, Jabalpur. The applicant was actually

WL

relieved from his earlier station of posting only on
19-8-1995 and thereafter joined the post of CWE Agra
on 25-8-1995. While he was working on this post, the
impugned order was issued by which he has been transferred
to Calcutta while Sri Hira Lal has been posted in his
place modifying his earlier posting from Portblair to
Kanpur.

3. The grounds which have been taken in this OA for
challenging the impugned order of transfer of the applicant
are following :-

(I) The applicant is said to ~~be~~ have been shifted from his present
place of posting in less than nine months' time and
this is violative of the instructions contained in
the Circular dated 21-2-1991 which stipulates that
tenure in an executive post would generally be two
to three years and such tenure can be curtailed only
on account of inefficient performance of the concerned
officer.

(II) The applicant's posting as CWE is his first executive
posting and his work, conduct and performance as
CWE Agra being fully satisfactory, there was no
ground for curtailment of his tenure on the post
of CWE Agra.

(III) The transfer order is malafide.

(IV) The order of transfer has been passed to penalise
the applicant and is based on co-lateral reasons.

WL.

4. When the case came up for admission, on 20-6-1996, the KK Single Member Bench ^{hearing} heard the matter at admission stage granted an interim order staying the operation of the impugned order dated 12-6-1996 in so far as it seeks to transfer the applicant from the post of CWE Agra to that of SO-1, CWE Eastern Command, Calcutta, until further orders. Subsequently, the matter came up for orders before a Division Bench on 12-7-1996. This Bench allowed the application filed by the respondents praying for vacation of the aforesaid interim order but, in view of the suggestions given, by the learned counsel for the respondents, had agreed that both the applicant and Sri Hira Lal, who had already joined as CWE Agra, shall continue to remain in Agra till such period as this OA would finally be disposed of. The respondents were given liberty either to take or not to take work from the applicant but he shall be paid salary and other allowances regularly.

5. The respondents have contested the claim of the applicant by filing several affidavits. One counter affidavit has been filed by Colonel KPR Singh on behalf of respondent nos. 1 to 4. Another counter affidavit was filed by Brigadier Ashok Kumar Nagpal arrayed by the applicant as respondent no.5. Respondent no.6, Colonel Ashok Kumat Dutt and Sri Hira Lal, Superintending Engineer, respondent no.7 have also filed separate counter affidavits. It may be mentioned at this place that the applicant has alleged bias on the part of

WL

respondent nos. 5 and 6 against the applicant in respect of which he has made certain averments, to which I shall advert later. The applicant has filed rejoinder affidavits to all the counter affidavits filed on behalf of various respondents.

6. During the course of hearing of this matter Sri Ashok Khare, learned counsel for the applicant focussed his arguments on two substantive grounds in challenging the impugned order of transfer. The first ground on which he laid great emphasis is that the impugned order of transfer is malafide in view of the fact that the respondent nos. 5 and 6 were biased against the applicant and they have not succeeded in getting their recommendations for the transfer of the applicant accepted by the competent authority. The ^{other} plank of his argument was based on a departmental circular regarding tenure on an executive post. He argued that since the applicant's performance was very satisfactory, several certificates issued by the user organisations bearing eloquent testimony to the same, the applicant's tenure on the post of CWE Agra, which is his first tenure on an executive post, could not have been curtailed so drastically as to shift him out of the executive post to a staff post in less than nine months' time.

7. Since the learned counsel for the applicant concentrated his argument on the two aforementioned grounds, I have given my careful consideration to these two grounds and examined their validity or otherwise in the light of the averments made in the various pleadings.

W.L.

8. In order to establish that the impugned order of transfer is malafide, the applicant has made the following averments in the OA. He has stated that he was authorised to conduct investigation into a complaint with regard to acceptance of tender by the GE Agra at higher rates. The applicant claimed that as a result of investigation conducted by him, he came to the conclusion that the tenders were being accepted by the GE Agra at higher rates on account of pooling/ring tender resorted to by the latter. He is stated to have raised objection to the existing procedure adopted in floating and accepting tenders and as a result of the implementation of the /suggested by him changed procedure, the rates of the tenders came down considerably. He further claims that similar malpractice was being adopted by the GE Mathura which was indicated by him to the CE Lucknow Zone, (respondent no.5 in this application). As a result, a Staff Court of Inquiry has been order by the Station Headquarters, Agra against the GE Agra and the GE Mathura. The applicant alleges that the investigation report submitted by him with regard to the mal-practice resorted to, the GS had annoyed respondent no.5 who is his immediate superior officer. He was thus prejudiced against the applicant and at every opportunity, he tried to humiliate and harass the applicant.

9. The further case of the applicant is that on 26-12-1995 after a meeting held at Mathura with the Chief of Staff, Major General SC Chopra, in which the applicant had participated along with respondent no.5, Colonel Ashok Dutt respondent no.6 allegedly misbehaved

W.C.

with him for getting his own suggestions accepted in the meeting instead of the suggestions given by respondent nos.5 and 6. It is also alleged that the acceptance of the alternatives suggested by the applicant in preference to that suggested by respondent nos.5 and 6, had annoyed both the respondents. The applicant addressed a letter dated 27-12-1995 to the General Officer Commanding, Headquarters 1 Corps, Mathura, complaining against the alleged misbehaviour of Colonel Ashok Dutt. The applicant claims that subsequent to this, the respondent no.5, to whom a copy of the letter dated 27-12-1995 was endorsed, called him to Lucknow and discussed the matter and assured him that he would advise respondent no.6 not to misbehave with the applicant in future. However, despite this assurance, it is alleged that the applicant received a communication dated 16-1-1996 (Annexure-15) issued on behalf of the General Officer Commanding through which the applicant was admonished for his misbehaviour both inside and outside the COS on 26-12-1995. Thereafter respondent no.5 continued to take misconceived objections to various actions of the applicant purely out of annoyance. This resulted in several communications from respondent no.5 counselling the applicant regarding his conduct and performance. Copies of these communications are Annexures-16 and 17. Feeling aggrieved the applicant submitted a representation dated 8-6-1996 addressed to the Secretary, Ministry of Defence, Government of India (Annexure-A-19). This representation is yet to be responded to. The applicant submits that being biased against the applicant, respondent no.5 recommended his transfer and the impugned order of transfer is based on this recommendation rendering the order of transfer malafide.

W.C.

10. The second leg of the argument is based on a circular dated 21-2-1991 stated to have been issued by the Engineers-in-Chief Branch, Army Headquarters, New Delhi on the subject of career planning and posting policy of MES Civilian Officers. A copy of this circular is at Annexure-24. This circular stipulates that the executive tenure will generally be of two to three years and that such tenure may be extended/ curtailed based on the performance of the officer after specific recommendation of the CE Command. The applicant's averment is that as Superintending Engineer, this was his first executive posting as CWE Agra, and he could not have been posted out before completion of the normal tenure, particularly when his performance was highly commended by various user organisations. In support of his claim that he had performed well, the applicant has annexed a number of documents of which Annexures 2 to 8, are commendations given to the applicant, in the past, the latest of which pertains to his performance during 1981-82. These, therefore, have little relevance to the present controversy. However, the commendations which are annexed at Annexures-9 to 11 are of recent origin and reflect ^{favourably} on his performance as CWE Agra.

10. In the CA filed on behalf of respondent nos.1 to 4, it has been denied that the order of transfer suffers from any malafide intention or in any manner amount to punishment to the applicant. It is stated that the transfer being an incident of service, if it is made in the exigencies of service, the courts can interfere only if it is malafide. Even dissatisfaction of management with the performance of an employee can be considered a valid administrative ground for transfer of the employee. It has been further submitted that the order of transfer was passed by the respondent no.2 and not by respondent no.5 and 6 against whom allegations of malafide have

had been levelled. It has been submitted that the respondent no.2 has taken independent decision on transferring the applicant on the basis of various reports and after making inquiry through independent persons regarding the performance and the working of the applicant. The allegations against respondents no.5 and 6 have also been denied.

11. It has been further submitted in the counter affidavit filed on behalf of respondents no.1 to 4 that the main work of CWE Agra , the post which the applicant was holding, is to ensure that proper and efficient engineering service is provided to the troops located in Agra and Mathura Cantt and in performing his duties effectively, he has to closely inter-act with several user agencies. It has been alleged that the applicant's performance was poor and he unnecessarily indulged in misbehaving with superior officers as well as subordinate staff. The superior officers had given him counselling which he did not take in good ^{the} spirit and ^{had} made no efforts to improve his performance. Various user agencies complained that the applicant had failed to render effective engineering support to the user formations/units, thereby adversely affecting users and tarnishing the image of the Military Engineering Services. The applicant also allegedly failed to maintain rapport with his immediate superior officers i.e. CE and also with his junior officers i.e. GEs. He also failed to maintain rapport with the commanders of the user formations. Thus, the applicant had strained relations with all and had created worst working conditios adversely affecting the operational efficiency of the user formations/units and, therefore, it was ^{due} administrative requirement to transfer the applicant.

WL

12. As regards incidents of 26-12-1995, it has been stated that the matter was investigated departmentally by an independent one-man inquiry specifically ordered by the Engineer-in-Chief. This inquiry was conducted by the Addl. Director General Engineers (Personnel) who clearly brought out that the complaint of the applicant was baseless. The respondents have also annexed certain letters as CA-5 and CA-6 which are letters from the user organisations complaining about the unsatisfactory performance of the applicant, with particular reference to his style of functioning.

13. Respondent no.5, who has been impleaded by name, has filed a separate counter affidavit specifically denying the allegations of malafide. He has further stated that as Chief Engineer, Military Engineering Service, Lucknow zone, he had opportunity to inspect and supervise the work of the applicant and in his official capacity he has given counselling letters to the applicant from time to time and had also reported to his next superior i.e. respondent no.3 regarding performance of the applicant as a part of his routine administrative work. It is further stated that he did not report or make any recommendation regarding the applicant directly to respondent no.2 who had passed the order of transfer. He submitted his report to his immediate superior i.e. respondent no.3. He has denied that he was annoyed by the applicant as alleged by the letter on the ground that the applicant was instrumental in ordering court of inquiry to investigate the malpractices ^{being} resorted to by GEs Agra and Mathura. He has submitted that the inquiry was actually ordered on a complaint by a contractor, and not on the basis of the inquiry by the applicant.

W.L.

14. A separate counter affidavit has also been filed by respondent no.6, who has also been impleaded by name. He has strongly denied the allegations of malafide made by the applicant in the OA and has submitted that such allegations are false and fabricated, and have been levelled by the applicant to conceal his own misdeeds and to malign the reputation of the respondents. He has stated that during the discussion on 26-12-1995 in the office of the Chief of the Staff, the behaviour and attitude of the applicant was very bad, odd and awkward. He has also pointed out that the entire matter was investigated by a Senior Military Officer and the inquiry has found no substance in the applicant's allegations.

15. The applicant has filed a rejoinder affidavit to all the counter affidavits in which he has reiterated his earlier submissions and sought to deny the contrary submissions made by the respondents in the counter affidavits.

16. I have heard learned counsel for both the parties and carefully perused the record.

17. I would first take up the second plea of the applicant which is based on the violation of the departmental guidelines regarding tenure on executive post as this can be easily disposed of. It is now settled law that the Courts/Tribunals may interfere in a transfer order only if such an order is in violation of statutory rules or is actuated by malafide. In a catena of decisions the Hon'ble Supreme Court had held repeatedly that while the employers are expected to follow their own guidelines, any contravention thereof shall not be a valid reason for the Courts/Tribunals to interfere with an order of transfer, which essentially is an incident of service. Such was the view taken in the case of Shilpi Bose Vs. UOI and 1992 SCC (L&S) 127 and UOI Vs. SL Abbas and 1993 SC 2444.

SL

18. Apart from the settled position of law that even if, there has been a violation of the guidelines of the department regarding tenure on executive post, it would not have given sufficient ground to the Tribunal to interfere in the impugned order of transfer, the fact remains that, in my view, there is not even a violation of the guidelines in the present case. The guidelines clearly stipulate that executive tenure will generally be ^{of} two to three years and it can be both extended and curtailed based on performance of the officer. It is a specific case of the respondents that the applicant's performance has been unsatisfactory. Therefore, the curtailment of the applicant's tenure on the executive post cannot be construed as a violation on the guidelines. It is another matter whether his performance was really unsatisfactory or not as alleged by the respondents. To this aspect of the matter I shall advert presently.

19. The more serious challenge to the impugned order of transfer is that it was actuated by malice on the part of the respondents. The detailed facts set out by the applicant in his application to substantiate his allegations of malafide have already been narrated ~~out~~ in some detail in the preceding paragraphs. The proposition of the applicant that the respondent no. 5 was annoyed with him as he has been instrumental in instituting certain inquiries into the alleged wrong doings by the GEs of Agra and Mathura, does not at all appear to be credible. It is quite clear from the records that on the basis of a complaint received against the GE, an inquiry had already been conducted even before the applicant had joined the post of CWE Agra. All that the applicant did was to forward his comments on the findings of the Inquiry Officer.

WL

Moreover, there was nothing to show that there was any kinship between the respondent no.5 and the two GEs involved so ~~xxx~~ as to make the allegation that ^{the} respondent no.5 would be annoyed with the applicant, even if he had been instrumental in getting inquiry instituted against the GEs, worth any credence.

20. The other incident, which the applicant alleges, ~~xx~~ ^{had} given rise to malice on the part of the respondents no.5 and 6 against the applicant is the incidence of 26-12-1995. The applicant's allegation is that respondent no.6 had misbehaved with him after the meeting with the Chief of the Staff. On the other hand, the version of the respondents including respondent no.5 and 6 is that it was the behaviour of the applicant in the meeting with the Chief of the Staff which was reprehensible. In fact, admittedly an inquiry was also held and the allegation of the applicant was found to be baseless. He was even admonished by the Brigadier-Incharge-Administration of Headquarters 1 Corps on behalf of the General Officer Commanding.

21. Irrespective of what actually happened both in and after the meeting with the Chief of the Staff on 26-12-1995, the fact remains that the applicant's allegation of misbehaviour is against the respondent no.6 i.e. Colonel Ashok Dutt. The respondent no.6 admittedly does not come in any way in the chain of command in so far as the applicant is concerned. His allegation that the respondent no.6 was the coursemate and a friend of respondent no.5, who is ^{his} immediate superior, has been specifically denied. Therefore, even if the applicant's allegation has any truth in it, it is difficult to believe that the respondent no.5 would become biased against the applicant.

WL

22. It is settled law that when allegations of malafide are levelled against public servants, the person making allegations has the onus of laying a firm foundation for any inference of malafide. After careful consideration of the various facts brought out in the pleadings, I am not satisfied that the applicant has been able to ~~establish~~ ^{establish} such a firm foundation for inferring that the respondent no.5, who was ^{his} immediate superior, did have any malice against him. So far as the allegation of malafide against respondent no.6 is concerned, I did not consider it relevant to the present controversy since, admittedly, respondent no.6 does not come in the chain of command, in so far as the applicant is concerned and, therefore, cannot have any conceivable role to play in getting the impugned order of transfer issued. There is also nothing on record to indicate that respondent no.6 had any fiduciary relationship with any of the respondents. The only bald statement made by the applicant was that respondent no.6 is the coursemate of respondent no.5. Even this has been denied by the respondent.

23. In any view of the matter, the existence or otherwise of any bias on the part of respondent nos.5 and 6 is, in the ultimate analysis immaterial in this case since the impugned order of transfer was not issued by either of them, but it was issued by respondent no.2 i.e. the Engineer-in-Chief, Army Headquarters. Learned counsel for the applicant had ~~submitted~~ ^{submitted} during the course of argument that there are several layers of command between respondent no.5, who is the immediate superior of the applicant and the respondent no.2, in the chain of command. There is no allegation that either the respondent no.2 or any other lower authorities in the chain of command between the respondent no.2 and respondent no.5 had any bias against the applicant.

W.L.C.

The learned counsel for the applicant laid great stress on the fact that the respondent no.2 had acted on the recommendations of the respondent no.5, who was biased against the applicant. I do not have before me the recommendation which is alleged to have been given by respondent no.5 for transferring the applicant. Even assuming that respondent no.5 had made recommendations in this regard, the fact remains that such a recommendation has been examined at several levels in the line of command and ultimately the order was issued by the highest authorities, i.e. the Engineer-in-Chief. The learned counsel for the applicant argued that if ⁱⁿ any departmental proceedings the Inquiry Officer is biased against the delinquent official and the disciplinary authority ^{acted} ~~had~~ on the report ^{of} such inquiry with adverse consequence to such employee, the entire proceedings will be vitiated, even if there is no allegation of bias against the disciplinary authority, merely because he had acted on the basis of a biased report. He argued that this analogy would be applicable to the present case in which a biased recommendation has been acted upon by the higher authorities. Apart from the fact that a disciplinary action against an employee and the transfer of an employee are two different matters, it has to be remembered that the rules regarding disciplinary proceedings flow out of the constitutional provisions contained in Article 311 gauranting certain ^{protection} ~~precautions~~ to ^{the} employees from arbitrary action on the part of the executive while there are ^{no} ~~no~~ such statutory rules governing circumstances ⁱⁿ ~~in~~ which a transfer can be effected. Moreover, in the case of disciplinary proceedings, the principles of natural justice are to be followed ^{meticulously} ~~very cautiously~~ so that an employee who is charged with ~~a~~ misconduct is given adequate opportunity

W.L.

to defend himself. In that context, if the disciplinary authority acts on the report of the inquiry authority with proven bias against the employee, the entire proceedings shall no doubt be vitiated in view of the time-honoured principles of natural justice. No such consideration can however apply to a matter of transfer of an employee which, as repeatedly being pointed out by the apex court, is an incident of service. I am, therefore, unable to accept the arguement of the learned counsel for the applicant.

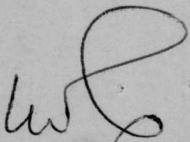
24. Reverting back to the plea that the guidelines regarding tenure on executive post has been contravened, as already mentioned, this would depend on the performance of the applicant. On this question the applicant has claimed that he has performed very well and the commendations at Annexures-9 and 11 appear to bear testimony to the same. As against this, Annexures-5, 6 and 7 to the CA filed on behalf of the respondents no.1 to 4 are indictment of the work and behaviour of the applicant by several user organisations. It is, therefore, obvious that not all the user organisations were happy with the performance and the behaviour of the applicant.

25. In these circumstances it is difficult to hold that the applicant's performance was very satisfactory and, therefore, his tenure could not have been curtailed on account of unsatisfactory performance. It is clear to me from the pleadings on record that whatever the truth be of the allegations made by the applicant regarding misbehaviour by his superiors and the counter-allegations of the respondents regarding the applicant's misbehaviour, there no doubt, existed a strained relation between the applicant on one hand and his superiors in the chain of command, his juniors in the chain of command and also some of the user units ~~or~~ the other. In such a situation

W

even if the applicant, was highly efficient and competent, his effectiveness cannot byt be drastically reduced. In such a situation, the administration would be well within its right to transfer the applicant.

26. After considering the facts and circumstances of the case, I am not convinced that the applicant has made out any case for interference with the impugned order of transfer. The application is dismissed accordingly. The interim orders are vacated. The parties shall,however, bear their own costs.



Member (A) 7

Dube/