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CENTRAL ADMINISTRATIVE TRIBUNAL

Circuit Bench at LUCKNOW

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Gandhi Bhawan, Lucknow

May , 1989

Registration No. O.A. 39 of 1988 (L)

Surya Prakash Applicant

Vs.

Union of India & ors ... Respondents

Hon' Mr. G.S. Sharma, J.M.

Hon' Mr. K.J. Raman, A.M.

(By Hon' Mr. K.J. Raman, A.M.)

In this application, filed under section 19 of the Administrative Tribunals Act, 1985, the applicant who is an Upper Division Clerk, in Ganga Basin Water Resources Organisation (GBWRO), has come up with the grievance that he has illegally been transferred from the above organisation to an altogether different service and cadre under the Central Water Commission (C.W.C.), simply for the purpose of accommodating Respondent No. 6 at Kanpur. He has prayed for the setting aside of the impugned orders of transfer dated 2-9-87 and 6-5-88 and for issue of a direction to the respondents to allow him to remain posted at Kanpur on a post in the cadre of the organisation, and to treat the applicant to be in continuous service as if the impugned orders have never been passed, with consequential benefits.

2. The applicant was initially appointed as Lower Division Clerk by the Superintending Engineer of the GBWRO on 7-12-1971 and was confirmed as such,

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by the Chief Engineer of GBWRO with effect from 1-10-1975; copies of these orders have been annexed to the application. The applicant was promoted as Upper Division Clerk with effect from 29-7-1976 by the Deputy Chief Engineer of GBWRO (Annexure - 5). While functioning as Upper Division Clerk, as aforesaid, the applicant has been transferred to Narmada Division, Bhopal, in the C.W.C., as U.D.C., by an order dated 2-9-87. This impugned order has been issued by the Under Secretary of C.W.C. and states that the applicant is transferred to Narmada Division, C.W.C. Bhopal against the post of Joint Ministerial Cadre of Subordinate Offices of CWC/CEA. The order further states that Shri R.K. Ojha, UDC (Respondent No. 6) borne on the Joint Ministerial Cadre of Subordinate Offices of CWC/CEA, is posted in the same capacity to Kanpur, Sub-Division of Middle Ganga Division No.II, Lucknow against the post of GBWRO Cadre vice the applicant, U.D.C. of GBWRO Cadre on the request of Shri R.K.Ojha.

3. The main and basic contention of the applicant against the impugned transfer order, referred to above is that he is an U.D.C. in the ministerial Cadre of GBWRO and he has been transferred as U.D.C. in a totally different Cadre, namely, the Ministerial Cadre of the C.W.C. According to the applicant, this transfer from one Cadre to another is illegal and is without any legal authority, and has been ordered for a collateral purpose, namely, to accommodate respondents No. 6 and not in the public interest or in the exigencies of service.

4. The applicant avers that the GBWRO, is an

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independent Organisation with the Chief Engineer as the Head of ^{the} Department and has its own functions and responsibilities different from those of C.W.C. The applicant has joined the GBWRO and got confirmed in that Organisation, as well as, promoted to U.D.Cs. level. He had never opted or desired to go into the C.W.C. The Ministerial Cadres in the GBWRO have their own seniority list. The applicant has annexed the seniority list of U.D.Cs. borne on GBWRO Cadre as on 1-10-1987, issued on 8-1-1988 (Annexure- 6); the applicant's name figures in this list.

5. The applicant states that he submitted a representation against the transfer order, on 28-1-1988, questioning the legality of the transfer and also bringing to the notice of the C.W.C. authorities, his personal problems and difficulties arising out of the transfer. By an office memorandum dated 9-3-88 the C.W.C. authorities rejected his representation and directed him to join his duties in Narmada Division, Bhopal. The Assistant Engineer of C.W.C. Nagpur, by his order dated 6-5-88 has ^{thereafter} posted the applicant at Surat in Gujrat. This is the second transfer order passed by the C.W.C. authorities in respect of the applicant. According to the applicant, the transfer of the applicant from Kanpur to Bhopal and again from Bhopal to Surat in the State of Gujrat has been done simply to harass the applicant and is arbitrary and unwarranted. The applicant alleges that it is entirely incorrect to say that there is no post of U.D.C. available in the Cadre of GBWRO, in which the applicant could be adjusted. According to the applicant, there are 9 vacancies still lying unfilled in the

197

Varanasi Circle of the Organisation including three vacancies at Lucknow. The applicant states that he is a scheduled caste employee eligible to sympathetic consideration in matters of posting and transfer in accordance with the existing instructions.

6. The respondents^{nos. 1 to 5 & 7} have taken the position that the transfer was legitimately done and that the applicant had been in one place for a very long time and his transfer was due according to the transfer policy. A copy of a document laying down the transfer policy for C.W.C. employee is annexed as C.II to the reply of the respondents. It is stated that under para 4-(b) of the said policy, ~~which states that~~ persons with longest continuous stay at the place of their current posting should generally be transferred^{first} to fill a vacancy elsewhere. The respondents aver that though the applicant belonged to GBWRO Cadre as on 7-12-1971 and continued to be govern^{ed} by that organisation till merger of GBWRO with C.W.C., after the merger, he is subject to the power of C.W.C. in regard to transfer and other administrative matters. The respondents seek to justify such stand on the basis of certain letters/orders. The first order is dated 14-12-1979 (copy annexed as C-1 to the reply). This order, however, merely states that the technical posts (Gazetted and non-Gazetted) of the two organisations GBWRO & C.W.C. have already been merged. It is clearly stated that necessary orders relating to the merger of non-technical and ministerial Group 'B', 'C' & 'D' posts, as well as, work-charged establishment of GBWRO with C.W.C. are expected to be issued shortly.

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Thus, it is clear that up to the end of 1979, there was no merger of the ministerial cadre to which the applicant belonged. The above order further states that the GBWRO which is a Subordinate Office of the C.W.C. will henceforth be under the immediate administrative control of the C.W.C., instead of directly reporting to the Department of Irrigation as hitherto being done. The respondents have submitted copies of some more letters in support of their contention that the C.W.C. was competent to issue the impugned transfer order. Annexure-1 to the Supplementary Counter Affidavit filed by the Respondents is regarding the principles to be adopted in combining technical posts of the organisations including GBWRO, with the Cadres of C.W.C. This letter is not relevant as regards the issue of transfer of a U.D.C. in this case. Annexure-2 thereof, is again regarding merger of technical staff; Annexure-S.3 dated 22-3-80 is regarding the transfer of budgetary control in respect of GBWRO to the C.W.C. The only matter relevant in this letter is that the C.W.C. has been authorised to deal with administrative matters of GBWRO including transfer, in respect of ministerial staff also, of the GBWRO. This letter also does not show that the ministerial cadres have been merged.

7. The respondents admit that the transfer of the applicant was made for adjustment of Shri R.K. Ojha (Respondents No. 6) on compassionate grounds, and say it is in the public interest. The respondents vaguely deny the allegation of the applicant that there are still some vacancies at the level of Upper Division Clerk in Lucknow and Varanasi divisions.

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8. The Respondent No. 6 in his reply has stated that he has been transferred 14 times during his service from 1955 to 1985, whereas the applicant from the date of his appointment in 1971, till 1987 remained at one and the same place. He also states that he is due to retire in 1990-91 and that is one of the main reasons for his transfer. Respondent No. 6 contends that the transfer order of the applicant for accommodating himself was properly issued in accordance with the transfer policy referred to earlier. In the rejoinder affidavit, filed, the applicant has submitted certain documents to prove that the ministerial cadres have never been merged. The first one is a reply to a Parliament Question which states that the merger is still held up due to a writ petition in the Delhi High Court (1982). A copy of the minutes of a meeting held in C.W.C. in 1981 also leaves no room for doubt that the merger was yet to come. There is another letter of 1987 from the C.W.C. which is to the same effect.

9. During the oral arguments, the learned counsel for the opposing parties explained their case at length. The learned counsel for the applicant also referred to the following cases :

- (1) a judgment of Delhi High Court reported in All India Services Law Journal, 1974 (Short Notes) (page xviii) (Civil Writ No. 957 of 1971);
- (2) M.P. High Court, Prakash Chandra Saxena Versus State of M.P. 1980 AISLJ p.466;
- (3) Allahabad High Court K.P. Purohit V. Chairman, N.T.C.(U.P.) and ors. W.P. No.7212 of 1986.

10. The learned counsel for the respondents Nos. 1, 2, 3, 4, 5 and 7 while arguing that the

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C.W.C. authorities were empowered to issue the impugned transfer order, was specifically asked by us to produce or cite the specific rule or authority or instructions of the Government, if any, empowering the C.W.C. to issue ^{ex cadre} such/transfer orders in respect of the GBWRO ministerial staff. The hearing was also extended by a day to enable the learned counsel for the respondents to obtain instructions and documents from the Department. On the day of the final hearing, the learned counsel for the respondents merely submitted a copy of the order dated 14-12-79 already referred to above and a copy of letter dated 22-3-80, which is also among the records and alluded to above. He stated categorically in reply to our question that the actual merger of the ministerial cadre has not taken place as yet, and that there are no other instructions, orders or other authority in regard to powers of ^{such} transfer.

11. We have carefully considered the various contentions advanced on behalf of the applicant and the respondents. The first issue in this case is, whether the applicant could be law-fully transferred from his last place of posting under the GBWRO at Kanpur, to C.W.C. Office at Bhopal/Surat. The applicant's contention is that the ministerial cadre under GBWRO to which he belongs being different from the ministerial cadre of C.W.C., he could not be legally transferred by the C.W.C. authorities ^{to the C.W.C.}. The contention of the Respondents is that the GBWRO is an organisation, subordinate to C.W.C. and the C.W.C. has been vested with powers of administrative control of transfer etc. by the Government over the GBWRO and, therefore, the C.W.C. is quite empowered to transfer the applicant as it has done. Certain averments in the counter affidavit,

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filed by the respondents stating that the GBWRO is no more in existence, and the cadres have been merged, are not supported by any authority. On the other hand, the seniority list published on 8-1-1988 (Annexure-6 to the application), the reply to the Parliament Question in 1982 (Annexure No. 2 to the R.A.), the minutes of the meeting annexed to the RA and the other letters and orders already referred to above, clearly show that the ministerial cadres of GBWRO and C.W.C. were separate at the relevant time and also even now, and the merger is yet to take place. It, therefore, follows without any doubt that the applicant belonging to the GBWRO cadre has been transferred in the same capacity to the Subordinate Office of C.W.C. which has a distinct, separate cadre. In this connexion, the judgment of the Delhi High Court cited by the applicant (Civil Writ No. 957 of ¹⁹⁷¹~~1967~~) is very relevant. In that case, the petitioner joined as an employee of the Directorate of Extension, Ministry of Food and Agriculture, New Delhi, in 1956. He was appointed to officiate as U.D.C. in 1959. There were certain conditions contained in his appointment order which included a stipulation that he should be prepared to serve anywhere in India. He was confirmed as U.D.C. in 1967. He was transferred in 1970 to the Office of Regional Station for Conducting Demonstration of Farm Produce. The petitioner represented against the transfer order, but his representation was rejected. He filed the writ petition in the Delhi High Court. The Hon'ble High Court held that the transfer was not legal.

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It was held that normally it is to be expected that the Government employees who join a particular cadre would have the range of their transferability determined within that cadre. Logically it does not stand to reason that a person who is recruited to a particular cadre should be compelled against his wishes to serve outside the cadre even when the permanent post to which he holds a lien exists within the cadre. The judgment refers to FR- 15 and states that even under that rule, the transfer could ^{only} be to another post within the same cadre. It is further held that in cases where the government servant is transferred to an ex cadre post, he is considered ^{to be} on deputation with the result that he is entitled to deputation allowance as per the various orders of the Government of India. The Hon'ble High Court went on to say that though the government has the authority to transfer a government servant and the court would be normally most reluctant to interfere with the exercise of administrative discretion by the government, it is equally well settled that the courts can interfere, if the transfer is violative of any legal provision or is otherwise mala fide. The Court referred to Hon'ble Supreme Court's decision in Barium Chemicals/Ltd. case (A.I.R. 1967 Supreme Court 295) and stated that just because the Government has stated that transfer was bonafide, it cannot be treated as the end of the matter. The court is entitled to examine, whether the order was bonafide or not. We respectfully agree with the observations of the Hon'ble High Court in the above case.

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Applying the same principle, it has to be held that the applicant ought not to have been transferred from his original cadre to an organisation outside his cadre without his consent and without specific legal authority. The transfer order is bad on this ground alone. It is no doubt true that the government has authorised the C.W.C. to exercise administrative control over the GBWRO in various matters, budgetary and otherwise, but, this only enables them to issue such orders which can be legally issued. This delegation of power does not entitle the C.W.C. to make inter-cadre transfer against both principle and practice.

12. One of the grounds of justification of the transfer order advanced by the respondents is the transfer policy for C.W.C. employees (Annexure C-2 to the reply). This policy is specifically issued in respect of C.W.C. employees only, and is not strictly applicable in the case of the applicant. Even assuming that this general policy can be applied to the applicant as a measure of administrative control, it is seen that the transfer of the applicant, does not seem to be covered by the policy. The respondents have relied on para 4(b) of this policy to justify the transfer of the applicant. This provision states that persons with the longest continuous stay at a place should be transferred first. Para 4, however, is to be read with para 3 which states that Group 'C' and 'D' personnel should not normally be transferred from one station to another except to meet the following inevitable ~~contingencies~~

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contingencies:

- a) When transfers become essential for purposes of adjusting surplus staff or making up deficiencies of staff.
- b) On the request of employees on compassionate grounds or on mutual transfer request basis.
- c) At the time of promotion, when the promotee cannot be adjusted locally for various administrative and other valid reasons.
- d) For exigencies of service or administrative requirements.

Sub paras a), b) and c) above are clearly not applicable in the case of the applicant. As regards, d), it is true that even group 'C' employees ^{like the applicant} can be transferred for exigencies of service or administrative requirements. The respondents have not pointed out to any exigency of service or administrative requirement which necessitated the transfer of the applicant. Accommodating Respondent No. 6, at Kanpur on compassionate ground cannot be considered to be an exigency of service or administrative requirement. Thus, the question of applying para 4, b) of the policy does not arise in this case, and the transfer appears to be in fact in violation of the transfer policy.

13. Considering all the circumstances of this case, we find that the application has merits and has to succeed. We hereby quash the impugned order of transfer dated 2-9-87 to Bhopal, the order dated 9-3-88 rejecting the representation of the applicant, and the second impugned order of transfer dated 6-5-1988, reposting the applicant at Surat. We direct the respondents Nos. 1 to 5 and 7 to allow

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the applicant to remain posted at Kanpur on any post of equivalent rank in the cadre of GBWRO and to issue a posting order accordingly. The above directions shall be implemented within two months from the date of receipt of this order by the above respondents. The period from the date of relief of the applicant from the post held by him before his transfer, till he is reposted as aforesaid, shall be regularised as leave of the kind admissible to the applicant, including extra-ordinary leave if necessary. The entire period, however, shall be treated as continuous service without any break for the purpose of pensionary and related benefits. The application is allowed to the extent indicated above. There will be no order as to cost.

[Signature]
MEMBER (A)

[Signature]
MEMBER (J)

(sns)

[Signature] Lucknow,
July 13,
May 1989.
[Signature]