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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No.913 of 1994

UMESH CHANDRA MISHRA

...APPLICANT

Versus

UNION OF INDIA & OTHERS

... RESPONDENTS

HON'BLE MR. K.MUTHUKUMAR -MEMBER (A)

(By Hon'ble Mr. K.Muthukumar- AM)

In this application, the applicant has prayed for setting-aside the impugned order dated 31st May, 1994 passed by the respondent no.2 transferring the applicant from Kanpur to the Central Office of the C.P.W.D. in Delhi (Annexure A-1) by this Tribunal and for issuing suitable direction to the respondents to allow the applicant to remain on the said post at Kanpur prior to this transfer order.

2- The brief facts of the case are as follows. The applicant as Superintending Engineer in C.P.W.D., is posted as Superintending Engineer (Valuation) in Income Tax Department at Kanpur. He has been working in the said post from 10th May, 1991 and has completed three years of service in this post. By the order of the respondent No.2 dated 31st May, 1991 (Annexure A-1) the applicant was transferred from Kanpur to Delhi and was directed to report for duty to the Central Office Delhi for further posting in Delhi. By the same order Shri D.S. Bhatia was transferred from Chandigarh to join the applicant's post at Kanpur. An application was moved for impleadment of Shri Bhatia as respondent no.4. This tribunal issued an interim-order/whereby, the respondents were directed to file counter affidavit within 4 weeks and in the meantime they were directed not to coerce the applicant

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to make over charge till 17th June, 1994 if he had not already made over the same. The applicant has averred that on the basis of the policy of the Government the transfer order is illegal and contrary to the policy of the Govt. of India, Ministry of Personnel, P.G. & Pensions as contained in Department of Personnel and Training circular dated 3.4.1986 (Annexure A-5) and the C.P.W.D. circular dated 13/18-3-1987 (Annexure A-3), according to which and as per the policy of posting of husband and wife at the same station, the officer concerned should be given the option either to stay at the same station for one more year beyond his normal tenure or to avail of the preference of one year in returning back to the station after ^{being} going transferred out. As per the C.P.W.D. Manual, the normal tenure of Supdt. Engineer at a station is 3-4 years and therefore his transfer order before completion of the tenure was illegal and arbitrary. Secondly, the respondent no. 2 has not taken into account his representation dated 9th March, 94 requesting for choice of posting giving Kanpur as first option for one year beyond normal tenure in accordance with D.G. Works Office Memorandum dated 18th March, 1987 as he and his wife are serving under Government of India at the same station. The applicant has also averred that the impugned transfer order was passed without considering the above facts and that he has not given the charge of the post at Kanpur till date.

3- Learned counsel for the respondents initially filed a short counter affidavit on 16th June, 1994 before this Tribunal informing the Tribunal that the deponent namely Shri Bhatia has been transferred and posted in place of the petitioner and that he has assumed the charge of new posting on 8th June, 1994 as per the photostat copy of the taking over charge (Annexure CA-1). The counsel for the respondents sought time for filing counter affidavit and was allowed 3 weeks time to file the same. Learned counsel for the respondents also filed an application for vacation

of the interim order issued by this Tribunal which was opposed by the applicant. While opposing the vacation of the interim order, the applicant has stated that Shri Bhatia had not assumed charge in his place and that the applicant was on casual leave till 14-6-94 and there was no question of taking over charge by Mr. Bhatia. Besides as per rules the charge certificate alleged to have been signed by the respondent No.4 for taking over the charge is false. In the rejoinder affidavit, the applicant raised objection to the impleadment of Shri Bhatia as respondent.

4- In the counter affidavit, the respondents have averred that the contents of circular issued by the Ministry of Personnel and Training dated 3.4.1986 and the C.P.W.D. circular dated 18th March, 87 cited by the applicant in support of his contention, are only guidelines and that the applicant's transfer after expiry of the three years tenure is in public interest. Besides, his substitute Shri Bhatia reported for duty on his transfer to Kanpur at Kanpur Office but, since the applicant was not available in the office, he could not take over the charge of his office on 7.6.1994 and assumed the charge on 8th June, 1994, and after his taking over the charge on 8th June, 1994 he had informed to the Director General of Works, New Delhi that the applicant had not come so far and that he was informed that neither the applicant had met the Chief Engineer (Valuation) nor he had applied for Earned Leave and no intimation was available at his residence regarding his attending the office and in the above circumstances he had to take over the charge and the charge report was accordingly sent to the Director General Works New Delhi without bearing the signature of the relieved officer, viz. the applicant. Respondents further averred that the transfer of the

applicant was not in the nature of punishment and that he was transferred in the public interest. His representation on 9th March, 1994 was duly considered by the respondent No.2 but he could not be retained at Kanpur and accordingly he was given transfer to the station nearer to his previous station and the option given by the petitioner was also considered before the order of transfer was passed and therefore, the contention of the applicant that his representation was not considered, was not correct.

5- During the hearing, learned counsel for the petitioner brought out the following points:

- (i) According to the interim order of the Tribunal, there was no question of his handing over charge;
- (ii) That the petitioner has not handed over the charge when he was on leave till 14-6-94; therefore, there is no question of assuming of charge by the respondent No.4 on 8th June, 1994.
- (iii) The charge report filed by the applicant contained only the signature of the respondent No.4 and not the petitioner and therefore this charge report could not be relevant;
- (iv) The transfer was not in the public interest as it was meant only to favour Shri Bhatia and the applicant had completed less than the normal tenure of 3-4 years and he had been transferred against the executive orders of the Department of Personnel and Training and the provisions of the C.P.W.D. Manual relating to transfer and therefore, the transfer has to be treated as illegal;

Learned counsel for the petitioner also cited certain cases in support of his contention;

- (i) A.I.R. 1984 Supreme Court page 1587 para-4, Union of India and others V/s H.R.Patnaker.

(ii) 1989 Vol.II SCC page 541 para-10 Paluru Ramkrishnaiha
V/s Union of India and others;

(iii) 1989 Vol.I SCC page 175 para-6 Union of India & others
V/s Somasundaram Viswanath & others;

6- Learned counsel for the respondents contended that the transfer order was not against any statutory rule and was in public interest and said that the applicant had not taken the plea of mala-fide in the order of respondent ^{and} cited the settled law on this subject, viz., Union of India V/s S.L.Abbas ATC page 844(1993). He also cited several other cases, namely;

(i) 1992 SCC Service Law Reporter page 127 Shilpi Bose V/s
State of Bihar;

(ii) 1993 ATC Vol.23 page 775 Union of India V/s N.P.Thomas,

(iii) Gujarat Electricity Board V/s Atmaram A.I.R.(SC) page-1433

(iv) 1989 Vol.II ATC page 269 Union of India v/s H.N.Kirtania

7- We have heard the learned counsels for the parties and also perused the records. Regarding the interim order of the Tribunal, in view of the averment made by the respondents, that respondent No.4 had already assumed charge on 8.6.94, this order had become infructuous. With regard to the contention of the petitioner that he did not handover the charge on 8th June, 1994 and therefore, the question of assumption of charge by the respondent No.4 Shri Bhatia, did not arise and the charge report filed was not in accordance with the G.F.Rs, I am of the opinion that the rule governing that the charge report has to be considered in the light of the ordinary circumstances of a transfer when both the outgoing officer and the incoming officer have to make over/take over the charge simultaneously. In this case the officer who is supposed to be relieved, does not sign because

he had not made himself available by being on casual leave and not reporting thereafter for duty also. The relieving Officer viz., respondent no.4 has explained the circumstances under which he had to forward the charge report to the Head Quarters without the signature of Shri U.C.Mishra, ^{respondent} The Officer has also to comply with the order of his transfer, and that the rule regarding the signing of the charge report by both the parties is based on the assumption that both the parties are normally expected to sign the report. The fact that the officer who has to be relieved does not sign the charge report for some reason or other does not ~~invalidate~~ the fact of assumption of charge by the other officer who has come to relieve the officer. Secondly, besides it has been contended in the counter affidavit that there has been no application for casual leave or any other leave by the applicant. The contention of the learned counsel for the applicant that the applicant was on casual leave to which he was entitled and there was no question of handing over charge, is, to my mind, a specious argument. It is seen from the averments made by the respondents that the applicant had not applied for casual leave or any other leave. Besides, he had not informed his superior officer about his reasons for not being present for handing over charges, which is normally expected of a responsible officer under transfer, however much ^{the} ~~much~~ transfer ~~also~~ is unacceptable to him. Instead, he had chosen to be on casual leave, according to him till 14.6.1994 and even thereafter also did not handover charge. By acting in this manner and ~~their~~ pleading that he never signed the handing over charge report and ~~and~~ therefore, there was no question of assumption of charge by the

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respondent No.4, would not in any way invalidate the assumption of charge by the respondent No.4, on the day he signed the charge report. The petitioner has not taken the plea that there is malafide in the order of the respondent No.2. I find that the transfer order of the applicant's and that ^{of} the respondent No.4 cannot be considered to be not in public interest. Besides, the respondents have clearly stated in the counter-affidavit that the representation of the applicant giving the choice of place of posting was duly considered and that he was transferred after due consideration nearer to the station of his previous posting. ^{This,} goes to show that the guidelines framed by the department of the Personnel and the C.P.W.D. regarding the transfer of the government servants in cases where both the husband and wife were working in the Central Government, have generally been kept in view. However, the fact remained that the applicant had served in Kanpur for a period of three years and it was not found possible by the respondent no.2 to give option to extend the tenure for one more year, in view of the administrative exigencies but was, however, accommodated to the station near to the station of his previous posting. The counsel for the petitioner referred to the case of Union of India V/s H.R. Patnagar AIR 1984 page 1587. This is only on the limited point that if there are no statutory rules, it is competent for the Executive Government to make appropriate rule or executive order. In the light of this, learned counsel contends that in the absence of any statutory rule relating to the transfer, these orders of Department of Personnel and Training and C.P.W.D. have to be treated as Executive Order. The circulars issued by the Department of Personnel and C.P.W.D are in the nature of guidelines and cannot be treated as Executive Orders of

the Government in the absence of statutory rules in this behalf, and therefore, this case is not quite relevant to the present case. The other two cases cited by the learned counsel for the petitioner are not relevant to the present case. I find that the scope of the judicial review in cases of transfer of Govt. servants has been settled by the Supreme Court in Union of India and others V/s. S.L. Abbas, 1993 (SC) ATC page 844 which also deals inter alia with the question of posting of the spouses who are government servants. Judicial review in such cases is limited to seeing whether the transfer order is passed mala fide or is made in violation of any statutory provisions. This is also the main thrust of the findings of the apex court in other cases cited by the counsel for the respondents. There is no plea in the petition that the transfer order is mala fide. Also, No violation of any statutory provision has been made out by him in this case.

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8- In the light of/above discussion I find no justification to interfere with the impugned order of the respondent No.2 and therefore, the O.A. is dismissed and there will be no order for cost.


MEMBER (A)

Dated:
ALLAHABAD JULY 29, 1994.
(IS PS)
