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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD

Dated : This...6th day of November, 1995.

Original Application No. 1231 of 1994.

CORAM : Hon. Mr. T. L. Verma, Member-J.

Jot Singh son of Sri Khushal Singh,
Resident of T-236/3, M.E.S.Colony,
Near Upper Pump House, Raiwala,
Dehradun.Applicant.

(By Advocate Sri K. P. Singh)

Versus

1. Union of India, through the
Secretary, Ministry of Defence,
New Delhi.
2. The Chief Engineer, Headquarter,
Central Command, Lucknow. Cantt. Lucknow.
3. The Commander Works Engineer, No.1,
Dehradun Cantt. Dehradun.
4. The Assistant Garrison Engineer (I)
M.E.S.Raiwala, Dehradun.
5. Mr. J. S. Bansal. .

.....Respondents.

(By Advocate, Sri Prashant Mathur)

O R D E R

(By Hon'ble Mr. T. L. Verma, J.M.)

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Subject matter of challenge in this O.A. is
order dated 13.7.1994 whereby the applicant has been
transferred from Raiwala to Commander Works Engineer,
(Hills), Pithoragarh.

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2. The applicant, at the relevant time, was working as Electrician under Assistant Garrison Engineer, Raiwala. He was elected as Member of Works Committee of Assistant Garrison Engineer (I) Raiwala on 28.12.1992 for a period of two years vide Annexure-4. The applicant, was thereafter elected as Secretary of the Works Committee on 14.1.1993. He was member of the Works Committee as well as Secretary of the Works Committee on 13.7.1994, the date on which he was transferred. The transfer has been challenged on the ground that the applicant was immune for transfer in terms of circular dated 30.4.1975 and 8.4.80 issued by the Government of India, Ministry of Labour during the period, he was Member/Secretary of the Works Committee. The other ground on which the transfer has been challenged is that he could not have been transferred from one Seniority unit (Dehradun) to another seniority unit (Pithoragarh).

3. The respondents have resisted the claim of the applicant inter-alia, on the ground that the applicant had been transferred for administrative reasons and that the Works Committee of which the applicant was a Member had been dissolved ~~on~~ with effect from 5.7.1994 and as such he was not entitled to the benefit of instructions issued in 1974 and 1980 referred to in the O.A.



4. The law pertaining to transfer of Government servant has been settled by the Apex Court in number of decisions. It has been held that the Courts/Tribunals cannot interfere with the order of transfer of an employee on a transferred post unless the same is against

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the statutory rules or is malafide. The Supreme Court has gone to the extent of the saying that even if a transfer order has been passed in violation of Administrative instructions/guidelines, the Courts shall not interfere with the order.

5. In view of the above position of law, the first question that falls for our consideration is whether the applicant has been transferred in violation of any statutory rule. In this connection reference may be made to Section 3 of the Industrial Disputes Act. Section 3 of Industrial Disputes Act empowers the appropriate government to constitute Works Committee in Industrial Establishment, employing 100 or more workers. Such Works Committee shall have representatives both of Employer and their workmen. The duty of the works Committee is to promote measures for securing and preserving amity and good relations between the Employer and the Workmen with regard to matters of their common interest and to comment on such matters. The Works Committee, it is, thus, clear is a statutory body.

6. Rule 53 of the Industrial Disputes (Central) Rules 1957 provides for filling up the vacancies of the members of the Works Committee caused on account of the Worksman representatives ceasing to be a member under Sub-rule (3) of Rule 52 or ceasing to be employee in the establishment or in the event of his ceasing to represent the Trade or vocation he was representing or resignation or death. Rule 53, it would, thus appear does not provide for filling up of the vacancy caused

transferred of the employee from one unit to another ~~unit~~, consequent upon transfer of the employee from one unit

unit to another. This implies that the Rules or the Act do not postulate the transfer of an employee who is member of the Works Committee. This ~~xxxxxx~~ conclusion finds support from the instructions issued by Government of India, Ministry of Labour vide letter dated 30.4.1975 (Annexure-2). The aforesaid instructions provide that elected representatives should not be transferred from one section/establishment to other section/establishment during their tenure except where the transfer becomes absolutely necessary and inevitable in their own interest ~~xxx~~ when they are promoted to higher post/grade on their own request. The Government of India, Ministry of Labour issued fresh instructions vide letter dated 8.4.1980 (Annexure-A-3). These instructions provide that elected representatives of the Works Committee may be given protection against transfer during their tenure of membership in order to maintain harmonious relations. It further provides that the transfer may also not be effected even from one installation to another except on grounds of discipline, promotion, reduction in establishment or operational requirements,. For transferring the elected representatives of Works Committee on grounds of operational requirements and discipline, the local managements should be instructed to obtain prior approval of the Ministry of Defence. ~~xxxxxx~~ Instructions as contained in Annexures-2 & 3., read with Section 3 of Industrial Disputes Act and Rule 57 of the Industrial Disputes (Central) Rules, 1957, leave no room for doubt that the Works Committee is a statutory body and that its members

are immune from transfer during their tenure of office except in the exceptional circumstances mentioned in aforesaid two letters. I have perused the record and the annexures filed on behalf of the parties and find that the respondents have averred that the transfer of the applicant had become necessary for reasons of discipline. The respondents, neither in the counter-affidavit nor supplementary counter-affidavit had filed material to support the averment that the transfer of the applicant had become necessary for reasons of discipline. A copy of some report, however, has been filed alongwith the written argument filed on 23.8.1995. The applicant had no opportunity of rebutting the aforesaid document and other documents annexed with the written argument. Hence I do not propose to take the aforesaid documents into account for determining this issue.

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7. In addition to the above, for transferring a member of the Works Committee during his tenure of office, approval of the Ministry of Defence has to be obtained as provided in Annexure-3. This provision has been made only to eliminate the possibility of victimization of worker representatives by the local management through colourable exercise of power. The respondents have not filed any paper as may show that prior approval of the Ministry of Defence for transferring the applicant from one establishment to another establishment had been obtained, in terms of Annexure-3. In this view of the matter also the transfer of the applicant can not be justified.

8. It was next argued that the applicant had ceased to be member of the Works Committee because the

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same had been ~~d~~esolved. In support of this contention, reliance has been placed on letter dated 5.7.94 Annexure-SCA-1. From the perusal of the aforesaid letter, it appears that the General Secretary of the U. P. M. E. S. Workers Union had dissolved their branch at Raiwala under their letter dated 26.7.1993. It was ~~stated~~ submitted that the applicant who was member of the Works Committee of Branch at Raiwala ceased to be the member of the Works Committee with effect from 25.6.93. Rule 57 of the Industrial Disputes (Central) Rules, 1957 which deals with the dissolution of the Works Committee reads as follows :-

" 57. Dissolution of Works Committee.-

The Central Government or where the power under section 3 has been delegated to any officer or authority under section 39, such officer or authority may, after making such inquiry as it or he may deem fit, dissolve any Works Committee at any time, by an order in writing, if he or it is satisfied that the Committee has not been constituted in accordance with these rules or that not less than two third of the number of representatives of the workmen have, without any reasonable justification failed to attend three consecutive meetings of the Committee or that the Committee has, for any other reason, ceased to function :

Provided that where a Works Committee is dissolved under this rule, the employer may, and if so required by the Central Government, or, as the case may be, by such officer or authority shall, take steps to reconstitute the Committee in accordance with these rules."

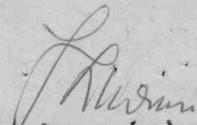
From the provisions extracted above, it is apparent that the power to dissolve the Works Committee does not rest with the Secretary of the Association /Union . In addition to the above, the applicant has filed copy of the minutes of meeting of the Works Committee of Assistant Garrison Engineer(I), Raiwala, held on 14.7.1994 (Annexure-RA-3). A perusal of aforesaid annexure, would reveal that the applicant was present in the said meeting as Member/ Secretary of the Works Committee. Had the Works Committee, of which the applicant is a member, been dissolved as contended by the respondents with effect from 25.6.1993, then the meeting of the Works Committee could not have been held on 14.7.1994. Again notice dated 8.8.1994 to the effect that the Works Committee meeting (Raiwala) Branch will be held on 11.8.1994 at 1500 hours was circulated under the signature of Sri Jashwant Singh. Aforesaid two documents leave no room for doubt that the Works Committee, of which the applicant was a member, was functioning on the date, he was transferred.

9. The learned counsel for the respondents has also argued that the tenure of the Works Committee has expired in the month of January, 1995 and as such this application has become infructuous. I find no substance in this argument. An order void ab-nitio is not validated by subsequent events. We have already held that the applicant was member of the Works Committee on the date he was transferred. Therefore, his transfer did not conform to the conditions laid down in the instructions issued by the Ministry of Defence.

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10. On a careful consideration of the facts and circumstances discussed above, I find and hold that the applicant was a member of the Works Committee on the date he was transferred from Raiwala to C.W.E. Hills Pithoragarh and that th transfer was contrary to the statutory rules. In the result, this application is allowed and the transfer order dated 13.7.1994 is quashed. It will, however, be open to the respondents to transfer the applicant, if the Works Committee, of which he was a member has ceased to be functional. There will be no order as to costs.


Member - (J)

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