

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 6<sup>th</sup> day of May 1996.

Original Application no. 555 of 1995.

Hon'ble Mr. S. Dayal, Administrative Member.

Budhsen, S/o Sri Dori Lal, R/o Qr. No., 67/6, M.E.S. Key  
Personal Badaun Road Cantonment, Bareilly.

.... Applicant.

C/A Shri R.R. Shukla.

Versus

1. Union of India through Engineer in Chief Army Head Quarter,  
Ministry of Defence New Delhi.
2. Central Command M.E.S., Lucknow.
3. C.W.E., M.E.S. Bareilly.
4. G.E. No. 2, M.E.S. Bareilly.

.... Respondents.

C/R Shri B.P. Singh.

ORDER

Hon'ble Mr. S. Dayal, Member-A.

The applicant seeks the relief of stay of operation  
of transfer till confirmation is not sought <sup>from</sup> ~~f/r~~ Engineer-in-  
Chief or Additional Chief Engineer in accordance with rules.

2. The applicant, who was working as M.T. Driver,  
Grade I, in the establishment of Garrison Engineer No. 2,  
Bareilly, was permanently transferred to the establishment of  
Garrison Engineer, Pithoragarh. The applicant claims that he  
was working as a member of the works committee of which the

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Garrison Engineer is the Chairman. It is also stated that in a meeting held on 22.05.95, it was resolved that election to the works committee would be held on 10.06.95. It is alleged that the Garrison Engineer manipulated the order of transfer from a non tenure station to a non tenure station. It is stated that permission to transfer the applicant was obtained from the Chief Engineer, Central Command, Lucknow, in order to prevent the applicant from taking part in the elections to the works committee as also from getting a reasonable opportunity of defence. Annexure two to the application stipulates that Group C and D personnel could be transferred from one station to another for adjustment surpluses/Deficiencies, for promotion, on compassionate grounds or on mutual basis or exigencies of services or administrative requirements according to Posting/Transfer policy of group C and D employees of the M.E.S circulated by the Engineer in Chiefs Branch, Army Head Quarters, New Delhi. Paragraph 5 of these instructions dated 25.2.91 stipulate that an individual shall not normally be posted to a tenure station or other normal stations on administrative grounds except on prior approval of Chief Engineer/Additional Chief Engineer Command, who, if the individual is due for a tenure posting, shall post him to a tenure station out of turn by obtaining the prior approval of Engineer-in-chief.

3. The arguments of Shri R.R. Shukla were heard for the applicant and Shri B.P. Singh for the respondents.

4. The main ground on which the transfer order of the applicant has been assailed in the application is that it was not passed in the manner prescribed for making such transfers and that it led to denial of opportunity to the applicant to



continue as a member of the Works Committee. The learned counsel for the applicant has cited the judgement of this bench in Jodh Singh Vs. Union of India and others delivered on 06.11.95.

5. As far as the first issue is concerned paragraph 5 of Annexure 2 which is a circular letter on Transfer Policy of Group C and D Employees dated 25.02.91, requires approval of Chief Engineer. It requires the approval of Engineer-in-Chief, if the employee is protected against transfer. As far as the transfer of the applicant is concerned, it is not in dispute that the approval of the Chief Engineer has been obtained. What is disputed is that the applicant was protected against transfer and, therefore, the transfer should have been made only after obtaining the prior approval of the Engineer-in-Chief. The applicant claims the status of the protected workman on the basis of a circular letter dated 30.04.75 of the Chief Labour Commissioner. The relevant part of the letter reads as under:-

"The Works Committee has been charged with the duty to promote measures for establishing and preserving good relations between the employee and the workmen. In view of this useful function performed by the Works Committee, it would be desirable that elected representative are not transferred during their tenure of office. It has, therefore, been decided that the elected representatives of workers should not be transferred from one section/establishment to other section/establishment during their tenure of office as member of the Works Committee. The only exception to the general practice would be when the transfer becomes absolutely necessary and inevitable in their own interest i.e. when they are promoted to higher posts/grades or at their own request."

// 4 //

The very language of this letter makes it clear that these instructions are administrative in nature. There is nothing in any statute or rule made there under for the restriction on the transfer of the Workman who is member of Works Committee. In the present case it has been brought out in the counter affidavit filed by the respondents that term of the Works Committee was completed on 22.05.95. This has been stated in annexure 1 to the counter affidavit filed by the respondents. The last three lines of minutes of the meeting of the Works Committee ~~are~~ as under:-

"The Chairman declared the works committee ~~de~~ dissolved in view of completion of 2 years period. Chairman thanked all members for ~~their~~ kind cooperation."

It is possible that the applicant may not have been aware of the Minutes due to his absence in this meeting. The transfer order against which the applicant has come to this Tribunal is dated 30.05.95. Therefore, it is clear that on the date the transfer order was passed the applicant had ceased to be a member of Works Committee. In view of the fact, the prior approval of ~~Engineering~~-in-Chief of this transfer was not necessary. Therefore, the procedure adopted for making the order of transfer under which the applicant has been transferred does not suffer from infirmity or lack of jurisdiction.

6. The contention of the applicant is that his transfer prevented him ~~from~~ <sup>from</sup> becoming a member of the Works Committee of the Office of the Garrison Engineer, Bareilly Cantt. In view of the election scheduled to be held by June, his transfer should not have been made, is not a proposition which can be accepted. The transfer is an

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incident of service in case of the Government Servants under Government of India. There is no averment on the part of the applicant that this condition of service did not apply to him. Besides the Works Committees are <sup>formed</sup> ~~found~~ under all Garrison Engineer's and mere fact of transfer does not prevent an employee from becoming member of one or the other Works Committee. The only difference is that the employee would have to contest election to the Works Committee which may be constituted at his new place of posting. Therefore, the contention that the employee is denied from becoming member of Works Committee would not entitle him from getting immunity from transfer from one office of the Govt. to another.

7. The case of Jodh Singh Vs. Union of India and others (Supra) is not in parimateria with the case of the applicant. The tenure of Jodh Singh as member of Works Committee was a period of two years, starting from 28.12.92. The transfer order was made on 13.07.94 which was within this period. Therefore, the ratio of this judgement would not give any benefit to the applicant.

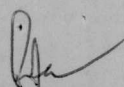
8. The complaint of malafide in this case is also not tenable. The applicant has merely made suggestion that the Garrison Engineer was annoyed, and, therefore, the transfer was made. In a situation where the Workmen Committee meets under Chairman Ship of Garrison Engineer to discuss ~~to~~ issues pertaining to grievances of Workmen, it is quite likely that the discussion becomes heated at times but mere suggestion of malafide should not establish colourable exercise of powers because this can conveniently be resorted to by any member of the Works Committee if he is transferred. There is no solid ground on which

// 6 //

malafide can be established. No such ground is evident in this case.

9. The applicant has mentioned in his application that the transfer is penal, Charge Sheet has been issued to him. From the averment made by the applicant in the Rejoinder Affidavit it appears that this enquiry has been concluded in the case against him and in any case this plea can not be accepted as a valid ground of immunity to the applicant against transfer, Therefore, the application has no merit and it is dismissed.

10. There shall be no order as to costs.

  
Member-A

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