

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD

Allahabad this the 18th day of October 1995.

Original Application no. 559 of 1995.

Hon'ble Mr S.Dayal, Member-A

Hazari Prasad Shukla, S/o Sri B.D.Shukla, Upper Division Clerk in the office of Garrison Engineer (East), A. Stanley Road, Allahabad.

..... Applicant.

C/A Sri B.B.Paul

Versus

1. Union of India through Secretary, Ministry of Defence Government of India, New Delhi.
2. Chief Engineer, Engineers Branch, HQ. Central Command, Lucknow.
3. Garrison Engineer (East) Stanley Road, Allahabad.
4. Commander Works Engineer, Air Force, Maharajpur, Gwalior.

..... Respondents.

C/R Sri P.V.Singh.

O R D E R

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

This is an application under Section 19 of

the Administrative Tribunals Act, 1985.

2. The applicant seeks the following relief through this application:-

"Quashing of impugned orders dated 31.5.94 and 30.5.95 issued by Respondent no.2".

3. The applicant is a Civilian in defence service and is working as an Upper Division Clerk. The applicant was elected as a member of works committee constituted under Section 3 of the Industrial Disputes Act, 1947, and he is holding the office of Vice Chairman of the Works Committee since 1.2.94. The term of an elected member is two years. Government orders dated 30.4.75 and 2.4.80 ban transfer of elected members/office bearers of Works Committee. The Engineer in chief had quashed transfer order dated 31.3.83 which was in contravention of the Government orders. Yet the applicant was transferred as U.D.C. in the office of C.W.E, Air Force, Maharajpur by an order dated 31.5.94. The implementation of transfer order was deferred by order dated 19.12.94 on applicant's representation. The representation against the transfer was, however, rejected on 30.5.95 by the respondents by an order in writing. These facts are given in his application.

4. The arguments of Shri B.B.Paul, learned counsel for the applicant and of Shri B.P. Singh, learned counsel for the respondents were heard.

5. The first ground on which the applicant claims

relief is that the orders were violative of Articles 14,16,21 and 300 A of the Constitution. This claim seems to stem from the fact that transfer order was set aside in a similar case in 1983. However, transfer is an incident of service and that order of cancellation in 1983 was made in a particular case by the respondents and would not bring another transfer order to be successfully challenged unless it is malafide or in contravention of any statutory orders. The Government order dated 30.4.75 (Annexure 4) is by way of administrative instructions not to transfer any elected representatives on the Works Committee during the currency of his tenure. Order dated 2.4.80 (Annexure 5) is also of a similar nature. Both these orders do not have any statutory force. Hence, this ground does not make the applicant entitled to any relief.

6. The second ground is that no show cause notice and opportunity of being heard was given before making the transfer order. Since transfer is admittedly an incident of service and purely an administrative action resulting from it; no show cause notice would be necessary before passing an order of transfer. This ground is also of no avail to the applicant in securing the desired relief.

7. It is clear that no legal right of the candidate is violated by making of the transfer order and that the candidate has no legal right to get such an order set aside. Having said this, it is clarified that no blame can be attributed to the candidate for not complying with the prior intimation about his impending transfer on 18.1.94 (Annexure CA 1) because the candidate

had filed his nomination on 14.1.94 and the nomination was found in order on 15.1.94 while the election was held on 20.1.94. Thus the candidature had been declared by the candidate before the service of warning letter about transfer. It would be an act of grace on the part of the respondents to hold their hand till 31.1.96 which is only about three and a half months away before effecting the transfer order. Such a decision, however, would be purely within the competence of the respondents and a decision to the contrary would not entail any legal consequences.

8. With the remarks as made in the last paragraph, the application of the applicant is dismissed as lacking in merits.

9. There shall be no order as to costs.

Member(A)

Concurred
J 9/12/95