

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 9th day of ~~June~~^{July} 2002. (3)

QUORUM : HON. MR. S. DAYAL, A.M.

O. A. No. 44 of 2000

Sukhpal Singh (MT Driver) son of Bhagwan Singh r/o 113-A, West Arjun Nagar, Agra..... Applicant.

Counsel for applicant : Sri S.C. Budhwar & Sri K.P. Singh.

Versus

1. The Union of India through Engineer-in-Chief, Army Headquarters Kashmir House DHQ Post, New Delhi.
 2. Chief Engineer HQ Central Command, Lucknow.
 3. Major General Prakash Suri Chief Engineer HQ Central Command, Lucknow.
 4. Chief Engineer, Air Force, Banrauli, Allahabad.
 5. Commander Works Engineer, Maharajpur, Gwalior.
 6. Garrison Engineer F/M MES Kheria, Agra.
 7. Sri R.D. Srivastava, Garrison Engineer F/M Kheria, Agra.
- Respondents.

Counsel for respondents : Sri S. Chaturvedi.

ORDER

BY MR. S. DAYAL, A.M.

The applicant seeks through this application a direction to the respondents that impugned order of transfer dated 15.12.99 ~~has~~^{has} been ~~set~~^{set} aside so that the applicant may continue working on the post from which he has been transferred.

2. The applicant is presently working as M.T. Driver in the office of Garrison Engineer, Kheria, Agra. He claims that he is Branch President of U.P. M.E.S. Workers Union and is a Member of Joint Consultative Machinery IV level in the office of C.W.E., Agra since 6.5.98. He also claims to be a Prantiya Upadhyaksh of State level M.E.S. Workers Union. He claims that he incurred the wrath of Respondent No.7 because he made complaints against him to superior authorities. Respondent

M

(10)

No.7 had also made complaints against the applicant for which he was charge sheeted on 5.10.99. The applicant was served another charge sheet dated 19.11.99. The applicant states that he had served at a hard station earlier and is again being transferred to a hard station. It is claimed that order is motivated by malice.

3. I have heard the arguments of Sri S.C. Budhwar assisted by Shri Vikas Budhwar for the applicant and of Shri Satish Chaturvedi for the respondents. I have considered the pleadings on record and the arguments put forth by the parties at the time of hearing.

4. Counsel for the applicant claimed that the transfer was ^{tainted by} ~~motivated~~ by the malafides of the respondents and was against the Govt. order dated 29.1.92. Counsel for the applicant mentioned that the applicant is Vice-President of UP, MES Workers Union and has incurred the wrath of the respondents on account of complaints made by the applicant in his capacity as Area Vice-President of UP, MES Workers Union. Counsel for the applicant has also stated that the applicant is the elected representative of the Works Committee since May 1998 and his term expires in May 2000. It is necessary that he may be protected against the transfer during his term on the Works Committee. Counsel for the applicant has also claimed that the transfer is penal in nature and the applicant is basing charge sheet dated 5.10.99 and 19.11.99. Lastly, the counsel for applicant has stated that the applicant had already served on a hard station and was again being transferred to another hard station, although he is merely a M.T. Driver.

5. Counsel for the respondents has mentioned that the applicant concealed the fact that he had been relieved from the post while filing this O.A. and seeking stay on transfer order which he obtained by such concealment. He revealed this fact only in the High Court in para 9 of his writ petition.

At

The applicant has not challenged his movement order and has thus not come out clean with the facts and his application deserves to be dismissed. Counsel for the respondents also contended that this O.A. would have only been filed in Ranchi as the applicant had been transferred to Ranch and had been relieved for taking charge there. As regards the permission of higher authorities on account of his status as a Member of Works Committee, the approval of Joint Secretary had been obtained before the transfer order was made. He has stated that transfer of an official could be made in the exigency of service on administrative ground. He cannot be considered to be a colourable exercise of power.

6. I have considered the rival submissions. The contention of counsel for the respondents that the O.A. cannot be entertained by Allahabad Bench of C.A.T. is ^{rejected} ~~indicative~~ at the outset because the applicant was posted in Agra at the time of his transfer to Gopalpur on Sea under C.W.E., Ranchi and the judgment of Allahabad High Court in Civil Misc. Writ No.8341/71 between General Manager, North Eastern Railway & others Vs. Jamayat Ram Khatnani & others only permits application to be heard by the prescribed authority under Payment of Wages Act of transferred place although the applicant may not have gone to that place. This bench of the tribunal has jurisdiction because part of cause of action has arisen while the applicant was posted in Agra.

7. The applicant has annexed a copy of the restricted circular of Adjutant General Branch Army Hqrs. (Annexure-XVIII). The provision of the compendium of instructions annexed to letter dated 25.5.84 (Annexure-XVIII) to the O.A. contends the following instructions regarding protection from transfer :-



"(h) Protection from transfer of the important office bearer of recognised trade unions/associations :- The office bearers of recognised trade unions/associations are afforded protection from transfer until the expiry of their current term as office bearers. In case they are re-elected ~~as office bearers~~ as office bearers at the end of that term. Such re-election does not entitle them to further deferment of transfer. If, however, fresh elections are not held for any reason, whatsoever, the protection from transfer to the office bearers concerned will cease on expiry of one year from the date of last election. The protection is not allowed to the office bearers of branches of union/association."

x
 (g) "The elected representatives of works Committees may be given protection against transfer during their tenure of membership in order to maintain harmonious relations. 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 ground of operational requirements and discipline, the local management should be instructed to obtain prior approval of the Ministry of Defence. The proposal is made only to eliminate the possibility of victimisation of any worker's representative by the local management through colourable exercise of power."

8. As far as the applicant's status as Vice-President of UP, ME-S Workers Union is concerned, the applicant has annexed the certificate of Registration No.710 dated 10.10.98 in which the applicant has been shown as a Vice-President of the Union. The transfer order is dated 15.12.99. The protection granted to office bearers is only a period of one year from the date of election. Thus, the applicant cannot claim protection after completion of the said period. As regards the tenure of the applicant as an elected member of Works Committee is concerned, the respondents have filed their counter reply in which they have shown that approval to the transfer of the applicant from the competent authority have been obtained. The note and the order of approval has been annexed as Annexure-I to the short counter affidavit filed on 11.2.2000 which reads as follows :-

"The proposal relates to posting of Shri Sukhpal Singh, MT Driver of CE, Kheria to CE Gopalpur on Sea (Orissa) on administrative grounds. Shri Singh is a Member of the Works Committee and he is to be prematurely moved out.

2. Several complaints have been received against him, has been reported by E-in-C's Br. The same have also been got investigated. Disciplinary action has also been taken against him for misbehaviour. It has been considered that further continuation of Shri Singh at Gopalpur is against the interest of the organisation. Hence it has been proposed to post him out prematurely.

1

3. In terms of D(Apptts) O.F. dated 02.01.80 for transferring the elected representatives of Works Committee, on grounds of operational requirement and discipline, prior approval of the Ministry is required with reasons for doing so.

4. As Shri Singh's conduct is vitiating the working atmosphere in the unit, we may have no objection to the proposal.

5. For kind approval of CS(E).

Sd/-
(Rita Chatterjee)
Deputy Secretary(A)
11.11.99

CS(E)

Sd/-

9. It is clear from the above note that approval of the competent authority had been obtained before the applicant was transferred and the reasons for transfer were administrative ground as well as existence of complaints and disciplinary action for misbehaviour. The order is a consonance with terms and condition of protection granted to an official.

10. The claim of counsel for the applicant that the transfer was penal in nature is also not tenable on account of the fact that the transferring authority has a right to consider the performance of an official at a place and if the performance is not found satisfactory or if the discipline of the office in which an official is working is likely to be adversely affected by continuation of an official, the transferring authority have a right to transfer the official.

11. The contention of the applicant that he was being given a second posting to a hard station in assailing the transfer order before the tribunal is also not tenable because the transfers are governed by transfer guidelines which are mere executive instructions and are not subject to judicial review because transfer has been held to be an incident of service.


12. As regards the concealment of facts, the respondents have filed a short counter affidavit in which they have stated that the applicant filed a writ petition No.425/00 before the

u

(14)

Hon'ble High Court and had prayed in the relief that order dated 23.12.93 be also set aside. The applicant had mentioned in the writ petition that the Respondent No.4 had directed the applicant by order dated 23.12.93 to surrender his Identity card for destruction and relieved the petitioner to join at Gopalpur on Sea in the establishment of Garrison Engineer. In the O.A., the applicant has neither claimed any relief against order dated 23.12.93 nor made any reference to the said order. Thus, it is clear that the applicant has not come clean with the facts of the case.

13. I, therefore, find that there is no merit in the O.A. The O.A. is, therefore, dismissed. No order as to costs.


A.M.

Asthana/
18.6.02