

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 5TH DAY OF DECEMBER, 2000

Original Application No.1076 of 2000

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

Pavinder Singh, S/o Shri Bachan Singh
R/o near Shakti typing
Institute, near Airforce Gate
Izat Nagar, Bareilly.

... Applicant

(By Adv: Shri R.C.Pathak)

Versus

1. Union of India through the Secretary of Defence, Ministry of Defence Govt. of India, South Block New Delhi 110001
2. The Engineer In Chief E-in-C's Branch, Army headquarters Kashmir House, Rajaji Marg New Delhi 110001
3. The Chief Engineer Headquarters Central Command Lucknow.
4. The Chief Engineer (Airforce) Bamrauli, Allahabad.
5. The Garrison Engineer (Independent) Airforce Station Izatnagar, Bareilly (UP)
6. Shri V.K.Nagpal, LDC S/o late R.L.Nagpal C/o GE(I) Airforce Izatnagar, Bareilly.
7. Shri V.K.Johari, LDC S/o Sri S.P.Johari C/o GE(I) Airforce Izatnagar, Bareilly (UP)

... Respondents

(By Adv: Shri R.C.Joshi)

O R D E R (Oral)

(By Hon.Mr.Justice R.R.K.Trivedi,V.C.)

By this application u/s 19 of A.T. Act 1985 applicant has challenged his transfer from Izatnagar Bareilly to Panchmani. It has been claimed that orders dated 13.9.2000 and order dated 23.9.2000 be quashed. The applicant is serving as LDC

in MES Izatnagar. The learned counsel for the applicant has questioned the legality of the aforesaid orders on the ground that applicant has been elected Member of the Works Committee and he could not be transferred in view of the Govt. order No.20852/ORG4(civ)(c) dated 8.5.1980 which provided as under:-

PROTECTION OF WORKS COMMITTEE MEMBERS

"The elected representatives of Works Committees may be given protection against transfer during the tenure of Membership in order to maintain harmonious relation. The transfer may also not be effected even from one installation to another except on grounds of discipline, promotion, retention 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. The proposal is made only to eliminate the possibility of victimisation of any workers representatives by the local management through colourable exercise of power.'

The learned counsel for the applicant has submitted that in the present case it is undisputed that applicant has been elected as Member of the Works Committee and he is entitled for protection provided by Govt. Order dated 8.5.1980. There is no prior approval of the Ministry of Defence and the order is without authority. It is also submitted that it is not the case of the respondents that the transfer of the applicant was necessary on account of discipline, promotion, reduction in establishment or for operational requirements.

Shri R.C.Joshi learned counsel for the respondents on the other hand, submitted that applicant was already warned in June 2000 for transfer and with full knowledge that he may be shortly transferred from Bareilly, ^{He contested} ~~selection~~ ~~allegations~~ hence the Govt order relied on will not be applicable in the

case of the applicant. Shri Joshi also submitted that in matters of transfer this Tribunal should not interfere. He has placed reliance in a judgement of High court of Jammu and Kashmir in writ petition no.1503/98 Uttamchand Gautam Vs. union of India and Others.

I have considered the rival submissions made by the counsel for the parties. It is undisputed fact that applicant was declared elected as Member of the Works Committee on 1.2.2000. The order of transfer has been passed on 13.9.2000i.e. after about seven months. The respondents were fully aware of the Govt. order that an elected member of Works Committee cannot be transferred without prior approval of the Ministry of Defence. The exception to the aforesaid rule were that transfer order could be passed on the grounds of discipline, promotion, reduction in establishment or operational requirements. In counter affidavit no such grounds have been raised on which basis impugned order of transfer could be justified. It has also not been pleaded that before passing the impugned orders of transfer prior approval of Ministry of Defence was obtained. In these circumstances, the orders cannot be sustained. The judgement relied on by Shri Joshi of High court of Jammu & kashmir(Supra) is entireley on different facts. The transfer order was challenged on the ground of sickness of the wife which was not accepted. The respondents have not filed any judgement of the superior courts in which the transfer of elected members of the Works Committee may be justified even without prior approval of the Ministry of Defence. In my opinion the order of transfer cannot be sustained.

For the reasons stated above this application is allowed. The impugned order dated 13.9.2000(Annexure A1) and order

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dated 23.9.2000(Annexure A3) rejecting the representation of the applicant are quashed. However, it is left open to the respondents to pass a fresh order after obtaining prior approval of the Ministry of Defence.

There will be no order as to costs.


VICE CHAIRMAN

Dated: 5.12.2000

Uv/