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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

O.A. No. : 194/1999

Date of Order : 30.11.1999

Om Prakash Purohit S/o Sh. Amar Dutt Purohit, aged 49 years
Resident of Jalap Mohalla, Jodhpur.

..Applicant.

Versus

1. Union of India through Secretary, Ministry
of Urban Development, Nirman Bhawan, New Delhi.
2. Director General of Works, Central Public
Works Department, A-Wing, Nirman Bhawan, New Delhi.
3. Chief Engineer, Central Public Works Department, Sector-7,
Vidhyadhar Nagar, Jaipur.
4. Shri D.N. Bhargava, Chief Engineer,
Central Public Works Department, Sector -7,
Vidhyadhar Nagar, Jaipur.
5. Shri R.P. Mathur Superintending Engineer (P&A),
North Zone-III, Sector-7, Vidhyadhar Nagar, Jaipur.

..Respondents.

Mr. R.N. Upadhyay, counsel for the applicant.

Mr. P.P. Choudhary, counsel for the respondents. No. 1 to 3.
None present for respondents No. 4 & 5.

CORAM :

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

PER HON'BLE MR. A.K. MISRA :

The applicant has filed this OA with the prayer that the impugned order dated 19th July, 1999 at Annexure A/1 be quashed and the applicant may be allowed to remain at Jodhpur to complete his term as provided in Manual. He has further prayed that if Mr. Mathur comes to join, he may not be permitted to join. The applicant has also prayed for interim relief that in pursuance of the impugned order, he may not be spared from Jodhpur till his representation dated 20th July, 99 is heard and decided by the competent authority.

2. After hearing the learned counsel for the applicant, notice of the OA was issued to the respondents but in pursuance of the prayer relating to interim relief, no stay was granted.

3. The applicant who was working on the post of Superintending Engineer, Jodhpur Central Circle, Jodhpur was transferred to Bhopal as Superintending Engineer (Valuation) vide impugned order dated 19th July, 99 vice Shri Lalit Mohan. The applicant was to be succeeded by Shri R.P. Mathur who is coming from Jaipur. The applicant has challenged his transfer on the ground that the applicant is being transferred prematurely and in contravention of section 8 of Central Public Works Department Manual, Volume I (for short, Manual), wherein it has been provided that Superintending Engineers are considered for transfer after they have completed 3 to 4 years at one station. In the instant case, the applicant has completed only a period of one year and 10 months. The applicant has also challenged the transfer order on the ground that it is a mid term transfer and would disturb the children of the applicant, the applicant has been shifted to accommodate Mr. Mathur, respondent No. 5, the transfer has been ordered when as per the notification of the Election Commission, no transfer could be affected during the notified period and due to prejudice and personal bias of respondent No. 4 against the applicant. It is further alleged by the applicant that his father is a heart-patient and is having visual difficulties and is quite weak. The applicant's transfer would affect his father's health adversely. For all these reasons, the applicant has prayed for the relief as mentioned above.

4. The official respondents No. 1 to 3 have filed their reply stating therein that the guidelines as stated in the Manual are not binding. The Superintending Engineer can be transferred on administrative ground and in public interest at any time. No rights of an individual officer is violated if he is transferred in public interest. The transfer order has been issued by respondent No. 2 against whom no bias or malice have been alleged, therefore, transfer order can not be interferred with. At Bhopal equivalent educational facilities are available where the children of the applicant can be admitted in school. It is further stated in the reply that during inspection of various works, respondent No. 2 was not satisfied in respect of applicant's performance as Superintending Engineer and, therefore, he had taken up the case for applicant's transfer from Jodhpur to the higher authorities. The transfer is in administrative exigencies and is in public interest. Therefore, the same can not be interferred with. It is further stated in the reply that the applicant had not correctly followed instructions issued by respondent No. 3 from time to time

relating to execution/supervision of various works under the charge of the applicant. The applicant had remained at Jodhpur for 4 years as an Executive Engineer apart from the present two years' tenure as Superintending Engineer. He has not been shifted to accommodate respondent No. 5. Allegations in this respect are denied by the respondents. The respondents have prayed that the OA be dismissed.

5. To the reply of the respondents, the applicant has filed a very lengthy rejoinder repeating the facts as pleaded in the O.A. and also supplementing explanations to the facts as alleged by the respondents. The rejoinder is more argumentative on factual aspects. Therefore, if necessary facts mentioned therein would be considered to appreciate and meet the rival arguments in respect of the controversy in hand.

6. We have heard the learned counsels for the parties who elaborated their arguments on the lines of their pleadings. We have considered the rival arguments and gone through the record.

7. It was argued by the learned counsel for the applicant that the respondents No. 4 and 5 who were made parties in person have not filed their reply and consequently allegations of the applicant as against them should be taken as correct. On the other hand it was argued that applicant has not come out with specific allegations of mala fide against any of these two respondents, therefore, it was not necessary for them to file reply to the O.A. He has cited (1991) 16 ATC 589 - State of Gujarat Vs. Badal Ramji Bhaisagar.

8. We have considered this argument. Respondent No. 5 has succeeded the applicant on account of his transfer from Jaipur to Jodhpur. There are no allegations of mala fide against him, therefore, it was not necessary for him to have filed any reply. So far as respondent No. 4 is concerned, there are no specific allegations against him personally for which he should have filed a reply. Whatever allegations the applicant has made against respondent No. 4 are narrative in nature of his working. His recommendation in respect of applicant's transfer has been challenged on the ground of personal bias which has been denied in the reply by the respondent No. 3 in his official capacity. In view of this no advantage can be derived by the applicant on account of the fact that the respondents No. 4 and 5 have not replied the allegations of OA by submitting their reply.

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9. In the instant case no violation of any statutory rules is established. The departmental guideline recommends 3 to 4 years as a period of stay as Superintending Engineer but this does not mean that a Superintending Engineer cannot be transferred from a particular post during the continuance of this recommended period. Therefore, the applicant's allegation that he has been transferred prematurely is without substance.

10. Although there are no specific allegations of malafides against the respondent No. 2 who is the transferring authority of the applicant but he has ordered applicant's transfer on the recommendation of respondent No. 3 against whom the applicant has alleged bias. Malafides in certain given cases can be inferred from the circumstances brought on record. Even ~~if~~ there are no specific allegations of mala fide against respondent No. 3 if the same can be derived from the facts as brought on record then it is a case of transfer, fit to be interfered with. The respondent No. 2 has not exercised his discretion in transferring the applicant. He has exercised his powers on the recommendation of respondent No. 3, therefore, the action, recommendation and prejudices of respondent No. 3 are required to be discussed. To appreciate the administrative exigency in transferring the applicant from the present post we had demanded the relevant record which has been submitted for our consideration. On going through the record, we find that respondent No. 3 has recommended applicant's transfer out of his jurisdiction on the ground that the applicant has not carried out his instructions issued from time to time, applicant's control over the work and its progress is not up to the mark and there are certain short-comings in his working due to which various works are lagging behind in time schedule. In this connection it is note worthy that the respondent No. 3 had taken the charge of the present post on 22.2.1999. In the month of April and then in the month of May he is said to have carried ^{out} the inspection of certain works under the charge of the applicant and on being dis-satisfied on various aspects, as mentioned in his letter recommending the transfer of the applicant wrote a letter to the respondent No. 2 on 26.5.1999. But there is nothing on record to show as to when he issued various instructions to the applicant to be carried-out for proper execution of various works under his charge. Had he issued certain instructions in writing to applicant and if thereafter the applicant had failed to carry-out those instructions then certainly the respondent No. 3 was free to make recommendations for applicant's transfer. But in the instant case respondent No. 3 has vaguely mentioned in his letter to respondent

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No. 2 that applicant has failed to carry-out his instructions with no details as to what were those instructions which were dis-obeyed by the applicant. The prejudice of respondent No. 3 is also evident from the fact that he had recommended applicant's transfer outside his zone and not only this he was in such a hurry to see the transfer of the applicant that he did not demand any suitable substitute for him. These facts go to show that the respondent No. 3 was pre-determined to see the transfer of applicant from the present post and to surmount the difficulty of Headquarter raising a point of premature transfer of the applicant he preferred to surrender him without a demand of suitable replacement immediately. If with the supervision of Superintending Engineer the works were lagging behind and difficulties remained unsolved how the respondent No. 3 expected these difficulties to be surmounted without a suitable replacement in place of the applicant is beyond comprehension. Looking the things from different angle, it appears that the whole exercise has been done to accommodate the respondent No. 5 with nothing in writing. There was no necessity of anybody being posted in place of applicant when respondent No. 3 had not demanded a substitute immediately. This shows that apparently innocent looking suggestion of surrendering the applicant without immediate demand of substitute was in fact manipulation for adjustment of respondent No. 5. A simple way could have been to transfer the applicant vice Shri Lalit Mohan who was working on equal ranking post at Bhopal. For Shri Lalit Mohan also it was a mid term transfer. On account of adjustment of respondent No. 5 two persons i.e. the applicant and Shri Lalit Mohan, have been disturbed in mid educational session. When number of posts of the rank of Superintending Engineer were lying vacant, as is clear from the file placed before us, why other two persons were disturbed is difficult to assess. Shri Lalit Mohan has represented to the authorities against his transfer on account of disturbance of education of his children due to mid term. The applicant has also represented on the same lines to the authorities. We do not know what had happened to the representation of Shri Lalit Mohan but the representation of the applicant against his transfer to Bhopal, has been rejected by the authorities. Shri R.P.Mathur, who is replacing the applicant had joined the posting without loss of time allegedly under the instructions of the higher-ups. If respondent No. 3 was not in a hurry for a suitable replacement of the applicant at Jodhpur then why the respondent No. 5 had been permitted to proceed to join in such a haste. Heavens were not falling if all the concerned officers were allowed to complete the preliminaries as were expected under the departmental instructions/

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being spared. All these facts, in our opinion, go to show that the whole exercise is more in nature of accommodating respondent No. 5 at Jodhpur than necessitating immediate transfer of applicant from his post. For these reasons in our opinion it is a fit case for interference.

11. We are conscious of the position of law that transfer made in administrative exigencies and in public interest are not liable to be interfered with unless the same has been ordered in violation of statutory rules or has been affected due to malafides. At the same time we are also conscious of the fact that the rights of an individual Government Officer cannot be allowed to suffer due to colourable exercise of power of the higher-ups. In the instant case, the transfer of the applicant was communicated through FAX and he was relieved of his charge two days thereafter. In reply, the respondents have tried to justify the transfer of the applicant by showing that it was necessary to replace the applicant on other grounds. But no details of such grounds is mentioned either in the reply or is found-out from the departmental file of transfer. This also shows that there was no reasonable ground for applicant's immediate transfer and his transfer is tried to be justified by showing it to be a transfer in public interest. Even the recommendation of the respondent No. 3 does not mention any allegation of a serious nature for immediate transfer of the applicant. Slackness in supervision in constructional works or lagging behind in time schedule in such works are in fact not solely attributable to the applicant when the works are supervised day to day by the Assistant Engineers and Executive Engineers. We need not repeat it again that there is nothing on record to show as to what specific instructions were passed to the applicant of violation of which the applicant is held responsible necessitating his transfer from his present post. The Government officials are not transferred at the whims of the individual superior officers. A fit case of transfer with concrete facts is required to be made out by the concerned authorities in absence of which the transfer cannot be said to be in public interest or in the exigencies of service.

12. It was argued by the learned counsel for the respondents that in absence of allegations of malafides against the transferring authority and violation of the statutory rules, the Tribunal has no power to look into any other reason necessitating the transfer of the applicant but we do not subscribe to this argument. Whenever the department seeks to justify transfer of a Government official

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Copy Received on behalf of Respondents

Richard
20/11/97

(P. S. CHAUHAN)

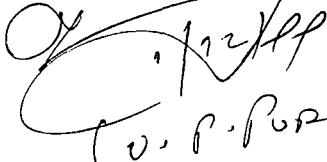
Officer-in-charge

on behalf of PWI-103

EE (PWA)

Jodhpur Central Circle
CPWD, Jodhpur

Copy Recd


(V. P. PURUSHOTTAM)
Applicant