

48

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT HYDERABAD.

O.A.No.99 of 1999.

DATE OF ORDER: 16-2-1999.

BETWEEN :

K.KANTHAIAH,
Son of Bhushnam
aged about 40 years,
working as U.D.C.
in the O/o the Asst.Engineer,
HCSD-I/3, CPWD, PDP Campus,
Rajendranagar, Hyderabad,
R/o 71-B, Type-II,
GPRA Quarters,Gachi Bowli,
Hyderabad.

.. APPLICANT

A N D

1. The Superintending Engineer,
Hyderabad Central Circle No.I,
C.P.W.D.Nirman Bhavan,
Sultan Bazar, Hyderabad-195.
2. The Executive Engineer,
Hyderabad Central Division/I,
C.P.W.D., Kendriya Sadan,
Hyderabad-95.
3. Shri K.Lingamurthy, UDC,
working in the O/o Asst.Engineer,
Hyderabad Central Sub-Division-I/3,
C.P.W.D., PDP Campus, Rajendranagar,
Hyderabad. .. RESPONDENTS.

Counsel for Applicant : Mr. N.R.Devaraj

Counsel for Respondents : Mr.J.R.Gopal Rao,Sr.CGSC

CORAM :

THE HONOURABLE MR.JUSTICE D.H. NASIR, VICE-CHAIRMAN

THE HONOURABLE MR.H.RAJENDRA PRASAD, MEMBER(ADMN.)

O R D E R.

(Per Hon'ble Mr.Jutice D.H. ~~Kasir~~ Nisce-Chairman)

1. By Office order No.469/98 dated 24.12.1998 the applicant who was working as U.D.Clerk was transferred to Hyderabad Central Division No.II, Hyderabad in place of Sri K. Lingamurthy and by a subsequent order No.1 of 1999 dated 1.1.1999, the applicant was relieved from his duties in the afternoon of 1.1.1999 with a direction to report for duty to the office of the Executive Engineer, Hyderabad Central Division No.II, C.P.W.D., Hyderabad. Both the orders are challenged in this O.A.

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 By ^{an earlier} Office order No.183/98 dated 5.11.1998 (Annexure-A.3 to OA), the applicant was posted to H.C.D.No.I, Hyderabad in place of Kumari K. Subhashini who was posted to S.E.(P) (SZ) II, Hyderabad vice the applicant.

2. The grounds urged by the applicant in support of his plea that both the aforesaid orders are liable to be quashed and set aside are as follows .

3. The impugned order dated 24.12.1998 is arbitrary, illegal and mala fide and that the same was passed for satisfying the Union and that no administrative convenience was involved in passing the said order. Further according to the learned counsel for the applicant, the mandatory provisions of C.P.W.D. Manual, Vol-I, have been violated inasmuch as even before completing the tenure of 3 years, the impugned transfers were sought to be effected. He further submitted that the transfer even before completion of one and half months against the tenure of 3 years was illegal and void, whereas the other officials similarly situated had been left undisturbed and therefore, the impugned order passed against the applicant was discriminatory in nature.

4. The allegation that the transfer was effected under the pressure of the Union has been emphatically denied. There is no other material on record to satisfy the Tribunal how the Union exercised any influence on the respondents to

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secure the transfer of the applicant. No third party affidavit has been produced by the applicant in this regard and therefore, we do not find any substance in the allegation made by the applicant that the transfer was effected under the influence of the Union.

5. The C.P.W.D. Manual Vol-I under Clause 21 provides as follows :

"21. Interchange of staff between Accounts and Correspondence Branches Upper Division Clerks and Lower Division Clerks, including Cashiers, serving in a Divisional Office shall be interchanged every three years. The period of three years' stay in Accounts seat shall be reckoned from first April and first October of a year. Transfers shall be completed by first May and first November of the year. Such transfers shall be effected by the Superintending Engineer of the Circle concerned. The Superintending Engineers are empowered to grant exemption from transfers under this rule up to a maximum period of one year where exceptional circumstances warrant.

The Interchange of staff between the Accounts and Correspondence Branches is not to be treated as transfer of Office which is changed every five years. The Superintending Engineers will, however, ensure while transferring the Clerks from one Division to another that the official is posted in the Correspondence Branch of the new Division if he was previously working in Accounts Branch of a Division and vice versa."

It thus appears from the language of the above provision of the Manual that the interchange of staff between Accounts and Correspondence Branches Upper Division Clerks and Lower Division Clerks, including Cashiers, serving in a Divisional Office are required to be interchanged every 3 years. However, the same is not to be treated as transfer of office which is changed every five years. The Superintending

42
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Engineers are required to ensure that while transferring the Clerks from one Division to another the official is posted in the Correspondence Branch of the new Division if he was previously working in Accounts Branch of a Division and vice versa.

6. Before arriving at a conclusion whether the above instructions as contained in the Manual are mandatory or discretionary, it is necessary to look into the facts of the case in greater depth.

7. The applicant was appointed on 20.5.1983 as L.D.C. in the office of the Superintending Engineer, Hyderabad Central Circle-I and was promoted as U.D.Clerk in 1994. The applicant was thereafter transferred from Hyderabad Central Division-I to Hyderabad Central Division-II on 24.12.1998 and by a further order dated 1.1.1999 the applicant was posted in the office of the Executive Engineer, H.C.D.-I of C.P.W.D. The next stage of promotion from U.D.Clerk is that of the Head Clerk for which 5 years of regular service and successfully passing the departmental examination is a must for being eligible to be considered for promotion to the post of Head Clerk. All U.D.Clerks would therefore try to get postings both in Correspondence Branch and in Accounts and Audit Branch before appearing at the Departmental Examination for higher post so as to acquire sufficient knowledge and experience in both the Branches for promotion to the post of Head Clerk. Further according to the applicant, contrary to the administrative policy, he had been made to work only in Correspondence Branch during his entire career of 16 years and was not given any opportunity to work in the Accounts Branch and therefore, the applicant had been continuously making representations for the last three years to give him a posting in the Accounts and Audit Branch so that he could equip himself with the knowledge of accounting and may have

sufficient opportunity to prepare himself for passing the requisite departmental examinations for promotion. Further according to the applicant, he was informed by the Superintending Engineer (Coord.), Chennai that the matter relating to rotational transfer was pending consideration of the Director General of Works, C.P.W.D., New Delhi and that the necessary action would be taken only after receipt of communication from New Delhi. In the meantime the applicant endeavoured for a mutual transfer with one Mrs. Subhashini who was working as U.D.Clerk in the Accounts side in the office of the Assistant Engineer, Hyderabad Central Sub Division I/3 PDP, Rajendranagar, Hyderabad, which was under the control of the Hyderabad Central Division-I and the same materialised on 5.11.1998. However surprisingly, according to the applicant, by an order dated 1.1.1999 he was transferred from HCSD I/3 PPD, Hyderabad to HCD-II, C.P.W.D., Hyderabad which was entirely the Correspondence Branch and not the Accounts or Audit Branch and therefore, according to the applicant, the efforts made by him for securing a mutual transfer to Hyderabad Central Division-I/3 stood frustrated.

8. In the face of the above fact-situation, the learned counsel Mr. Devaraj for the applicant submitted that the first respondent Superintending Engineer, Hyderabad Central Circle-I had no power to make the transfer prematurely by order dated 1.1.1999, more particularly in view of the fact that the applicant had been shifted from his place of posting unjustly after one month and fifteen days. He further pointed out that the first respondent himself had recommended and approved their mutual transfer as stated above, but hardly after expiry of 1½ months the applicant was arbitrarily transferred by the first respondent to a Division where the applicant had no opportunity to gain experience of Accounts Branch.

9. The Superintending Engineer (first respondent) has refuted the allegations made and the claims advanced by the applicant in the O.A. in his reply statement dated 2.2.1999. At the outset we must record our opinion that the subsequent transfer by the first respondent after expiry of 1½ months cannot be termed as 'transfer' at all. It is merely shifting of the applicant from one office to another in the same town and it is well settled that such shifting cannot be termed as transfer and therefore, the norms governing the transfer of public servant from one town to another cannot be applied to mere shifting of a public servant from one office to another office in the same town. We also do not find any substance in the allegation made by the applicant that the impugned action was taken by the respondents under the influence of the Union and in the absence of any convincing material on record in this regard such plea taken by the applicant is rejected.

10. It is true, however, as stated in Clause 21 of the Manual that interchange of staff between Accounts and Correspondence Branches shall take place every three years. This appears to be a mandatory direction because the word 'shall' has been used for emphasizing that such interchange should take place. A duty is also cast upon the Superintending Engineer that he will ensure while transferring Clerks from one Division to another that the official is posted in the Correspondence Branch of the new Division who was previously working in the Accounts Branch of the Division and vice versa. In our opinion, therefore, having regard to the fact that the applicant did not have any opportunity to work in the Accounts Branch during his tenure of 16 years, it was necessary that his mutual transfer should not have been disturbed keeping in view the fact that the applicant for the first time in his 16 years career had the opportunity of working in the Accounts Branch. This,

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according to us, was necessary so as to allow a fair opportunity to the applicant to equip himself with the experience of working in the Accounts Branch for enabling him to be sufficiently equipped with the necessary experience to get through the departmental examination which may be held in future for securing promotion to the position of Head Clerk.

12. The respondents in their reply statement state that rotational transfer or inter-change of staff between Accounts and Correspondence Branches of UDCs/ LDCs including Cashier serving in a Divisional Office were resorted to every three years and such transfers were to be effected by the Superintending Engineer concerned in accordance with the guidelines mentioned in Para 21 of Section 8 CPWD Manual Vol.I. However, according to the respondents, it was decided that the UDCs/LDCs who were transferred from one Circle to another Circle would be posted initially to Correspondence Branch under the Circle and then they could be considered for posting in the Accounts Branch or Sub-Divisions depending upon the vacancies under the Division.

13. In the instant case, the question of vacancy does not play any part. If it is the case of the respondents that in case of transfer of UDCs/LDCs from one Circle to another Circle they were required to be posted initially to Correspondence Branch, such requirement cannot circumscribe, the mandatory direction given in Clause 21 of the Manual. Decisions which may be taken by the Departments could be respected only if no violation of the provisions of the Manual/Rules is taking place by such a decision. In the event of any violation taking place, needless to say that the provisions of Manual/Rules would prevail. This ground, therefore, does not render any assistance to the respondents.

14. In paragraph-8 of the reply affidavit, the respondents have given the particulars of various postings of

the applicant from time to time and an effort was made by the learned Standing Counsel Mr. Gopal Rao for the respondents to point out that the applicant was posted as LDC-Cum-Cashier from 12.7.1988 to 24.8.1991 in the office of the Executive Engineer, Hyderabad Central Division No.II, C.P.W.D. This posting of Cashier, according to Mr. Gopal Rao, was sufficient for the purpose of saying that the applicant had sufficient opportunity to work in the Accounts Branch. However, the learned counsel Mr. Devaraj for the applicant submits that mere posting as Cashier could not be treated as sufficient opportunity to say that the applicant had the opportunity of gaining experience of working in the Accounts Branch. Further according to Mr. Devaraj, the work of a Cashier was of a very limited nature inasmuch as the Cashier had to deal with the cash only and was not required to maintain or write any accounts books. In our view, it may not be correct to say so because the applicant in his tenure as Cashier would atleast be required to write Cash books and to ~~know~~ deal with bills and vouchers. However, we do not ~~know~~ for sure whether this work was handled by the Cashier in addition to his actual function of dealing with cash. If the respondents wanted us to believe that the placement of the applicant as Cashier was sufficient to treat him as having gained the experience of working in the Accounts Branch, it was necessary for the respondents to come out with precise particulars with regard to the duties and functions of the Cashier, more particuarly, when it was incumbent upon the respondents, according to Clause 21 of the Manual to ensure that the applicant was afforded sufficient opportunity to work in the Accounts Branch.

15. Reverting to the contention raised by the respondents that while transferring Clerks from one Division to another, it was necessary to ensure that the official was

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posted to the Correspondence Branch of the new Division, we cannot lose sight of the fact that it is also provided in the second paragraph of Clause 21 that the official on transfer has to be posted in the Correspondence Branch of the new Division if he was previously working in the Accounts Branch of a Division and vice versa. This provision made it obligatory on the respondents to satisfy the Tribunal that the applicant on transfer was required to be posted in the Correspondence Branch on the ground that he was previously working in Accounts Branch of any Division. Therefore, even if it is believed that the posting of the applicant from 12.7.1988 to 24.8.1991 as Cashier was sufficient for treating the applicant as having worked in the Accounts Branch, it was necessary for the respondents to satisfy the Tribunal that immediately prior to the impugned transfer effected on 24.12.1998 followed by the office order dated 1.1.1999 the applicant was working as Cashier or that he was holding any post in Accounts Branch. Failure on the part of the respondents to render such satisfaction deprives the respondents from taking recourse to Clause 21 of the Manual to say that the applicant was required to be posted in the Correspondence Branch on transfer because immediately prior to his transfer he was posted in the Accounts Branch.

16. It was further urged on behalf of the respondents that for appearing at the departmental examination for the post of Head Clerk what all was required/to have a minimum 5 years experience in the grade of UDC irrespective of the Branch to which he was attached. If that was so, Clause 21 which we have discussed above would not have been there at all. Clause 21 is included precisely with a view to giving UDCs/LDCs to have sufficient experience in both the branches and therefore, the respondents are not justified in raising a contention that it was not necessary for the purpose of

securing promotion to the post of Head Clerk that the incumbent should possess the experience of both the Correspondence and Accounts Branches. There is no Audit Branch in the respondents' department which is not disputed by either side and therefore, we need not express any views on the requirement of having experience of working in the Audit Branch.

17. The respondents have also sought reliance on the decision of this Tribunal in O.A.No.1194/94 dated 4th July, 1996 in which it is observed in paragraph-4 as under :

"... It is left to the concerned controlling officer to decide the question of transferring the applicants from Accounts Branch to the Correspondence Branch in accordance with the rules. The Controlling Officer may also post them in any other Branch if the rule permits."

18. The learned Member who decided the above matter recorded the fact that the respondents had indirectly admitted the existence of the rule in CPWD Manual but they were not specific for not adhering to the said rule. Same is the situation in the case before us also inasmuch as the rule is not disputed, but the non-compliance thereof is not explained by the respondents. The learned Member in O.A. No.1194/94 further observed that when there was a policy of transfer, pressure or otherwise of the Staff Union should not stand in the way of the respondents to implement the instructions given in the Manual. In the case before us also an allegation is made that the pressure was exercised by the Union, but there is no material on record to satisfy the Tribunal that the respondents acted under pressure of the Union. We have clearly expressed our opinion earlier that the

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allegation of the order having been passed under the pressure of the Staff Union as advanced by the applicant cannot be taken into consideration, but rejection of that proposition does not justify the issuance of the impugned order of transfer.

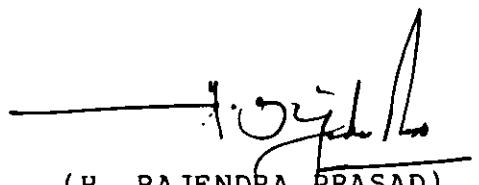
19. It is true that in O.A.No.1194/94 it was left to the concerned Controlling Officer to decide the question of transferring the applicant from Accounts Branch to the Correspondence Branch in accordance with the rules and that the Controlling Officer may post them in any other Branch if the rule permits. In the case before us, since ~~sufficient~~ grounds have been urged and since we have recorded our satisfaction that the applicant's case was amply substantiated by the rule position, we would be failing in our duty if we do not record a specific finding on the relief claimed by the applicant instead of merely directing the respondents to reconsider the matter and leaving the same to the discretion of the respondents.

20. It would not be out of place to mention that in service matters covered by the Administrative Tribunals Act,1985 merely giving direction to the Executive Officer to consider or reconsider any matter is ~~not an efficacious and~~ conclusive disposal. The Tribunals are expected to decide the questions of law and facts on merits as far as possible rather than be complacent by giving directions to consider or reconsider the grievances on merits unless such disposal is inevitable or consent of the rival parties is obtained and recorded.

21. In the above view of the matter, therefore, in spite of the fact that the impugned action cannot be treated as transfer at all and in spite of the fact that no material is available on record to show that the impugned action was

taken under the influence of the Union, there are ample and convincing grounds justifying the applicant's case for securing the reliefs which he has claimed in the present O.A.

22. The O.A. is, therefore, allowed. The impugned proceedings dated 24.12.1998 and 1.1.1999 are hereby quashed and set aside. The respondents are directed to permit the applicant to work in the Accounts Branch of Hyderabad Central Division No.I, C.P.W.D., Hyderabad. No costs.


 (H. RAJENDRA PRASAD)
 MEMBER (ADMN.)


 (D. H. NASIR)
 VICE-CHAIRMAN.

16-2-99
 DATED THE 16th FEBRUARY, 1999.

DJ/

22/2/99
Ist and IIInd Court.

Copy to:

1. HDHND
2. HHRP M(A)
3. HSSDP M(J)
4. D.R. (A)
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH:HYDERABAD.

✓ THE HON'BLE MR. JUSTICE D.H.NASIR:
VICE - CHAIRMAN

✓ THE HON'BLE H.RAJENDRA PRASAD :
MEMBER (A)

THE HON'BLE R.RANGARAJAN
MEMBER (A)

THE HON'BLE MR.B.S.JAI PARAMESHW.R:
MEMBER (J)

DATED: 16.2.99

ORDER/JUDGMENT

M.A./R.A/C.P.NO. —

IN

C.A.NO : 99/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

15 (con't.)

केन्द्रीय प्रशासनिक अधिकार Central Administrative Tribunal प्रेषण / DESPATCH
17 FEB 1999
हैदराबाद प्रायोगी HYDERABAD BENCH