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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT JAIPUR BENCH: JAIPUR.
O.A.NO. 608/1996

Date of order: 7.4.1997

Tahseen Mohd. Khan S/o Shri Atecad Mohd. Khan, resident of 2-
Cha-3, Housing Board, Shastri Nagar, Jaipur (Rajasthan).
: Applicant

Versus

1. Union of India through the Secretary to the Government of India, Ministry of Urban Development and Employment, New Delhi.
2. The Superintending Engineer, Central Public Works Department, Co-ordination Circle (Civil), I.P.Bhawan, I.P.Estate, New Delhi.
3. The Superintending Engineer, Central Public Works Department, Jaipur Central Circle, Vidhyadhar Nagar, Jaipur (Raj.).

: Respondents

Mr. M.S.Gupta, counsel for the applicant
Mr. V.S.Gurjar, counsel for respondents.

CORAM:

HON'BLE SHRI RATAU PRAKASH, MEMBER (JUDICIAL)
O R D E R

The applicant Shri Tahseen Mohd. Khan has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 for quashing the impugned order dated 9.10.1995 (Annex.A/1) issued by the respondent No.2 with a further prayer to allow him to continue to perform his duties at Jaipur without any loss or break.

2. Facts which are not in dispute between the parties are that after recruitment by the Staff Selection Commission, New Delhi for the post of Stenographer Gr. III (Hindi) he was allotted the Ministry of Home Affairs, New Delhi. He made a request for transfer to any other Department of the Central Government located at Jaipur and consequently he was transferred to Central Public Works Department Office located at Jaipur vide order dated 24.11.1989 (Annex.A/3).

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3. The grievance of the applicant is that while seeking transfer to Jaipur he had to sacrifice the seniority, suffer loss of TA & DA, joining time and other benefits available to him in the Central Secretariat Stenographers Service cadre. Vide the impugned order dated 8.10.1995 (Annex.A/1) he has now been transferred to Jodhpur Central Division against a diverted post by the respondent No.2. The applicant has claimed this order to be an arbitrary and capricious one and also tantamounting to colourable exercise of powers as according to him at Jodhpur, there is no work to be performed by the applicant being a Stenographer (Hindi) and 80% work is being performed by the Hindi Stenographer in the office of Executive Engineer, C.P.W.D. Jaipur Central Division-I, Jaipur. Aggrieved, he has approached to claim the aforesaid reliefs.

4. The respondents have opposed this application by filing a counter to which the applicant has also filed a rejoinder. The stand of the respondents has been that the applicant has been transferred to Jaipur on account of the administrative exigencies and in public interest. It has been denied that his transfer is arbitrary or capricious or is in exercise of colourable powers on the part of the respondents. It has also been stated on behalf of the respondents that consequent upon the order of his transfer dated 8.10.1995, the applicant has been relieved from the Jaipur Central Division-I on 26.11.1996 and that the applicant has proceeded on leave w.e.f. 25.10.1996.

5. I have heard the learned counsel for the applicant Shri M.S.Gupta and Shri V.S.Gurjar for the respondents and have examined the record in great detail.

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6. It has been vehemently argued by the learned counsel for the respondents that since the applicant has been transferred in the administrative exigencies and in public interest, the impugned order Annexure A/1 dated 8.10.1995 is neither illegal, nor suffers from any infirmity. It has also been urged that in view of the law propounded by Hon'ble the Supreme Court in the cases of transfer of Government employees, the Courts/Tribunals should not interfere unless the order of transfer is in violation of any statutory rule or is malafide.

7. There is no dispute about the law propounded by Hon'ble the Supreme Court in the matters of transfer. However, in the instant case the facts are little distinguishable. In this case after accepting the request of the applicant for being posted in any of the offices of the Central Government, located at Jaipur; the applicant was transferred to the CPWD office located at Jaipur vide order dated 24.11.1989 (Annex.A/3). In this particular order it has been specifically mentioned that this order of the transfer of the applicant Shri T.M.Khan is with the approval of the Director General of Works, CPWD, New Delhi vide his Office Memo dated 24.10.1989. It has further been mentioned that the Director General has given approval of the transfer of the applicant to the CPWD office located at Jaipur as a special case relaxing the recruitment rules but subject to the conditions that he will forfeit his claim to:

- "1. Seniority in C.S.S. Cadre.
2. TA/DA/Joining time in respect of any journey to be performed by him and
3. Pay during the period of journey for taking up the new posting at Jaipur unless covered by leaves due to him and granted by Competent authority.

He will be a fresh recruit in the post of

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Stenographer (O.G.) in Region 'A' of the CPWD and will be junior most in the grade. However, the last pay drawn by him may be considered for protection as per existing rules.

He should report for duty to the office of the Executive Engineer, Jaipur Central Division, CPWD, Jaipur only after relieving from the present case."

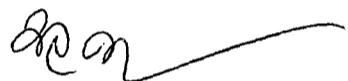
From a perusal of the above order, it is apparent that while being posted at Jaipur the applicant has not only lost his seniority in the C.S.S. Cadre but also TA & DA, joining time and pay during the period of journey for taking up the new posting at Jaipur. He has further been treated as a fresh recruittee in the post of Stenographer (O.G.) in Region 'A' of the CPWD and was also made the junior most in the grade. However, in the impugned order Annexure A-1 there is no reference to the disabilities placed on the applicant's career vide order dated 24.11.1989 (Annex/A/3). It is also not clear from Annexure A/1 that there is any approval of the Director General of Works, CPWD, New Delhi. Impugned order Annexure A/1 has been issued only with the approval of Superintending Engineer under the signature of the E.A. (Engineering Assistant) to the Superintending Engineer Coordination Circle (Civil), CPWD, IP-I, New Delhi. The stand taken by the respondents that because one post has been diverted to Jodhpur and as such the applicant was transferred in the administrative exigencies and in public interest does not stand the test of credibility on part of respondent No.2. When once the applicant has been posted at Jaipur on the approval of Director General of Works, CPWD, New Delhi forfeiting his career prospects, it was incumbent upon respondent No.2; in case he wanted to transfer

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the applicant from Jaipur to any other station to have brought this fact to the knowledge of the Director General of Works, New Delhi and after obtaining approval should have been transferred. This having been not done, the impugned order Annexure A/l does not stand the test of law and is hereby quashed. This OA was filed by the applicant on 19.11.1996 and he was relieved by the respondents on 26.11.1996. He is reported to be on leave w.e.f. 25.10.1996. The respondents would also issue necessary orders for regulating the period falling between 25.10.1996 to 26.11.1996; the alleged date of his relieving from Jaipur; and till the date of this order. Consequently, it would be deemed that the applicant stood not transferred to Jodhpur vide impugned order dated 8.10.1995 (Annex.A-1). The direction given on 5.12.1996, therefore, stands merged in this order.

8. The O.A. is disposed of accordingly with no order as to costs.


(RATAN PRAKASH)
MEMBER (JUDICIAL)