

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 24th day of Sept, 2010

O.A. No. 270/2010

CORAM:

HON'BLE MR. M.L. CHAUHAN, MEMBER (JUDL.)

Bakshi Ram
s/o Shri Sinna Ram
working as Draftsman Grade-II
under Executive Engineer,
Jaipur Central Division-I, C.P.W.D.,
Kendriya Sadan Parisar,
Block-A, Sector No.10,
Vidyadhar Nagar, Jaipur
r/o Q.No.32, Block D/5, Custom Colony,
Sector-7, Vidhyadhar Nagar,
Jaipur

.. Applicant

(By Advocate: Shri Nand Kishore)

Versus

1. Union of India through Secretary,
Ministry of Urban Development,
Central Public Works Department,
Nirman Bhawan,
New Delhi
2. Superintending Engineer,
Jaipur Central Circle,
C.P.W.D., Nirman Bhawan,
Sector-10, Vidhyadhar Nagar,
Jaipur
3. Executive Engineer,
Jaipur Central Division-I,
C.P.W.D., Kendriya Sadan Parisar,
Block-A, Sector-10,
Vidhyadhar Nagar,
Jaipur
4. Ramesh Chandra Parashar,
Draftsman Grade-II,



Jaipur Central Circle,
CPWD Sector-10,
Vidhyadhar Nagar,
Jaipur

Respondents

(By Advocate: Shri Mukesh Agarwal)

ORDER

The applicant has filed this OA thereby praying for the following reliefs:

- (i) The Transfer order dated 21.5.2010 (A/1) at Sr. No.33 as far as applicant is concerned may be declared arbitrary, bad in law, capricious and may be quashed and set aside.
- (ii) Any other directions and orders, which are, deem proper in the facts and circumstances of the case may kindly be allowed to the applicant.

2. When the matter was listed on 25.5.2010 while issuing notices to the respondents and granting interim stay, this Tribunal has made the following observations, which thus reads:-

"The grievance of the applicant in this case is regarding order dated 21.5.2010 (Ann.A/1) whereby the applicant has been transferred from Jaipur C.D.-01 to Jaipur C.C. The case of the applicant is that before issuing transfer order, a warning list was issued in which name of those officials who have been working in field group for a period of four years or more are included. Since the applicant has not completed four years of service, as such, his name could not have been included in the warning list prepared for field group. For that purpose, the applicant has also filed representation dated 24.2.2010 (Ann.A/4) to the Superintending Engineer (Civil), Coordination Circle, New Delhi. The applicant has further pleaded that representation of the applicant was duly recommended by the Executive Engineer, Jaipur vide letter dated 25.2.2010 (Ann.A/7) as well as by the Assistant Engineer vide letter dated 3rd March, 2010 (Ann.A/8) thereby specifically stating that the applicant has not completed tenure of four years, as such, he may be permitted to work

for a further period of one year. Despite this, the Superintending Engineer (Civil), Coordination Circle, New Delhi has passed in the impugned order.

I have given due consideration to the submissions made by the learned counsel for the applicant. I am of the view that the applicant has made out a prima-facie case for grant of ex-parte interim order. Accordingly, the respondents are directed to maintain status-quo qua the applicant as on today till the next date of hearing.

3. The respondents have filed reply. In the reply the respondents have stated that the applicant has in fact joined the office of respondent No.3 i.e. Executive Engineer, Jaipur Central Division-I, C.P.W.D. on 6.3.2006, which is evident by the office order dated 7.3.2006 (Ann.R/2). It is further stated that on the request of the applicant, he was allowed to work in the office of Chief Engineer (NZ-III), CPWD, Jaipur on the sanction strength of respondent No.3 office temporarily and pay and allowances of the applicant for the period in the office of Chief Engineer (NZ-III) was also made and paid from the office of respondent No.3 after getting attendance from office of Chief Engineer (NZ-III) as is evident from letter dated 9.3.2006 (Ann.R/3). It is further pleaded that the applicant was never transferred to the office of Chief Engineer (NZ-III) but was allowed to work on the strength of respondent No.3 on his request purely on temporary basis, which is clear from the letter dated 3.4.2006 (Ann.R/4). Thus, according to the respondents, the applicant has already completed four years' tenure. Further, the applicant has himself mentioned his date of joining as 6.3.2006 in the performa for seeking retention submitted by him along with his application forwarded by letter dated 9.6.2009 and 15.6.2009 (Ann.R/6 and R/7).

As such, according to the respondents, the applicant has already completed tenure of four years in March, 2010. It is further pleaded that mere recommendation made inadvertently that the applicant has not completed field tenure of four years and date of joining of the applicant mentioned as 13.12.2006 in place of 6.3.2006 does not confer any right to the applicant for retention in field unit for more than 4 years tenure.

4. The applicant has filed rejoinder thereby reiterating the submissions made in the OA. According to the applicant after joining in the division office on 6.3.2006, he was posted in head office as Draftsman where he joined on 9.3.2006 and worked up to 13.12.2006. Thus, the said period cannot be treated posting of the applicant in the field unit. Thus, according to the applicant, the applicant will complete tenure of four years in the field unit in December, 2010, as such, it was not permissible for the respondents to transfer the applicant vide impugned order dated 21.5.2010 (Ann.A/1).

5. I have heard the learned counsel for the parties and gone through the material placed on record.

6. At this stage, it will be useful to reproduce the letter dated 18th June, 1999 (Ann.R/1) which stipulates rotation of officials in sensitive posts and thus reads:-

.... In pursuance of the letter under reference from the Central Vigilance Commission, the following posts/Units in CPWD were identified as sensitive vide letter No.16/12/97-VSI dated 14.05.99:

(a) Field Unit (Construction, Maintenance & Central Stores)

(b) Encadared posts in Central Board of Direct taxed (Valuation & Appropriate Authority)

(c) Vigilance and Quality Assurance Units

(d) Posts dealing with establishment matter viz. Promotions, postings and transfers.

The frequency of rotation was stated wrongly in the aforesaid letter dated 14.05.99. The frequency of roatation for the posts/units at © & (d) can be 2 to 3 years and for the posts/units at (a) & (b) the desirable frequency of rotation is 3 to 4 years.

This issues with the approval of Director General (Works)."

7. From perusal of this letter, it is evident that in order to maintain transparency the period has been prescribed for posting a person in sensitive posts. Here, I am concerned with Clause-(a). As can be seen from the policy decision as quoted above, desirable frequency of rotation is 3 to 4 years. Admittedly, the applicant was posted in the field unit of office of respondent No.3 where he joined on 6.3.2006. It is also admitted fact that the applicant worked in the office of the Chief Engineer (NZ-III) for a period w.e.f. 8.3.2006 to 13.12.2006 against the sanctioned strength of the post of field unit in the office of respondent No.3 and also has drawn salary against that post. The question whether the period w.e.f. 8.3.2006 to 13.12.2006 is treated to be service rendered by the applicant against sensitive post/field unit is not material for the purpose of deciding the controversy in the matter as the policy decision as reproduced above stipulates desirable frequency of ration as 3 to 4 years, even if the aforesaid period w.e.f. 8.3.2006 to 13.12.2006 is ignored for the purpose of calculating service rendered in the field unit. Admittedly, the applicant has completed the period of more than 3

years when he was shifted from Jaipur CD-01 to Jaipur CC. Thus, according to me, the stand taken by the applicant that he has got right to be retained in the field unit for a period of four years cannot be accepted in view of the policy decision dated 18th June, 1999, as reproduced above, where frequency of rotation in respect of field units is 3 to 4 years. Even as per own showing of the applicant, he is going to complete the tenure of 4 years in the month of December 2010 i.e. after a period of about 3 months. Further, the applicant has been shifted one office to another office within the same station. As already stated above, the policy does not stipulate that employee can be shifted only after a tenure of four years. Rather, the tenure prescribed is 3 to 4 years.

8. Thus, in view of what has been stated above, I am of the view that the applicant is not entitled to any relief. Accordingly, the OA is dismissed with no order as to costs.


(M.L. CHAUHAN)
Judl. Member

R/