

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No.3985/2017

**Reserved On:15.11.2017
Pronounced on:21.11.2017**

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)**

Smt. Indu Bhalla
W/o Naresh Bhalla,
Aged 66 years,
(Assistant (AD) S) Group 'B',
R/o BG-36, Shalimar Bagh,
East, New Delhi-110088.Applicant

(By Advocate: Shri Sahil Bhalaik)

Versus

Central Public Works Department
Through its Directorate General,
Nirman Bhawan,
New Delhi-110001. Respondent

ORDER

By Hon'ble Ms. Nita Chowdhury, Member (A)

The applicant has filed this Original Application (OA) claiming the following reliefs:-

“(a) To quash and set aside the Memorandum No.30(01)2016-EC-V dated 26.10.2017 (Annexure A-1) issued by respondent transferring her to Jaipur and warning of disciplinary proceedings under Rule 14 of CCS (CCA) Rules, 1965 against the applicant.

(b) The applicant be retained at New Delhi for the reasons set out here and above.

(c) The pending arrears including salaries be released to the applicant at the earliest.

(d) Any other relief which the Hon'ble Tribunal may deem fit in the circumstances of the case".

2. Briefly narrated, the facts are that the applicant is an Assistant (AD) working with Central Public Works Department (CPWD) for the last 34 years and is aggrieved by the impugned order dated 26.10.2017 issued by the respondent. On 07.07.2014 (Annexure A-2), she was posted as SA at Jammu. Thereafter, she made a representation and on 28.05.2015 (Annexure A-3) her transfer was modified from SA, Jammu to SA, Jaipur. She requested the department vide letter dated 24.07.2015 to retain her at Delhi due to her husband's ill health. She again requested on 03.08.2015 to the department to retain her at Delhi. On her request, vide OM No.28(05)2013-EC-V dated 14.10.2015, she was retained in Delhi up to 31.03.2016. Thereafter, she was to join at Jaipur on 01.04.2016. Immediately thereafter, the Architect (HQ) Planning-cum-CA (DR) vide letter dated 31.03.2016 to the ADG, DG, CPWD requested for her retention in Delhi.

3. Applicant further submitted that she was relieved vide order dated 08.08.2016 from SA (DR)-III Delhi to join at SA, Jaipur. She again requested vide letter dated 17.08.2016 to the DG Works, CPWD for retention in Delhi on the ground that her husband had undergone two major and serious surgeries which requires special care. Again on 13.10.2016 and 13.02.2017, she made similar

requests that as her husband had undergone open heart surgery, which may require a valve change so she be retained at Delhi. Thereafter, applicant vide Office Order No.28 of 2017 (CPWD) dated 10.03.2017 was promoted to the grade of Technical Officer and also required to join at Kolkata. She requested vide letter dated 14.03.2017 to the DG Works, CPWD expressing her inability to join at CA, Kolkata. On 17.05.2017, she requested to forego her promotion and be retained at Delhi. Immediately thereafter, the competent authority on 26.05.2017 after consideration cancelled the applicant's promotion and even debarred her for promotion till 26.05.2018. However, she was directed to join at SA, Jaipur within 15 days as Assistant (AD), since her request for retention in Delhi had been rejected.

4. Applicant further avers that vide letter dated 15.06.2017, she again requested the respondent for retention in Delhi and foregoing her promotion as her name was not included in the Hard Case Committee meeting. On 19.06.2017 she again requested the ADG (ARCH) to not strictly consider the directive of joining at Jaipur in 15 days till a decision is taken on her representation dated 15.06.2017. Ultimately, the Deputy Director, CPWD vide Memorandum dated 26.10.2017 directed the applicant to report for duty at Jaipur as Assistant (AD) latest by 05.11.2017 and failure of the above, would attract action under CCS (CCA) Rules, 1965. She

has thus prayed that the OA be allowed and she be retained at Delhi.

5. We have heard the learned counsel for the applicant and perused the pleadings.

6. The short question involved in this case is whether applicant can be retained in Delhi or asked to join Jaipur immediately. From the above, it is clear that the applicant is in the habit of making representations after representations on one pretext or other to stall her transfer. It is very true that in the matters of transfer, the Courts/Tribunals are not required to intervene. In normal circumstances, intervention of the court would be only confined to such cases where either mala fide is alleged and proved or there is a violation of some statute or where the laws of natural justice have not been respected. It is fully considered that the courts are not to go into the issue like justification of the administrative orders. In

Sarvesh Kumar Awasthi versus U.P. Jal Nigam and Others [2003(11)SCC 740] wherein the Hon'ble Supreme Court has held as under:-

“3. In our view, transfer of officers is required to be effected on the basis of set norms or guidelines. The power of transferring an officer cannot be wielded arbitrarily, mala fide or an exercise against efficient and independent officer or at the instance of politicians whose work is not done by the officer concerned. For better administration the officers concerned must have freedom from fear of being harassed by repeated transfers or transfers ordered at the instance of someone who has nothing to do with the business of administration.”

Similarly in **Somesh Tiwari Vs. Union of India & Others [AIR 2009 SC 1399]**, the Hon'ble Supreme Court has held as under :-

“19. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved...”

7. Further, the Hon'ble Supreme Court in its judgment in **S.C. Saxena Vs. Union of India & Ors., 2006 SCC (L&S) 1890** has held as under:

“6. We have perused the record with the help of the learned counsel and heard the learned counsel very patiently. We find that no case for our interference whatsoever has been made out. In the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed.”

8. In view of the law settled by the Hon'ble Supreme Court as well as the facts of this case, we find absolutely no merit in the applicant's plea and this OA is, therefore, dismissed in limine.

(NITA CHOWDHURY)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

Rakesh