

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

**O.A No.2170/2017
With
O.A. No.3745/2018**

Reserved On:17.10.2018

Pronounced on: 22.10.2018

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. A.K. Bishnoi, Member (A)**

O.A. No. 2170/2017

1. CPWD Arch. Asstt./Asstt (AD) Association,
Through its General Secretary,
Vinod Kumar Sharma, Assistant (A.D), Group 'B'
Aged about 55 years,
S/o Shri B.L. Sharma,
R/o 90/18-A, 2nd Floor, Malviya Nagar,
New Delhi-110017.
2. Devina Sharma, Assistant (A.D), Group 'B'
Aged about 52 years,
W/o Shri A.K. Sharma,
R/o B-1401, J.M. Orchid, Sector-76, Noida,
U.P.-201301.
3. Anupama Jain, Assistant (A.D), Group 'B'
Aged about 52 years,
W/o Sh. R.K. Jain,
R/o 24, Bahubali Enclave, Delhi-110092.
4. Shobha Ringe, Assistant (A.D), Group 'B'
Aged about 54 years,
W/o Shri Ravi Ringe,
R/o C-212, Pandav Nagar,
Patparganj Road, Delhi-110092.
5. Achla Mendiratta, Assistant (A.D), Group 'B'
Aged about 54 years,
W/o Shri Prem Kumar Mendiratta,
R/o EC-287, Maya Enclave,
Hari Nagar, New Delhi-110064.
6. Avinash Soni, Assistant (A.D), Group 'B'
Aged about 50 years,

S/o Late Shri Nihal Singh Soni,
R/o 674, Group-III, Hastal Janta Flats,
Uttam Nagar, New Delhi-110059.

7. Sushma Singh, Assistant (A.D), Group 'B'
Aged about 55 years,
W/o Shri Yudhveer Singh,
R/o 165, MIG Flats, Prasad Nagar, New Delhi.
8. Seema Mehta, Assistant (A.D), Group 'B'
Aged about 51 years,
W/o Shri Kapil Kumar Mehta,
R/o 295, Jagriti Enclave, Delhi-110092.
9. Geeta Wadhwa, Assistant (A.D), Group 'B'
Aged about 52 years,
W/o Shri Ashwani Wadhwa,
R/o C-I-211, Lajpat Nagar-I,
New Delhi-110024.
10. Kusum Gulhar, Assistant (A.D), Group 'B'
Aged about 50 years,
W/o Shri Harish Kumar Gulhar,
R/o 269, Gulmohar Enclave, New Delhi-110049.
11. Neerja Malik, Assistant (A.D), Group 'B'
Aged about 51 years,
W/o Shri Anil Malik,
R/o 205, Goenka Apartments,
19/41 West Punjabi Bagh,
New Delhi.
12. Prerna Sharma, Assistant (A.D), Group 'B'
Aged about 50 years,
W/o Shri Sanjay Sharma,
R/o 45-A, Pkt-D, SFS Flats,
Mayur Vihar, Phase-III,
New Delhi-110096.

..Applicants

(By Advocate: Shri M.K. Bhardwaj)

Versus

1. Union of India,
Through its Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.

2. The Director,
CPWD, Nirman Bhawan,
New Delhi. ...Respondents

(By Advocate: Dr. Ch. Shamsuddin Khan)

O.A. No.3745/2018

Smt. Kimmi Syal
Wife of Shri Pradeep Syal
Daughter of Rajinder Kumar Sud
Being Assistant (A.D.), Group 'B'
Aged about 53 years
R/o House No.3652,
Sector-23, Gurgaon, Haryana. ... Applicant

(By Advocate: Shri Sumant DE with Shri Pritish Sabharwal)

Versus

1. Union of India,
(Through its Secretary),
Ministry of Urban Development,
Nirman Bhawan,
New Delhi-110001.
2. Director General,
CPWD, Nirman Bhawan,
New Delhi-110001 ...Respondents

(By Advocate: Shri Gyanendra Singh)

ORDER

By Mr. V. Ajay Kumar, Member (J)

Since the facts and law involved in these OAs are identical, the same are disposed of by way of this common order.

O.A. No. 2170/2017

2. The applicant No.1 is the CPWD-Architectural Assistants/Assistants AD) Association and the applicants No.2

to 12 are the individual Assistants (AD) of the 2nd respondent-CPWD. They jointly filed the OA seeking quashing of the Annexure A-1 Office Order No.81/2017 dated 23.06.2016 (*sic* 23.06.2017) whereunder the respondents have transferred the applicants from the present regions to different regions, i.e., effecting inter regional transfers.

3. Heard Shri M.K. Bhardwaj, the learned counsel for the applicants in OA No.2170/2017 and Shri Sumant DE with Shri Pritish Sabharwal, the learned counsel for the applicant in OA No.3745/2018 and Dr. Ch. Shamsuddin Khan, the learned counsel for the respondents in OA No.2170/2017 and Shri Gyanendra Singh, the learned counsel for the respondents in OA No.3745/2018 and perused the pleadings on record.

4. This Tribunal on 10.07.2017 directed the respondents to maintain status quo qua the applicants and by virtue of the said order, the applicants are being continued in the original places of posting till date. It is submitted that though only 11 individual applicants are in OA 2170/2012 in whose favour the status quo order is subsisting, but it appears that the respondents have not moved the other persons, who were also directed to be transferred to different regions through the same Annexure A-1 impugned order dated 23.06.2017. However, the applicant in OA No.2745/2018 was relieved.

5. Shri M.K. Bhardwaj and Shri Sumant DE, the learned counsel appearing for the applicants submits that previously no inter regional transfers in the category of Assistants (AD) in the Architectural Department were affected. This is the first time that the respondents transferred the applicants and others from their regions to different regions. He also submits that respondents vide Annexure A-2 dated 23.12.2013 while deciding to effect transfers on regional basis issued the draft policy of intra and inter regional transfers guidelines in respect of (Architectural Department) and called for suggestions and comments from all the concerned. Accordingly, the applicants and others have submitted their comments/suggestions to the said Draft Policy, and the same is yet not finalized. But even before finalisation of the same, the respondents illegally and against the said Draft Policy affected inter regional transfers by issuing the said impugned orders. When the respondents were taking steps to relieve the applicants, even before considering the representations made by them against the impugned transfer orders, they filed the instant OAs.

6. The learned counsel for the applicants also submits that number of newly recruited persons also joined in the meanwhile and hence the respondents are required to revoke the impugned orders keeping in view the said fact.

7. Dr. Ch. Shamsuddin Khan and Shri Gyanendra Singh, learned counsel for the respondents submits that the contention of the applicants that there was no transfer policy at all in the respondent-CPWD prior to the Annexure A-2 Draft Policy, is not correct. In fact, Chapter 12 of the CPWD Manual – Regular Establishment and Office Procedure, 2013, provides for the policy of transfers of the applicants and others. The impugned action is in terms of the said existing policy and hence there is no illegality in their action. They further submit that in view of the settled position of law that the transfer is an incident of service and that in Government servant can insist that he should be posted in a particular place or he should be continued in a particular place for a specified period, this Tribunal cannot entertain the OAs filed for quashing of the transfer orders. The learned counsel further submits that as no valid grounds for interfering with the policy of transfer, such as, violation of any statutory rule or mala fide is existing, the OAs are liable to be dismissed.

8. The relevant paragraphs of Chapter 12, i.e., Transfer, Deputation and Transfer of Charge of the CPWD Manual – Regular Establishment and Office Procedure, 2013, reads as under:-

“Central Public Works Department is a multi-disciplined organisation having officers from Civil, Electrical, Architecture and Horticulture wing. In addition there are various other cadres i.e Ministerial Draftsman, Stenographers, official language etc. Being

a large organisation with number of cadres, CPWD follows transfer policy to bring in transparency in transfer and posting and balancing working strength in different areas as per their requirement. The officers and staff of the Central P.W.D. are required to serve anywhere in India. The officers and staff are liable to be transferred from one office to another or from one station to another.

12.1 All transfer are to be carefully planned within reasonable space of time. To avoid dislocation of work, large number of officials of one office is not transferred out simultaneously. As far as possible the transfers should take effect after the end of the financial year/academic year. Transfers during the rest of the year should be ordered only to the extent it is absolutely necessary from administrative point of view on account of transfer/closure/opening of unit, retirement, death, resignation of Officers.”

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12.5. General Guidelines: The following guidelines are to be followed while deciding transfer and posting of officers of the rank of Superintending Engineer and below. The guidelines including tenure etc. may vary from cadre to cadre. However, the guidelines which are common to all are as below: i) While deciding transfer factors like tenure transfer rule, hard area posting, zonal requirement, deputation policy of the department and personal difficulties of the individual officers shall be taken into account. However, needs of the department shall have overriding priority over other factors.

ii) The tenure in North Eastern Region and other declared hard area shall be 2 years. Officers posted to such station shall be allowed to exercise choice of station of posting and same will be considered subject to availability of vacancy at the station chosen and administrative exigency.

iii) For the purpose of annual tenure transfer, the longest stayee list shall be circulated by January/February of the year. The list shall be prepared based on completion of station tenure as on 30th June of the year. The transfer orders should normally be issued in the month of March / April so that the officers can move before commencement of the academic year.

iv) Officers having 2 years residual service may opt either for retention in the station of posting for residual period or may opt for posting to a station of their choice where they propose to settle down after retirement. The request will be considered subject to availability of vacancy at the station chosen and administrative exigency.

v) For the purpose of determining station tenure, the period spent at a station continuously shall be considered irrespective of the post held.

vi) The posting/transfer committee may recommend retention to officers for a period of one year on children education/medical ground after completion of tenure at a particular station.

Note : (i) Cases of Medical ground shall constitute terminal diseases and case of mentally challenged.

(ii) Educational grounds shall constitute child studying in class 12th only.

vii) Permission for study outside office hours will not be a ground for retention in same station.

viii) DOP&T guideline on posting of husband and wife shall also be taken into consideration while deciding such cases.

ix) Once transfer orders are issued, officer should be relieved by their controlling officer immediately after issue of order without waiting for substitute unless direction contrary to this are indicated in the transfer order.

x) The period spent in Headquarter posting shall not count towards station tenure in respect of officers of Engineering cadre (of the rank SE/EE/AE/JE). The Headquarter posting shall include posting in the Directorate, CDO, CSO, CSQ and Vigilance Unit.

xi) The competent authority may relax any of the above provisions and order transfer/posting or retention of officers / staff keeping in view exigency of public service and administrative requirement.

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(c) Dy. Architect, Assistant Architect, Technical Officer & Assistant (AD)

i) The normal tenure at a station shall be 3 years except Delhi Region (including Ghaziabad, Faridabad, Gurgaon, NOIDA & Greater NOIDA) where tenure shall be 5 years.

ii) The officers who have completed 55 years of age shall not normally be posted to hard areas."

9. A perusal of the above supports the case of the respondents that there is an existing transfer policy applicable to the applicants as well as to other officers of CPWD and that the respondents are

empowered to transfer the applicants from one region to another region. Since even as per the applicants that the Draft Policy Annexure A-2 Intra and Inter Regional Transfer Policy in respect of Architectural Group 'B' Staff, i.e., Assistant (AD), Technical Officer and Assistant (Architectural) is still under consideration and not yet finalised, the same cannot be relied upon.

10. In **Rajendra Singh & Others v. State of UP & Others**, (2009) 15 SCC 178, the Hon'ble Apex Court held as under:

"6. A Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the Government Servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires [see **State of U.P. v. Gobardhan Lal**; (2004) 11 SCC 402].

7. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In the case of **Shilpi Bose (Mrs.) & Ors. v. State of Bihar & Ors.** AIR 1991 SC 532, this Court held :

"4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive

to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

8. In **N.K. Singh v. Union of India & Ors.** (1994) 6 SCC 1998, this Court reiterated that the scope of judicial review in matters of transfer of a Government Servant to an equivalent post without adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides or violation of any specific provision."

11. In **State of U.P. Vs. Gobardhan Lal;** (2004) 11 SCC 402, it was held as under:-

"7. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration

borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer”.

12. In the circumstances and in view of the existing policy of transfer of the 2nd respondent-CPWD, and in view of the settled principles of law, we do not find any illegality in the action of the respondents. However, it is a fact that the representations made by the applicants against the impugned transfer orders were not considered by the respondents. It is also a fact that certain number of newly recruited Assistants (AD) joined in various places after filing of the OA. i.e., during the last about more than one year.

13. In the circumstances and for the aforesaid reasons, we are not inclined to interfere with the impugned transfer orders. However, the respondents are directed to consider the representations of the applicants, if any, pending with them against the impugned transfer orders and to pass appropriate speaking and reasoned orders on the individual and personal objections of the applicants, keeping in view the administrative exigencies, existing at present, as per rules and in accordance with law, within 4 weeks from the date of receipt of a copy of this order. Till then, the interim orders of status quo, qua, the

applicants, shall be in force. Accordingly, the OAs are disposed of. No costs.

Let a copy of this order be kept in both the files.

(A.K. BISHNOI)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

RKS