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CENTRAL ADMINISTRATIVE TRIBUNAL. PRINCIPAL BENCH

OA No.949/2003

New Delhi this the 17th day of July, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Tiinder Kumar,
64D Pandav Nagar,
Opp SPD Post,
Shadipur Depot,
New Delhi.

-Applicant

(By Advocate Sh. G.K. Aggarwal)

-Versus-

1. Union of India through
Director General (Works),
CPWD, Nirman Bhawan,
New Delhi-110011.
2. O.P. Arora, AD (H), CPWD,
through Director General (W),
CPWD (E-III), Nirman Bhawan,
New Delhi-110017.

-Respondents

(By Advocate Shri S.M. Arif, proxy for Sh. D.S. Mahendru)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant impugns transfer order dated 7.4.2003, transferring him from New Delhi to Bhubneshwar. He has sought quashment of the same with consequential benefits.

2. Applicant joined CPWD as Sectional Officer (Horticulture) on 1.4.1977 and was promoted and posted to Jullundhar as Assistant Director (H) on 11.12.1995. He had been serving at Delhi since 20.4.1998. Applicant's wife is employed in NDMC and children are studying. His parents residing with applicant are getting treatment at Delhi. As per the transfer/posting guidelines by an office memorandum dated 26.2.2003 while issuing a list of longest stay of Assistant Director (H) whereas name of applicant figures at serial No.6. On his stay at Delhi for five years objections have been sought with an opportunity to opt for

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choice of three stations. In response to the same applicant has given his choice for Jaipur, Jodhpur and Mumbai.

3. Posting Committee held its meeting on 31.3.2003 and after carefully considering the case of longest stay transferred applicant to Bhubneshwar as one Sh. S.P. Singh figuring at serial No.2 of the list on account of his personal problems and was due to retire within three years i.e., 31.10.2005 was not disturbed as well as one M.P. Nimb who was posted at Parliament House could not be transferred as prior concurrence of Lok Sabha Secretariat due to security reasons was not accorded. Sh. S.C. Verma figuring at serial No.1 of the list was transferred to Mumbai and also incumbent figuring at serial Nos.4-6. As there was no vacancy available in Jaipur one S.S. Rathi senior to applicant has been posted at Jodhpur and Sh. R. Selvam a newly recruited Assistant Director of Horticulture is posted at Mumbai as he cannot be given independent charge in his first posting. As the available vacancy was at Bhubneshwar, which is an independent Horticulture sub-Division applicant could not be adjusted at his choice station he was transferred to Bhubneshwar, giving rise to the present OA.

4. By an order dated 10.4.2003 status quo has been maintained with the result applicant could not be transferred to Bhubneshwar and one of the incumbents O.P. Arora who has been transferred from Indore to Delhi vice applicant has joined at Delhi.

5. By an order dated 30.5.2003 D.S. Mahendru, learned counsel of the respondents has been directed to produce record regarding Postina Committee's proceedings. Despite three opportunities he has failed to produce the same. Accordingly, I took adverse inference.

6. Learned counsel for applicant Sh. G.K. Aggarwal imbuans the transfer order as mala fide against the transfer policy. According to him, respondents are bound by the doctrine of promissory estoppel. In so far as guidelines for transfer and posting on longest stay is concerned, it is stated that both S.P. Singh and Nimb having longest stay than applicant have been retained whereas applicant has been transferred which is against the policy guidelines.

7. It is further stated that respondents have acted mala fide in order to adjust one O.P. Arora who had been transferred from Indore in place of applicant and the aforesaid transfer is on his own request without any element of either public interest or administrative exigencies. It is further stated that the above incumbent had already joined at Delhi without disturbing applicant.

8. Sh. Aggarwal further contends that there is no exigency apparent on the record to shift applicant out of turn when his wife is employed in NDMC and he had personal problems like S.P. Singh, meeting out differential treatment by the Committee clearly shows arbitrariness and discrimination in the matter of posting/transfer, which cannot be countenanced under Articles 14 and 16 of the Constitution of India.

9. On the other hand, respondents' counsel contested the OA and opposed the contentions. According to him those who had completed four years service in Delhi. Posting Committee, which met on 31.3.2003 carefully considered the case of each officer and taking into account personal problems and retirement of S.P. Singh he was not disturbed. The other person N.P. Nimb has not been transferred due to non-clearance of security reasons by Lok Sabha Secretariat.

10. In so far as choice posting by applicant as no vacancy was available and seniors were adjusted in administrative exigencies having an all India transfer liability applicant was posted to Bhubneshwar against a vacant post.

11. In continuance of public interest and administrative exigencies it is contended that the post of Assistant Director (H) at Bhubneshwar has been long vacant for more than one year and applicant's transfer is in no way related with the transfer of respondent No.2 from Indore to Delhi. As applicant had already completed his tenure in the present posting his transfer is in exigency of service as per the terms and conditions.

12. As far as stay of applicant at Delhi is concerned, it is stated that incumbent from Indore had been relieved and a substitute is also taken either at Indore. However, he could not join as the post at Delhi has been occupied by applicant due to stay order.

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13. I have carefully considered the rival contentions of the parties and perused the material on record. In so far as choice posting of applicant is concerned. in pursuance of respondents' OM dated 26.6.2003 applicant opted for Jodhpur, Jaipur and Mumbai. whereas in Jodhpur a senior with longest stay S.S. Rathi has been posted and as there was no vacancy at Jaipur he was not considered. The only choice state left was Mumbai where a new entrant had joined viz. R. Selvam cannot be given independent charge in his first posting. as such he was posted at Mumbai.

14. However. I find that in clause 4 of the OM ibid respondents have to make their attempts to adjust applicant at one of the places of his choice but no commitment can be made as posting to choice place as per option depends on other factors as well and also the exigencies of work. However. there cannot be a denial to the fact that as per the list of longest stay only persons with longest stay are to be transferred. One Sh. S.P. Sinha who had 11 years of stay at Delhi has not been transferred and the reason given is that it was on account of his personal problems as well as he was to retire on 31.10.2005. i.e.. within three years from the date of transfer. I find that the policy of the Government is to relax condition and not to disturb the posting of those who had less than three years to serve before normal superannuation. Aforesaid was in vogue.

15. In so far as other personal reasons are concerned. in absence of production of relevant record pertaining to the posting committing meeting held on 31.3.2003 as applicant was equally placed in so far as

personal difficulty are concerned, with regard to his ailing parents wife employed in NDMC and study of the children has not been established to be comparatively considered. As such, their contention on the basis of averment in counter-reply has not been established for non-production of record.

16. The Apex Court in Vijay Narain Singh v. Supdt. of Police, Bijnore (UP) and Others, 1984 SCC (L&S) 796 held as follow:

"4. The appellant has expressly asserted that his appointment as a Constable was on probation in a clear vacancy. ON behalf of the State of U.P., there is no denial of this assertion and no material has been produced by the State to indicate that the appellant's appointment was not of this nature. There can be no doubt that the State which is in possession of the entire record was not in a position to show with reference to the record that the factual position was different. The failure of the State Government to produce any record in support of its submission is alone sufficient to reject its submission to this effect. The case has, therefore, to be examined on the basis that the appellant's appointment was on probation in a clear vacancy which was governed by Regulation 541 of the U.P. Police Regulations."

17. If one has regard to the aforesaid failure of the respondents who are custodian of the official record despite several opportunities to produce the same is sufficient to reject their decision for transfer of S.P. Singh.

18. As under the longest stay S.P. Singh, who had longest stay has been retained whereas applicant with lesser stay has been transferred is certainly in violation of the transfer policy having statutory force of law. As applicant has been discriminated vis-a-vis S.P. Singh in contravention of the transfer policy without any

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justification brought on record by the respondents the same cannot be sustained. Accordingly the OA is allowed. Impugned order dated 7.4.2003. in so far as it transfers applicant to Bhubneshwar is quashed and set aside. Applicant shall also be entitled to all consequential benefits. No costs.

S. Raju
(Shanker Raju) :
Member (J)

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