

(4)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1899/2003

New Delhi this the 23<sup>rd</sup> day of January, 2004

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

V.K. Angira,  
IDSE,  
Garrison Engineer,  
Base Hospital, Delhi Cantonment,  
New Delhi-110 010. -Applicant

(By Advocate Shri H.K. Gangwani)

-Versus-

Union of India & Others  
through:

1. The Secretary,  
Ministry of Defence,  
Government of India,  
South Block,  
New Delhi-110001.
2. The Director General (Personnel),  
MES, Engineer in Chief Branch,  
Army Headquarters, DHQ PO,  
New Delhi-110 011.
3. Shri Narendra Kumar, ~  
Chief Engineer (Delhi Zone)  
Delhi Cantonment,  
New Delhi-110 010. -Respondents

(By Advocate Shri R.P. Aggarwal)

O R D E R k

Applicant impugns transfer order dated 15.7.2003 as well as order on representation dated 28.7.2003, rejecting his request for cancellation of transfer.

2. The brief factual matrix, as reflected from the pleadings is that applicant joined as Assistant Executive Engineer, a Group 'A' post in MES in December, 1999. Applicant was earlier posted on a hard posting at Nagaland w.e.f. 1998-2001 and had worked at Base Hospital as AGE (E/M) from 1998 to 2001. In November, 2001 he was promoted as Executive Engineer and was posted at Base

(4)

Hospital. Vide impugned order dated 16.7.2003 applicant was transferred from Base Hospital to Bhusawal. This has been represented against.

3. Being aggrieved with the transfer order, applicant filed OA-1799/2003, which was disposed of on 21.7.2003, directing applicant to prefer a representation and if aggrieved, take recourse to the process of law. In pursuance thereof, applicant preferred a representation, which was disposed of by a reasoned order, giving rise to the present OA.

4. Learned counsel for applicant Sh. H.K. Gangwani assails the transfer order on the ground that though directions given in the OA (supra) to treat the OA as supplementary representation but the respondents have not taken into consideration the aforesaid directions and through a non-speaking order, rejected request of applicant for cancellation of transfer.

5. According to applicant transfer has been resorted to for extraneous reasons and is punitive. The performance of applicant remained all along good for which he has been appreciated by the superiors. According to him, as no immediate superior of applicant is at Bhusawal he cannot prove his capabilities in the said executive appointment. He alleges mala fides against R-3, contending that respondents had changed the stand, whereas earlier transfer was in public interest but the subsequent ground is on unsatisfactory performance. According to learned counsel

for applicant on an anonymous complaint by adopting short cut applicant has been victimised by the aforesaid transfer, which is colourable exercise of powers.

6. He relies upon the decision of the Apex Court in **S.G. Jaisinghania v. Union of India & Others**, AIR 1967 SC 1427 to contend that even in routine administrative matter arbitrariness has no place. It is not the public interest or administrative exigency which weighed in the mind of respondents but extraneous consideration. By referring to the Cadre Management of MES Civilian Officers Guidelines and more particularly to paragraph-8 contends that the first tenure as an executive assignment of GE is two to three years duration, which though may be curtailed but not on extraneous consideration.

7. By referring to clause 10 of the guidelines it is contended that tenure of EE shall be two to three years depending upon performance and the performance as reflected in the OR will be considered towards next promotion. Those who have performed consistently in the posts are to be considered for EE (QS&C). Further relying upon clause 30 of the guidelines it is contended that it is only MOD/JOC who has prerogative to curtail the executive tenure and performance.

8. In this backdrop what has been pointed out is that applicant's performance had remained above par and the unsatisfactory performance has not been reflected from the ACRs. The counselling letters issued to applicant cannot be considered as performance counselling. The performance is

to be reflected by ACR only. The performance of applicant remained very good which has been certified by the higher authorities.

9. Learned counsel for applicant placed reliance on a decision of this Tribunal in **K.S. Gautam v. Union of India**, OA No.849/2003 decided on 18.9.2003, where the transfer based on extraneous consideration and on punitive basis, affecting the service prospects of an honest officer has been set aside.

10. On the other hand, Sh. R.P. Aggarwal, learned counsel for respondents vehemently opposed the contentions and contested the OA. The record has also been produced to indicate that curtailment of the tenure has been recommended by the DDG and other competent authorities. By producing record where applicant has been warned giving counselling letters it is stated that his performance was wanting and unsatisfactory and as per clause 36 of the Scheme his tenure was curtailed in view of paragraph-8 of the Policy of the Cadre Management.

11. In so far as order of reversion is concerned, it is stated that though reasons are not to be assigned but on the directions of the Tribunal reasons have been reflected in the order passed on representation, according to which, applicant has been found wanting in performance, as such his tenure was curtailed. It is stated that no mala fides are involved and the order is passed in administrative exigencies and public interest as well, within the purview of the guidelines which are though not mandatory but are to be followed.

6

12. Sh. Aggarwal states that no anonymous complaint has been received but the transfer is based on overall performance which was found unsatisfactory. Several times verbal and written counselling were given to applicant, the transfer resorted to is not a punishment.

13. In so far as the contention that other officers who are promoted and posts to various places as GE are still continuing which does not attract Articles 14 and 16 of the Constitution of India as their performance was not found unsatisfactory.

14. Respondent No.3 in his reply contends that the allegations are figment of imagination of applicant. Respondent No.3 had been counselling applicant verbally as well as in writing on several occasions to improve his performance but this has not been achieved and in the interest of organisation, which is paramount, applicant has been transferred.

15. In the rejoinder applicant has re-iterated his pleas taken in the OA.

16. I have carefully considered the rival contentions of the parties and perused the material on record.

17. A government servant has no indefeasible right even in a fixed tenure and posting to remain at a particular place of his own choice indefinitely. A transfer in administrative exigencies, public interest and in

consonance with the rules and guidelines on the subject cannot be questioned in a judicial review. The only scope as settled by the Apex Court in several decisions in a matter of transfer is when it is found mala fide and in that event the mala fides are to be laid as a foundation and proved to its hilt. The other scope is when the transfer, on the face of it violates statutory rules. Although, there are no statutory rules but the Cadre Management Guidelines not being inconsistent cover the transfer and posting of the officers.

18. The Apex Court in several decisions counselled as to non-interference in the matter of transfer to stall the wheels of administration being run smoothly.

19. As per clause 8 of the Scheme the first tenure of executive assignment is two to three years duration which can be curtailed on the approval of E-in-C/DG (Pers). Clause 10 provides posting depending on the organisational requirements the tenure of EE ((GS&C) is proportionate to the performance. The posting cannot be claimed as a matter of right. As per clause 36 on the recommendations of GOC/MOD the executive/non-executive tenure can be extended or curtailed, which is based on the performance.

20. From the record produced before us, we are satisfied that the competent authority has approved curtailment of tenure of applicant. The documents produced before us clearly show that during this tenure applicant's performance was not upto mark and it was wanting. Despite several warnings/counselling notes applicant's performance



was not improved. Accordingly, within the purview of the Scheme the respondents following the rules and guidelines curtailed the posting of applicant.

21. In so far mala fides are concerned, I am satisfied that applicant has miserably failed to lay a strong foundation of mala fides against R-3, which is a condition precedent, having failed to lay a foundation, mere vague averments would not be a valid compliance.

22. The case-law cited in **Gautam's** case (supra) would have no application, as therein, on the face of it applicant was an honest officer was transferred and the mala fides were proved to its hilt.

23. Having regard to the reasons recorded above, I do not find the transfer based on extraneous matter or punitive in nature. Instead of taking disciplinary action resort to transfer cannot be a punitive measure, which is in administrative exigencies. In the matter of transfer and posting one cannot claim a right. The organisational interest is paramount. The change of stand by respondents that it was in public interest and later on due to unsatisfactory performance of applicant would not establish any mala fide.

24. In the result, OA being bereft of merit is dismissed. No costs.

25. Interim order is vacated.

  
(Shanker Raju)  
Member (J)