
(2020) 10 CAT CK 0044

In the Central Administrative Tribunal

Case No : Original Application No. 909 Of 2020

Er. Virendra Pandey

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 14-10-2020

Acts Referred:

Citation : (2020) 10 CAT CK 0044

Hon'ble Judges : Pradeep Kumar, Member (A); R.N. Singh, Member (J)

Bench : Division Bench

Advocate : C. Mohan Rao, Lokesh Kumar Sharma, S.N. Verma

Final Decision : Partly Allowed

Judgement

Pradeep Kumar, Member (A)

1. The applicant is working as an Executive Engineer (Electrical) in the CPWD. He was posted at Delhi on 03.09.2015. Through an order dated 03.01.2019, the applicant along with four others, were transferred to various places. The applicant was transferred to a project circle in Electrical Division at Berhampur, Odisha. He was relieved to carry out this transfer order on 18.1.2019.

Feeling aggrieved by this transfer order, the applicant approached the Tribunal by filing OA No.421 of 2019. The applicant pleaded that in terms of transfer policy Dt. 9.10.1995, which is in force in the CPWD, the applicant had not completed his tenure at Delhi and as per this policy, in the last two years of service (i.e. period 31.05.2019 onwards), he is required to be considered for posting at his choice place, as the applicant was going to superannuate on 31.05.2021. The applicant also pleaded that he was Joint Secretary of the association and the transfer is vindictive in nature.

After consideration of rival arguments, the Tribunal gave the following directions in the said OA on 08.02.2019.:-

"9. We are of the view that a request in this behalf can be made to the

respondents and the same can be acceded to, as soon as the applicant completes six months of service at the present station.

10. We, therefore, dispose of this OA, refusing to interfere with the transfer order, but directing that the request of the applicant to post him at a place of his choice, in the last leg of his service, shall be considered before he completes six months of his service in Purvanchal Division"

2. The applicant was not fully satisfied with the directions of this Tribunal and approached the Hon'ble High Court of Delhi by filing W.P (C) No.1893/2019. This Writ Petition was decided vide Order dated 25.2.2019 wherein the directions of this Tribunal were upheld.

3. Thereafter, the applicant approached the Hon'ble Apex Court by filing Special Leave Petition (Civil) No.9703/2019. The same was decided on 22.4.2019 with the following directions:-

"After arguing the matter for some time, learned counsel appearing on behalf of the petitioner seeks permission to withdraw the special leave petition with liberty to work out his remedy in accordance with law including making of representation before the appropriate authority.

The special leave petition is disposed of as withdrawn with liberty as prayed for."

4. In the meanwhile, the applicant had already joined his duty at his place of posting at Berhampur on 04.03.2019.

5. In accordance with the aforesaid directions contained in the Hon'ble Apex Court's judgment (Para 3 supra), the applicant made a detailed representation on 31.07.2019. This was forwarded to the respondents by the concerned Chief Electrical Engineer-cum-ED, IISER Project, Berhampur on 02.08.2019. This forwarding letter reads as under:-

"Sh.Virendra Pandey, EE(E), IISEPR Project Elect. Division has submitted an application for transfer to Delhi/NCR, as he is due to retire within two years, this application is self explanatory.

As per record he joined ISER, Berhampur on 4.3.2019 and his date of birth is 21.5.1961, so he will be superannuating on 31.5.2021.

It is also intimated that construction of IISER is likely to be started in the month of Sept 2019. Electrical work will come up after six months i.e. Jan/Feb.2020. The completion period as per NIT is 30 months, Sh. Pandey will retire in mid of the Project.

Hence it will be prudent to post an Executive Engineer (E) who is having at least 3 years remaining service, so that he remains at project for full period from start to completion to enable unhindered execution, completion, handing over and finalization of bills etc.

Therefore original application of Sh. Pandey alongwith enclosures is forwarded

with recommendation to post his at place of choice in the last leg of his remaining service is 22 months.

Application through PIMS is already forwarded."

This indicates that enough work was not available at that time at Berhampur project and CEE requested for posting of an officer with longer balance service available in the interest of project, as the applicant was noted to be superannuating on 31.5.2021.

However, strangely, the Chief Electrical Engineer wrote another letter on 14.10.2019, which reads as under:-

"The recommendation in favour of Shri Virendra Pandey, EE(Elect), posted at IISER Project Electrical Division, Berhampur was forwarded vide above referred letter No. 23(2CE-IISER/CPWD/2019/27 dated 2.8.2019 for transfer from Berhampur to New Delhi.

Only one Executive Engineer (E) posted at Berhampur, who has vast jurisdiction includes Berhampur (IISER Project), Koraput & Adjoining areas.

Considering the present exigencies of work at Berhampur Koraput particularly due to the new sanctions received from Central University of Odisha, Koraput and Khallikote University, Berhampur the recommendation of transfer of Shri Virendra Pandey, EE(Elect) which was forwarded vide above referred letter is hereby withdrawn with immediate effect in public interest."

Thereafter, the DG, CPWD, rejected the applicant's representation Dt. 31.7.2019, vide his letter dated 18.12.2019.

6. The applicant was aggrieved at this rejection of his request and he preferred a second OA No. 237/2020 before this Tribunal. This was decided on 17.02.2020 wherein following directions were given:-

"7. After considering the rival condition, there is no force with the argument that similarly situated persons are seeking transfer to Delhi, each and every case has its own merits. We are of the strong opinion that the respondents shall consider the representation of the applicant for transfer and posting as per the station of his choice in terms of Government of India guidelines, the employee should be given choice posting during his last leg of service and pass a reasoned and speaking order within a period of one month and if possible, consider the applicant's transfer and posting in Delhi/NCR.

8. The OA stands disposed of with these observations. No order as to costs."

The Tribunal, therefore, did not find force in the arguments put forth by Respondents and gave above directions. In follow up thereof, the respondents passed another order on 16.03.2020, however, the request for transfer of the applicant to a station in National Capital Region/Delhi was again rejected.

7. The applicant was aggrieved and he preferred the instant OA which is the third

litigation for the same grievance. The reliefs have been sought in the form of quashing of the order dated 16.03.2020 and direction to the respondents for revisiting the transfer of applicant to a station of his choice, which is in accordance with the transfer policy also. The applicant brings out that he is going to superannuate on 31.05.2021.

8. While the OA was being prosecuted, the respondents submitted their counter reply on various issues. During arguments, the learned counsel mentioned that an opportunity for consideration of the request of the applicant is likely to arise shortly, when some promotions shall take place. The respondents were directed to submit their additional affidavit in regard to this averment.

In this additional affidavit which was submitted on 31.08.2020, the respondents pleaded that there is an acute shortage of Executive Engineer (Electrical) in the CPWD. As such the available manpower is deployed at the places of importance and it has not been possible to agree to the request of applicant so far. At Berhampur, amongst other projects, IISER project is also being executed which is an important project. It has not been possible for the respondents to transfer the applicant to a place of his choice even though the respondent's transfer policy indicates that such a course should be considered.

However, the respondents have also brought out that approximately 29 number of Assistant Engineer (Electrical) are going to be promoted to the post of Executive Engineer (Electrical) shortly and as soon as these promotions take place, the respondents will be able to consider transferring the applicant to a place of his choice, i.e., NCR/Delhi. The specific paragraph of the additional affidavit filed by the respondents on 31.8.2020, is reproduced below:-

"7. As per direction of Hon'ble Tribunal in its order dated 17.02.2020, the representation of the applicant was considered by respondent but due to administrative reasons/functional requirement etc. it was not found possible to transfer the applicant at a station of his choice Delhi/NCR. A proposal for promotion of 29 AE (Elect.) to EE (Elect.) has been sent to the Ministry of Housing and Urban Affairs for kind approval. The promotion order of these AEs (Elect.) is expected to be issued in the next 2-3 months. As soon as these promotions take place, the department will have additional 29 EE(Elect.) to post them at different stations. We are quite positive and hopeful that we would be able to get a suitable replacement for the applicant at his current place of posting after abovesaid promotion orders Considering approaching retirement of the applicant and accompanying circumstances, respondents remain open and sympathetic to the request of the applicant to transfer him back to Delhi. However, in order that the project works of the respondents at Berhampur don't suffer in absence of any EE(Electrical), we would like him to continue there until a suitable replacement is found for him at Berhampur."

9. Per contra, by filing the response to the aforesaid additional affidavit, the applicant has disputed the facts and learned counsel for the applicant submits

that by passing the impugned order, the respondents are admitted to have overridden the Courts' directions and also ignored their own policy. The applicant has also pleaded that he was the Joint Secretary of the Association and it appears that certain vindictive action has been taken by the administration and that is why despite several directions from the judicial forums, as brought out above, his case has not been considered favourably even though the policy directives are to this effect.

The applicant has also brought out that several officers have actually been transferred to Delhi region vide orders Dt. 10.8.2020, even as his request has not been considered, despite directions by Tribunal.

10. Matter has been heard at length. Shri Sh. C. Mohan Rao with Sh. Lokesh Kumar Sharma, learned counsel, represented the applicant and Shri S.N. Verma, learned counsel, represented the respondents.

11. The instant case pertains to the transfer of an officer. The Tribunal normally do not interfere in such transfer cases as the same lies in the realm of administrative action by the executive authority, except to order consideration wherever warranted.

In the instant case, the CPWD has a transfer policy dated 09.10.1995, according to which, the officers, who had completed their tenures, are also advised in advance by issuing a list of readiness for transfer. In the instance case, such readiness list was issued on 5.12.2017 and 18.12.2018. These two lists did not contain the name of the applicant.

This transfer policy also has a clause to consider request of choice posting in the last two years of service. This period was to kick in on 31.5.2019.

However, keeping in view the requirement of work and non-availability of work at NCR, the respondents have taken an administrative decision in public interest to transfer the applicant to a project at Berhampur on 03.01.2019.

It was in keeping with this background that when the matter came up before this Tribunal earlier in the earlier two OAs, the respondents were given directions to consider and take an appropriate action. In the second OA, it was also observed that arguments put forth by respondents, for not agreeing to applicant's request, do not have force.

12. However, it is seen that appropriate action for compliance with the policy directives has not been taken so far by the respondents and the applicant had filed a 3rd OA.

13. As regards the applicant's plea of vindictive attitude, it does appear strange that the CEE/Berhampur recommended the case of applicant in his communication Dt. 02.08.2019, but even without any letter from HQrs. office, totally reversed his views within a short time when a second letter was written on 14.10.2019. This was the time when applicant's representation Dt. 31.7.2019

was under consideration in HQrs. office. However, in keeping with the averment of respondents in their additional affidavit, the Tribunal notes that there may have been a need of work at Berhampur and the applicant was accordingly posted there.

The Tribunal also noted that the respondents are desirous of complying with the applicant's request for transfer to a station at Delhi/NCR. However, they are constrained to do so at present due to non-availability of another officer and now promotions of 29 officers are under process, which are likely to be finalized in two to three months' time, say by end of November 2020 counting the period w.r.t. date of filing additional affidavit, when this constraint is likely to be over.

14. Keeping in view the aforesaid, the present OA is partly allowed with direction to the respondents to issue order of transfer of the applicant from Berhampur to any appropriate station/Division in National Capital Territory of Delhi, immediately after currently underway promotions of 29 Assistant Engineer (Electrical) to the post of Executive Engineer (Electrical) materialise or 15.12.2020, whichever is earlier. The respondents shall also ensure that the applicant is physically relieved from Berhampur within one week thereafter, to carry out transfer. The applicant shall have liberty to approach Tribunal if some grievance still subsists. There shall be no order as to costs.