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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Date of Decision: 25.02.2019**

% **W.P.(C) 1893/2019**

E. VIRENDRA PANDEY

..... Petitioner

Through: Mr. C. Mohan Rao with Mr. Lokesh
Kumar Sharma, Advs.

versus

UNION OF INDIA AND ANR.

..... Respondent

Through: Mr. Jinesh Tiwari, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A.K. CHAWLA

VIPIN SANGHI, J. (ORAL)

C.M. No. 8839/2019

Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C) 1893/2019 & C.M. No. 8838/2019

1. The petitioner assails the order dated 08.02.2019 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal)

in O.A. No. 421/2019. The said Original Application preferred by the petitioner – to assail his transfer from Delhi to Behrampur, has been rejected by the Tribunal. The Petitioner is an Executive Engineer serving in the CPWD. Prior to the issuance of the order of transfer dated 03.01.2019, he was serving at Delhi. His relieving orders have already been issued on 18.01.2019. On instructions, Mr. Rao states that the petitioner has not yet joined on the post to which he is transferred.

2. The grievance of the petitioner, firstly, is that the transfer was not made in accordance with the guidelines issued by the respondents for making transfers. In this regard, Mr. Rao has drawn our attention to the guidelines issued by the Government of India on 09.10.1995, wherein it is stated that the normal tenure of an officer in the grade of EE/SE at any one station shall be 5 years. Period spent on deputation training etc. will also be taken into account for purposes of counting the tenure of 5 years.

3. The petitioner claims that he had rendered 3 years and 5 months service in Delhi since his last posting and, therefore, this condition was breached. He also places reliance on O.M. dated 25.05.2016, wherein it is provided that an annual exercise shall be undertaken to prepare a “Readiness List” of officers, who are likely to be transferred by the first week of January of the year. He submits that in the “Readiness List” that was prepared on 15.12.2017 and 30.01.2019, the name of the petitioner was not included.

4. The submission of Mr. Rao that these lists contain the names of officers who have served in Delhi for nearly 3 decades or less. However, the name of the petitioner was not included in any of the “Readiness Lists”,

since he has served for a very less period of time in Delhi. Mr. Rao submits that the transfer of the petitioner is *mala fide* and on account of the fact that he is the Joint Secretary of the Central PWD Engineers Association. He submits that this association had made representations to the Government against creation of one additional post of Director General and, since an appointment has been made to the said Additional Post, the incumbent Director General is acting inimically towards the petitioner.

5. He places reliance on the decisions of the Supreme Court in 1995 Supp (4) SCC 169, **Abani Kanta Ray v. State of Orissa and Others**, (2003) 11 SCC 74, **Sarvesh Kumar Awasthi v. U.P. Jal Nigam and Others** and (2004) 12 SCC 299, **Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey and Others** to submit that transfers may be interfered with by the Courts, where they are arbitrary, or vitiated by mala fides or infraction of any professed norm or principle governing the transfer.

6. The submission of Mr. Rao is that in the present case, the transfer is arbitrary and discriminatory, as others who have served for much longer tenure in Delhi, have been left and the petitioner has been picked up for transfer to Behrampur.

7. On the other hand, the submission of learned counsel for the respondent, who appears on advance notice, is that the transfer has been affected in the exigencies of service. He submits that the minimum tenure for the purpose of transfer has been reduced from 5 years to 3 years vide O.M. DG/S & S&D/57 dated 11.12.2018, which states that “*the normal period of continuous stay of all officers/ officials shall be 3 years at any post*”

as well as at any station”.

8. He further submits that the petitioner joined the Electrical Division III on 03.09.2015 on transfer from Agra Central Electrical Division vide O.M. dated 21.12.2018. The said Electrical Division was closed with the approval of the DG, CPWD. Thus, the petitioner became surplus. Simultaneously, there was a demand raised by the Chief Engineer, CPWD Behrampur vide a letter dated 03.01.2019, that there was dire need of an Executive Engineer (Electrical) at Behrampur. These communications were placed on record by the respondent before the Tribunal with its reply and form part of our record as well.

9. The respondents further state that since the Electrical Division III has been closed, the incumbents need to be re deployed immediately, in order that they are in a position to draw their salary.

10. Having heard the submissions of learned counsels and perused the record, we are of the view that the impugned order does not call for interference. The petitioner has served the minimum requisite period as per the guidelines, which is more than 3 years. It has been pointed out by reference to the list of dates, that the petitioner has served in the NCR continuously for about two decades between 15.09.1981 to 2001. Thereafter the petitioner has again served in Ghaziabad/ Delhi after being promoted as Executive Engineer. He was continuously in Delhi from 03.09.2015 onwards till his impugned transfer was affected. The petitioner was rendered surplus on account of closure of the Electrical Division III.

11. Thus, there was urgency of his being posted, so that he could continue to draw his remuneration. At the same time, there was a need of an Executive Engineer (Electrical) at Behrampur. In these circumstances, the transfer of the petitioner, in our view does not call for interference. So far as the allegations of *mala fides* are concerned, the same are non specific and the Director General CPWD – against whom allegations were made, was not sought to be impleaded as party respondent.

12. We, therefore, do not consider it necessary to go into these allegations. Dismissed.

13. At this stage, Mr. Rao seeks some time for the petitioner to join the transferred post. In case, the petitioner joins the said post within one week, the respondent may consider not taking any action against him for his not joining the transferred post.

VIPIN SANGHI, J.

A.K. CHAWLA, J.

FEBRUARY 25, 2019

N.Khanna