

Reserved
On 04.01.2021

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD**

Allahabad, this the **19th** day of **January**, 2021

Present:

Hon'ble Mrs. Justice Vijay Lakshmi, Member-J
Hon'ble Mr. Devendra Chaudhry, Member-A

Original Application No. 330/00001/2021
(U/S 19, Administrative Tribunal Act, 1985)

Pradeep Kumar Singh MES No. 424314 J.E. (Civil), aged about 40 years, Son of Sri Jawahar Singh, Resident of 22/2, BI Line, New Cantt., Allahabad, U.P.

.....**Applicant.**

By Advocate – **Shri Dharmendra Tiwari**

V E R S U S

1. **UNION OF INDIA**, through Director General (Pers.), Hq. Military Engineer Service, Engineer-in-Chief's Branch, Kashmir House, New Delhi.
2. **Chief Engineer, Hq. Lucknow Zone**, Pin-900450 C/o 56 APO.
3. **COMMANDER WORKS ENGINEER**, Hq., MES Cantt., Allahabad.
4. **GARRISON ENGINEER (WEST)**, MES New Cantt., Allahabad.

.....**Respondents.**

By Advocate: **Shri Chakrapani Vatsyayan**

O R D E R**Delivered By Hon'ble Mr. Devendra Chaudhry, A.M. :**

The present OA has been filed against the transfer order dated 21st January 2020 / 11th of August, 2020 vide which the applicant has been transferred from Garrison Engineer, West, Allahabad to Infantry School, Mhow, Indore.

2. The facts of the case *per* applicant are that he was posted as Junior Engineer in GE, (West) Allahabad, on 5 September 2019 and has been how transferred vide order dated 21.01.2020 from Allahabad to Mhow, Indore (Annexure-2). That, his transfer had been stayed upto 01 October 2020 (Annexure-4) but has now been directed to be relieved vide order dated 2nd December, 2020/ 15/12/2020. That the applicant is due for promotion through a DPC to be convened shortly, and since, as per guidelines dated 18.02.2019 Annexure A-5, an employee due for promotion cannot be transferred, hence the said transfer is against the guidelines. That, his representation dated 25.09.2020 has been rejected vide letter dated 2 December 2020 which being against the aforesaid guidelines is therefore illegal and unjustifiable. Since no other forum of justice is available, hence this OA.

3. The key ground on which the transfer has been challenged is that the applicant is due for promotion and since as per guidelines dated 18.02.2019 an officer due for promotion cannot be transferred, therefore the said transfer is illegal and liable to be quashed.

4. We have heard the learned counsels for both the parties at the admission stage and perused the OA available in PDF. With the consent of both the counsels we proceed to decide the OA finally.

5. In order to decide the matter, it is first of all important to examine the transfer order assailed by the applicant. The same is reproduced below for ready reference:

*HQ Chief Engineer
Central Command
PIN 900450
Cod 58APO*

1300/SD019/67/EIC (1)

11 Aug 2020

*Chief Engineer
Lucknow Zone
Bareilly Zone
Jabalpur Zone
(AF) Nagpur*

**POSTING OF CIV SUBORDINATE STAFF ON TURN OVER SINGLE STN AND
COMPLEX (AS PER CVC GUIDELINES) ALL CAT**

1. Refer this HQ Posting Order No.901300/SD-19/21/EIC (1) dated 22 Aug 2019 & 901300/SD-19/61/EIC (1) dated 21 Jan. 2020.
2. Individual representations on subject Posting Orders received from the following individuals have been considered by Competent Authority and deferment of move as mentioned against their name is approved.

<i>Ser No.</i>	<i>MES No. & Name</i>	<i>Cat</i>	<i>Present unit</i>	<i>Posted to</i>	<i>Deferment upto</i>
(a)	486739 Sh Rajesh Kumar Srivastava	JE (QS&C)	GE (P) Allahabad	GE Faizabad	01 Feb. 21
(b)	424314 Sh Pradeep Kumar Singh	JE (Civ)	GE (W) Allahabad	GE (M) Inf Sch Mhow	01 Oct 20
(c)	439145 Sh Nitendra Prakash Gupta	JE (QS&C)	GE (1) Kanpur	GE (West) Jabalpur	01 Nov 20
(d)	483616 Sh Sunil Kumar	JE (QS&C)	GE Roorkee	GE (P) No. 1 Meerut	01 Feb 21
(e)	468264 Sh Mahesh Kumar Gupta	JE (QS&C)	GE (E) Lucknow	CWE (AF) Chakeri	01 Feb 21
(f)	465563 Sh Chandra Prakash Verma	JE (QS&C)	GE (P) Allahabad	GE (W) Lucknow	01 Feb. 21

3. For necessary action please.

Sd./-
(Varinder Singh)
Col
Col (Pers)
For Chief Engineer

Copy to: -.....”

The key takeaway from the above order is that it does not rescind the main original order of 21.01.2020 transferring the applicant. It merely defers the same upto 01.10.2020. This is not a transfer cancellation order. Therefore while the applicant has strangely assailed the same it offers no help to the applicant in his plea that if struck down it will enable him to continue to stay at Allahabad for the simple reason that the original order will continue to operate after 01.10.2021. Notwithstanding, the key point to be confronted is the guideline prescribing transfer limitation of an employee who is due for promotion through an impending DPC. For this it would be useful to examine the guidelines dated 18.02.2019. Key portions of concerned para 6(vii) of the same are extracted below:

“..(viii) GP ‘B’ (NG) Employee due for promotion to GP ‘B (G) within 06 months will be exempted from any posting from the existing station/complexes except LTO in the interest of state. This will avoid multiple movements and also safeguard government interest. However, for those in sensitive appointment and due for non sensitive under LTO will not get exemption...”

6. Now, as per applicant, he is due for promotion. In support of this contention he has submitted a document Annexure-4 titled –“ UPDATE ON PERS MATTER AS ON 01 SEP 2020”. Relevant portion is extracted below:

<i>Sl. No.</i>	<i>Proposal</i>	<i>Years</i>	<i>No. of vacancies</i>	<i>Present Position</i>
<i>A</i>	<i><u>Engineer Cadre</u></i>			
<i>(a)</i>	<i>CE to ADG</i>	<u>2020</u> <u>2021</u>	<u>04</u> <u>03</u>	<i><u>Panel issued on 13 Feb 2020</u></i> <i><u>Proposal submitted to MoD on 22 Apr 2020.</u></i>
<i>(b)</i>	<i>SE to CE</i>	<u>2019 (S)</u> <u>2020</u> <u>2021</u>	<u>2</u> <u>27</u> <u>24</u>	<i><u>Panel issued on 27 Apr 2020</u></i> <i><u>Proposal submitted to MoD on 29</u></i>

				<i>Jun 2020</i>
(c)	<i>EE to SE</i>	<u>2019</u> <u>2020</u> <u>2020(S)&</u> <u>2021</u>	<u>36</u> <u>25</u> <u>48</u>	<u><i>Panel issued on 27 Apr 2020</i></u> <i>Proposal submitted to MoD on 03 Jul 2020</i>
(d)	<i>EE to EE</i> (<i>NFSG</i>)	<u>2019</u> <u>2020</u>	<u>30</u> <u>73</u>	<i>Proposal submitted to MoD on 21 May 2020</i>
(e)	<i>AEE to EE</i>	2020	45	<i>Proposal submitted to MoD on 21 May 2020.</i>
(f)	<i>AE to EE</i>	2016-17 to 2020	91	<i>Proposal is under scrutiny with UPSC.</i>
(g)	<u><i>JE (Civ) to AE</i></u>	<u>2020</u>	<u>112</u>	<i>Integrity & Vigilance clearance certificate are awaited from CEs Command.</i>
(h)	<u><i>(Civ)</i></u> <u><i>JE (E/M) to AE</i></u> <u><i>(E/M)</i></u>	<u>2020</u>	<u>78</u>	
<u>B</u>	<u>Surveyor Cadre</u>			
(a)	<i>CE to ADG</i>	<u>2020</u> 2021	<u>01</u> Nil	<u><i>Panel issued on 31 Aug 2020</i></u>
(b)	<i>SE to CE</i>	<u>2019</u> <u>2020</u>	<u>06</u> <u>01</u>	<i>DPC meeting is schedule on 10 Sep 2020</i>
(c)	<i>EE to SE</i>	2020	09	<i>Proposal submitted to MoD</i>
(d)	<i>EE to EE</i> (<i>NFSG</i>)	--	--	<i>Panel issued on 24 Feb 2020</i>
(e)	<i>AEE to EE</i>	2019 &2020	24	<i>No eligible officer.</i>
(f)	<i>AE to EE</i>	2017-18 2018 (Ty) 2019 2020	03 09 17 13	<i>Proposal submitted to MoD on 05 Jun 2020.</i>
(g)	<u><i>JE (QS&C) to AE (QS&C)</i></u>	2020	80	<i>Panel issued.</i>
<u>C</u>	<u>Arch Cadre</u>			
(a)	<u><i>CA to ADG</i></u>	2020 2021	01 01	<i>Panel and posting issued</i> <i>Proposal submitted to MoD on 20 May 2020</i>
(b)	<u><i>SA to CA</i></u>	<u>2020</u> 2021	<u>02</u> 03	<i>Panel issued.</i> <i>Proposal submitted to MoD on 28 May 2020</i>

7. As may be seen, entry at sl (g) states that in respect of candidates in Engineering Cadre of rank JE (Civ) to AE (Civ) for the year 2020, **the integrity and vigilance certificates of 112 candidates are awaited that from CE's command.** It is the contention of the applicant that he is placed at Sl 67. Notwithstanding, it is to be noted that as regards claim of DPC to be

held, no such statement is recorded in the entry 'g' above or **even inferred from what is written. It only states that integrity certificates are awaited.**

Now, if this is read in context of other entries for example in the case of entry at sl 'A' '(a)' '(b)' '(c)' it is written as below -

<u>Panel issued on 13 Feb 2020</u>
<u>Proposal submitted to MoD on 22 Apr 2020.</u>
<u>Panel issued on 27 Apr 2020</u>
<u>Proposal submitted to MoD on 29 Jun 2020</u>
<u>Panel issued on 27 Apr 2020</u>
<u>Proposal submitted to MoD on 03 Jul 2020</u>

Similarly, in case of entry at 'B' '(b)' it is clearly mentioned **DPC meeting is schedule on 10 Sep 2020.** Thus in such entries there is a probability of convening of the DPC. Mere call to collect Integrity and Vigilance certificates is not adequate proof of convening of the DPC. **This is a convenient extrapolation by the applicant – *creation ex nihilo.*** Hence the basic premise of the applicant that his promotion DPC is to be convened shortly and so, he should therefore not be transferred does not fit squarely into the evidence at hand.

8. Furthermore, the letter of the Employees Union dated 08.09.2020, lists several candidates who as in the case are stated to be due for promotion on the grounds of convening of the DPC and applicant is not the sole singled out candidate. This brings into doubt the entire plea of the applicant that a DPC is getting convened shortly for consideration of his promotion. There is no defined date of receipt of the stated integrity and vigilance certificates which in the best of times is a time-taking task for the concerned personnel department and there is no way of stating definitely that the task is getting completed in the immediate future and the steps subsequent to the same

leading upto announcement of date of DPC and importantly convening of the same are neither known or can be said to be possibly completed anywhere in the near future to fall into the ambit of the stated guidelines. Therefore, the plea of the applicant is at best a good alibi to get his transfer stayed. As one would say **Honesty whispers; Don't get pricked by the thorns of lie and an Alibi is as good as its details. Josh Stern a litterateur of many books has aptly said: "An alibi is one alternative consonant short of being a magic carpet".** In factin retrospect, it seems that the initial deferment of the transfer of the applicant from January 2020 to October 2020 was a well thought out ploy of the applicant to get transfer deferment initially and then put up plea of promotion. Notwithstanding, we are not able to convince ourselves on the basis of records made available to advance the argument of the applicant that his promotion DPC is due shortly and so the advantage of the said provision of the guideline should be given to him.

9. It is also to be understood from the language of the said provision that it is more for the state's interest to not to disturb an employee ripe for transfer from all documentation angles and it does not bestow a right to an employee to seek shelter under the provision sitting his or her interest rather than that to the state. The responsibility of the State to look after its own interest is best left to the State. Even otherwise it should not be lost sight of and this is being stated at the risk of repetition that there is no announcement of a DPC or impending DPC in the document filed as Annexure-4 by the applicant. Therefore, we do not find any grounds to held the applicant's claim to quash his transfer on the grounds of violation of the stated guidelines.

10. Moreso there is a catena of judgement citations of the Hon Apex Court which deserve mention in the context of the submissions made by the 1d applicant counsel.

11. Thus, at the outset, it has to be understood any transfer policy is an executive instruction *ab initio ipso facto* and is not a statutory subordinate legislation. Therefore, a transfer policy guideline can, therefore, not acquire the authority of the statutory rules because the rules cannot be amended by executive orders and a transfer policy can be amended and is amended from time to time by the executive authority. This is fortified in the matter of **K.A. Nagamani v. Indian Airlines, 2009 (5) SCC 550** in which it has been held that

“....mere administrative rules are not legislation of any kind. They are in the nature of statements of policy and the practice of government departments, statutory authorities, whether published or otherwise. Statutory rules, which are made under the provisions of any enactment and regulations, subject to Parliamentary approval stand on entirely different footing. The administrative rules are always considered and have repeatedly been held to be rules of administrative practice merely, not rules of law and not delegated legislation and they have no statutory force. Mere description of such rules of administrative practice as "rules" does not make them to be statutory rules. Such administrative rules can be modified, amended or consolidated by the authorities without following any particular procedure(emphasis supplied). There are no legal restrictions to do so as long as they do not offend the provisions of the Constitution or statutes or statutory rules as the case may be.,”

12. In fact, it has also been held quite clearly in the matter of **Ajaya Kumar Das v. State of Orissa, 2011 (11) SCC 136** that whatever may be

the efficacy of the executive orders or circulars or instructions, statutory rules cannot be altered or amended by executive orders or circulars or instructions nor can they replace the statutory rules. Such being the distinction between rules and executive instructions, it is quite clear that the impugned transfer orders are at best by way of executive instructions, which can be amended from time to time by competent executive authority who need not to refer the legislature for framing Transfer Policy or any such authority which concerns Rule making power required under the Constitution such as w.r.t. conditions of the service of the applicant. Thus, the plea that the impugned transfer orders are statutory rules and regulations to be followed at the pain of disregard to the Constitution or the Legislature or such Rule making body is not tenable. In fact, the transfer orders are executive instructions and source of guidance only in view of the several Apex court rulings as we analyse herein below.

13. It would be well to begin this interesting task by appreciating that the whole business of transfer, based on the universe of rulings on the matter, can be looked at from some key view-points namely (i) nature of Transfer (ii) competent authority issuing the order (iii) rights of the concerned public servant or employee against a said transfer (iv) transfer as being exigencies of service, (v) transfer on grounds of malafide / by way of punishment / victimization/ with malice etc., (vi) representations challenging transfers (vii) issues of natural justice (viii) protection under Article 14 and 16 of the Constitution (ix) nature and force of transfer Guidelines/Instructions (x) Consequences of non-compliance with transfer order and (xi) interferences of the Courts in the matter of transfers

14. With respect to the nature of transfer, it is laid down again and again that the transfer is always understood and construed as incident of service (**B.Varadha Rao v. State of Karnataka, 1986 (4) SCC 624**). That, transfer is not a change in the conditions of service and it is to be well understood that the transfer of a government servant who is appointed at a particular cadre of transferable posts from one place to other place is an ordinary incident of service and therefore, does not result in any alteration of any of the condition of service to government servant's disadvantage.

15. Similarly, in the matter of **Gujrat Electricity Board v. AtamaramSungomalPoshani, 1989 (2) SCC 602**, it has been held that

“.....Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification, or cancellation of the transfer order. If the order of transfer is not stayed, modified, or cancelled the concerned public servant must carry out the order of transfer. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules (emphasis supplied), as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other..”

16. This position is further buttressed by another bunch of rulings concerning the transfer as an exigency of service. These include: **T.D. Subramanian v. Union of India, 1981 (4) SCC 150** and **Laxmi Narain Mehar v. Union of India, AIR 1997 SC 1347**.

17. On the issue of transfer violating Constitutional rights under Article 14 and 16, it has also been held in the matter of **E.P. Royappa v. State of Tamil Nadu, 1974 (4) SCC 3** that so long as the transfer has been made on account of exigencies of administration it would not be open to attract under Article 14 and 16. In fact, in the matter of **Sreedam Chandra Ghosh v State of Assam, 1996 (10) SCC 567**, it has been held that when the Government views non-compliance of the transfer order as a serious indiscipline on the part of the erring officers and when the person complains of the non-compliance to the court, **the court necessarily have to give effect to the order and give directions from enforcement thereof** (emphasis supplied). **Even dismissal on account of refusal to join at the place of transfer has been held valid as State of Punjab v Baldev Singh, Conductor, 1998 (9) SCC 325**(emphasis supplied).

18. As regards interference of the Courts in the matter of transfer, it is trite to observe that the Hon Apex Court has consistently frowned often on stays granted by lower courts. Here also there is a bunch of rulings on the matter such as in the matter of **Shanti Kumari v Regional Deputy Director, Health Services, Patna, 1981 SCC (L & S) 285, Union of India v. H.N. Kirtania, 1989 (3) SCC 447** etc. In fact to go a step further, the courts have been advised not interfere with the matter of transfer **even in the writ jurisdiction - State of Punjab v. Joginder Singh Dhatt, AIR 1993 SC 2486 and also on administrative grounds as in the matter of State of M.P. v. S SKourav, 1995 (3) SCC 270, Union of India v. Ganesh Dass Singh, 1995 SCC (L&S) 1142** etc.

19. The comprehensive analysis heretofore qua the rulings of the Hon'ble Apex Court and various courts weigh heavily in, in the favour of non-interference in transfer matters except in very exceptional circumstances. In the instant matter we do not find the same as analysed above in sufficient detail. Hence, we find it difficult to interfere with the impugned transfer orders. We quote the famous **Sir H.J. Kania (1890-1951), the 4th Chief Justice of the Federal Court of India** which functioned as the highest court of the land till the Supreme Court was established on 28th January 1950 wherein he continued as the first CJI. He has said that "**No man is above the law. And no man below it; nor do we ask any man's permission when we ask him to obey it..**"

20. In conclusion therefore on the basis of the reasoning and the discussions in the foregoing paras, the plea of the applicant in the OA for quashing of the impugned order does not hold water and is liable to fail and fails. The OA is accordingly dismissed.

(Devendra Chaudhry)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

/M.M/