

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

Reserved on 19.01.2021

Pronounced on 27.01.2021

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

Original Application No. 330/00025/2021
(U/S 19, Administrative Tribunal Act, 1985)

Nitendra Prakash Gupta son of Shri Jai Prakash Gupta presently working as Junior Engineer JE (QS & C) MES-439145 in the office of Garrison Engineer (I) Kanpur, aged about 44 years, Resident of House No. 10/93, King Road, Hamirpur, Uttar Pradesh-210301.

.....Applicant.

By Advocate – Shri Anil Kumar Singh.

VERSUS

1. Union of India, through the Directorate General (Pers.), Military Engineers Services, Integrated Head Quarter of MOD (Army), Engineer in Chief Branch, Kashmiri House, New Delhi-110011.
2. The Chief Engineer, Central Command, Lucknow-226602.
3. The Garrison Engineer (W), Jabalpur (M.P.).
4. The Garrison Engineer (I), Kanpur.

.....Respondents.

By Advocates : Shri Chakrapani Vatsyayan.

ORDER

Delivered By Hon'ble Mr. Devendra Chaudhry, A.M. :

Shri Anil Kumar Singh, learned counsel for the applicant and Shri Chakrapani Vatsyayan, learned counsel for the respondents are present in Court.

2. The Original Application (OA) is directed against the transfer order dated 20.01.2020 (Annexure A-1) whereby the applicant has been transferred from the present place of posting at Kanpur to Jabalpur. The applicant has prayed for cancellation of the impugned transfer order and in the interim relief sought stay with respect to the operation of the transfer order and subsequent movement order dated 12.12.2020.

3. With the consent of both the parties we are disposing of the OA finally as the learned applicant's counsel has submitted that the applicant is willing to join the new place of posting except, that he may be permitted to get the delayed re-transplantation operation of Kidney of his younger brother

done in the next 4-5 months. That applicant is also, a likely donor for the said re-transplantation of the Kidney.

4. Heard learned counsel for both the parties at length and perused the records available.

5. The facts of the case in brief are there the applicant is posted as Junior Engineer in the office of Garrison Engineer (I), Kanpur. That the concerned guidelines with respect to transfer are the "Guidelines Management of Group 'B' (NG) & 'C' employees of Military Engineer Services-February, 2019". That, while the OA mentions a number of issues with respect to the compliance of the guidelines which are stated to have been transgressed in the case of the applicant's transfer, however, during the course of arguments the learned applicant's counsel has submitted that the applicant is fully willing to join the transferred place of posting but is only and only seeking sometime to get the re-transplantation operation of Kidney of his brother done in which he is likely to be a donor also. Further that the Kidney transplant done earlier in 2004 has failed and hence the need for a re-transplantation. That,

therefore the plea before the Tribunal is only for temporary injunction on the transfer for a period of 04-05 months.

5.1 It is further submitted by the learned applicant's counsel that given the condition of the requirement of re-transplant, the respondents have been very kind earlier to permit the applicant to extend his period of stay at Kanpur vide order dated 11.08.2020 and deferred the movement of the applicant upto 01.11.2020.

5.2. That after the failure of the 2004 transplantation, the treatment of his brother was under way at hospitals in Kanpur, SGPGI, Lucknow & AIIMS, New Delhi, etc. and none of these hospitals were able to give time for re-transplantation due to the Covid crisis. Therefore, he rushed to Coimbatore for diagnosis and treatment (Annexure No.6) but there also the hospital refused due to the Covid-19 pandemic and since then he has been running from pillar to post for the said re-transplantation.

5.3. That, the applicant thereupon consulted Dr. Pratim Sengupta, MD (Medical), DM (Nephrology) at Kolkata (Annexure No.7) who has advised that the transplantation can be taken up forthwith (Annexure No. A-7). Therefore, the only plea of the applicant is that if he can be given sometime to organize the re-transplantation including testing himself for his suitability of Kidney donation. That this is the second transplantation and therefore he does not wish to take chances and needs to be more and very careful.

6. Per contra, the learned respondents' counsel has opposed the transfer and submitted that (i) the transfer order is in compliance w.r.t. the guidelines, (ii) there is a phalanx of citations of the Hon'ble Apex Court in which it is very clearly stated that transfer is an incident of service and also that the guidelines themselves are not statutory law. That there is flexibility in consideration of transfer employees as per administrative exigencies and requirements. Hence, the prayer for interim as well as final relief is opposed.

7. We have heard learned counsels at length and we are aware of the judgments of the Hon'ble Apex Court including judgments of the Hon'ble High Court of Allahabad where mere humanitarian grounds do not always equate to consideration for cancellation or stay of a transfer order. We are also very conscious of the law laid down by the Hon'ble Apex Court with respect to extreme caution and restraint in matters of transfer. Therefore, we are not at all moved by the mere plea with regards to (i) violation of any guidelines and (ii) any humanitarian grounds.

8. However, we are also seized with the fact that the applicant has made all sincere efforts to arrange for the renal re-transplantation quickly but could not get success due to the Covid crisis and a number of hospitals have expressed inability to consider the same expeditiously. The factor which is also weighing in our mind is, that the applicant is ready to go to the transferred place and the only issue that is holding is not merely the aspect of re-transplantation of the Kidney of his younger brother, but more importantly that he is a likely donor and therefore, he also has to medically prepare himself for

possible kidney donation. We are aware from **general information that the recipient body does not easily reject a close relative's (elder brother in this case) organ and a relative is in fact the best donor.**

9. Thus we have a very **atypical and exceptional circumstance**, which has not crossed our decision frame work earlier and therefore, we are inclined to consider it in a very exceptional one-off way. It is not that the transfer is irregular or illegal. It is not that we are swayed by compassion or just humanitarian grounds. In fact, what is impacting on us is the fact that because of the Covid crisis, the hospitals have expressed inability for the said renal transplantation at an early date and the Kolkata Surgeons are ready to do the same as soon as possible. We find that there is lot of sincerity in the efforts of the applicant and therefore on the basis of truth, sincerity and justifiability, we are inclined to consider relief to the applicant.

10. Accordingly, on the basis of foregoing discussions, we are convinced that the ends of justice would be served with a

partial grant relief to the applicant. In the event following is ordered:-

- (i) That the operation of the impugned transfer order dated 20.01.2020 and the movement order dated 12.12.2020 shall remain stayed for the next 5 months, i.e. till 30th June, 2021.
- (ii) The applicant shall join at the new place of posting within the first week of July, 2021 and not later than 07th July, 2021.

11. No order as to costs.

(Devendra Chaudhry)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

/Shakuntala/