

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH: ALLAHABAD.

M.A.NO.2431/05
IN

ORIGINAL APPLICATION NO.931 OF 2005

ALLAHABAD, THIS THE 29th DAY OF JULY, 2005

QUORUM : HON. MRS. MEERA CHHIBBER, J.M.

1. R.N. Shukla, Son of Late Sri Badri Prasad Shukla, resident of 125/1, Om Gayatri Nagar, Allahabad, at present posted as Senior Auditor in the office of Accountant General (C&RA), U.P. at Allahabad.
2. Lalit Kumar, son of Late Shri Krishna Mohan, resident of M-4, Katju Ki Bagh, Allahabad, at present posted as Senior Audit Officer in the office of Principal Accountant General (Civil Audit), U.P. at Allahabad.
3. S.P.L. Asthana son of Sri Brij Bihari Lal, resident of 25M, M.I.G., Myorabad, Allahabad, at present posted as Senior Audit Officer in the office of Principal Accountant General (Civil Audit), U.P. at Allahabad.
4. Pradyumna Singh, son of Sri S.K. Singh, resident of 30G/1, Krishna Nagar, Kydganj, Allahabad at present posted as Senior Auditor in the office of Accountant General (C&RA), U.P. at Allahabad.
5. S.N. Tripathi, son of Late Sri K.N. Tripathi, resident of 245-C/16, Jayantipur, Sulem Sarai, Allahabad posted as Senior Audit Officer in the office of Accountant General (C&R), U.P. at Allahabad.
6. Mohammad Nafis, son of Late Sri Mohd. Rafique, resident of 65/63 Garhi Vala, Allahabad, at present posted as Senior Officer in the office of Accountant General (C&R), U.P. at Allahabad.
7. Rajbali, son of Sri Banarsi Das, resident of B.50 Ashok Nagar, Extension, Patrakar Colony,

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Allahabad at present posted as Section Officer in the office of Accountant General (Civil Audit), U.P., Allahabad.

.....Applicants.

Counsel for applicants : Shri V.K. Nagaich.

Versus

1. The Union of India through Comptroller and Audit General of India, New Delhi.
2. The Principal Accountant General (Civil Audit), U.P., Allahabad.
3. Deputy Accountant General (Admn), Office of the Principal Accountant General (Civil Audit), U.P., Allahabad.

.....Respondents.

Counsel for Respondents : Sri A.Sthalekar.

ORDER (Oral)

HON'BLE MRS. MEERA CHHIBBER, J.M.

This O.A. has been filed by as many as 07 applicants, who have sought permission to file a joint application. Since all the applicants are aggrieved by the transfer order, issued against them to Uttaranchal, M.A.No.2431/05 is allowed.

2. By this O.A., applicants have challenged the Memorandum dated 9.6.2005 (The transfer policy) and the order dated 6.7.2005 whereby the applicants have been transferred to Uttaranchal, Dehradun for a period of 18 months starting from the date of taking charge in the office of Dehradun (Page 28). It is submitted by the counsel for applicants that Respondents have earlier also issued such type of transfer orders, which were quashed and set aside by the Hon'ble High Court of Allahabad vide its detailed judgment dated



26.3.2004 (Page 42 at 59). He has thus, prayed for quashing of this order on the ground that it is fully covered by the judgment given by the Hon'ble High Court of Allahabad.

3. Counsel for the Respondents, on the other hand, submitted that after the judgment was passed by Hon'ble High Court of Allahabad, Respondents have taken the matter to Hon'ble Supreme Court wherein Hon'ble Supreme Court was pleased to pass the following order (Page 40) :-

"There will be a stay of the operation of the impugned order in so far as it requires consent of the employees. It is made clear that for the time being the respondents shall be trended as being on deputation and afforded all allowances on that basis."

Moreover, he has also placed subsequent corrigendum dated 19.7.2005, which is taken on record. According to the corrigendum, Respondents have themselves stated with reference to order dated 6.7.2005, the transferred Officers/employees will be entitled to get deputation allowance in accordance with rules. He thus, prayed that this O.A. may be dismissed.

4. I have heard both the counsel at some length and since this case is fully covered by the judgment, passed by Hon'ble High Court, I need not issue notice in this case as this O.A. can also be allowed in terms of the judgment passed by Hon'ble High Court of Allahabad subject to the restrictions imposed by Hon'ble Supreme Court vide its order dated 20.7.2004.

5. In the judgment, passed by Hon'ble High Court of Allahabad, it has already been held that transfer policy framed by the employer, is not justifiable in the Court of law as it does not have



any statutory force. It has also been held that the transfer orders are issued contrary to their service conditions as they could not have been transferred from one Cadre Controlling Authority to the jurisdiction of other Cadre Controlling Authority. It was in this view of the matter that the impugned orders dated 29.10.2003 and 31.10.2003 and also the judgment dated 4.1.2004, passed by the Central Administrative Tribunal in earlier case, was set aside, meaning thereby that the transfer orders were quashed and set aside. However, it was provided by the Hon'ble High Court that respondents may, after obtaining consent from the employees concerned, send them to deputation to Uttaranchal and ensure payment of deputation allowance to such employees. It was further provided that the employees, who had joined on transfer at Uttaranchal under the interim order passed by the Court, will be entitled to deputation allowance for the period they have worked at Uttaranchal and they shall not be asked to continue at Uttaranchal without their consent any further. However, that part of the judgment of Hon'ble High Court was stayed by Hon'ble Supreme Court, which required consent of the employees. It was further made clear that for the time being respondents shall be treated as being on deputation and shall be afforded all allowances on that basis. If both the orders read together, it is clear that even Hon'ble Supreme Court was of the view tentatively that the officers/employees could be sent on deputation to Uttaranchal temporarily of course and they shall be paid the deputation allowance.

6. Counsel for the applicant strenuously argued that the interim order, passed by Hon'ble Supreme Court will not be applicable for the applicants of this O.A. in as much as they were not party before the Hon'ble Supreme Court and the said order was meant

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only for those officers, who had already joined at Uttaranchal. I am afraid such a contention cannot be accepted in view of the fact that before Hon'ble Supreme Court, the respondents were not few individuals but respondents were represented through Civil Accounts Association and applicants are also members of the said Association. Therefore, they shall also be equally bound by the interim orders, passed by the Hon'ble Supreme Court. Counsel for the applicants next contended that deputation cannot be ordered in though taking consent of the employee. I do find force in the contention raised by counsel for applicant that deputation cannot be ordered unless consent of the person is taken. This contention is already settled by none else than by Hon'ble Supreme Court itself. It is settled law that deputation can be ordered only if all the three viz. the borrowing department, lending department and the person concerned, who is to be sent on deputation, give the consent. However, the interim orders must have been passed by Hon'ble Supreme Court in the given circumstances. It has clearly been held by Hon'ble Supreme Court that it would not be necessary to take the consent of the Officers/employees. I am bound by the orders, passed by Hon'ble Supreme Court. In any case, these are exactly the issues, which would be argued before the Hon'ble Supreme Court at the time of final arguments. It would be open to the applicants to advance their arguments as well, through their General Secretary before the Hon'ble Supreme Court. Since the order passed by Hon'ble Supreme Court is absolutely clear, therefore, applicants herein would also be treated in the same manner as has been observed by the Hon'ble High Court and Hon'ble Supreme Court.

7. At this juncture, it would be relevant to clarify that Respondents have issued the order dated

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6.7.2005 transferring the applicants to Uttaranchal for a period of 18 months, which could not have been done in view of the detailed judgment already given on this subject by Hon'ble High Court of Allahabad. Though counsel for respondents produced for my perusal the corrigendum dated 19.7.2005 but even in corrigendum also Respondents have merely clarified that the officers/employees will be entitled to get deputation allowances but they are still treating the applicants as transferred employees, which, according to me, could not have been done in view of the detailed judgment already given by Hon'ble High Court of Allahabad. Therefore, to that extent, the order dated 6.7.2005 and 19.7.2005 are wrong and need to be set aside. Respondents are given liberty to issue fresh orders making it clear in terms of the judgment given by Hon'ble High Court that applicants are being sent to Uttaranchal on deputation for a period of 18 months and they shall also be entitled to deputation allowances for the said period. However, this shall be subject to the final orders to be passed by the Hon'ble Supreme Court.

5. With the above direction, this O.A. stands disposed of.

No order as to costs.

29/7/05
J.M.

Asthana/