

Reserved

**Central Administrative Tribunal, Allahabad Bench,
Allahabad**

O.A. No. 330/00539/2021

This the 17th day of August, 2021.

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

Shri Hari Gupta aged about 38 years, Son of Late Chandra Prakash Gupta, Senior Auditor No. 8345085 previously working as Senior Auditor in the office of Local Audit Office (Air Force) "B" Chakeri, Kanpur; R/o 381-D-7A, Ompurwa, Kanpur.

.....Applicant

By Advocate: Sri N.P.Singh

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Principal Controller of Defence Accounts (Air Force) 107 Rajpur Road, Dehradun – 248001, Uttarakhand
3. Local Audit Officer (Air Force) office of the Local Audit Office (Air Force) 'B' Chakeri Kanpur.
4. Local Audit Officer (Air Force) office of the Local Audit Office (Air Force), AFAC Campus, Red Field, Coimbatore – 641018.
5. Defence Accounts Joint Controller (Air Force), Nagpur.

.....Respondents

By Advocate: Sri Chakrapani Vatsyayan

ORDER

By Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)

The instant O.A. has been filed by the applicant challenging his transfer order dated 20.10.2020, whereby the applicant has been transferred from District Kanpur to Coimbatore.

2. We have heard Sri N.P.Singh, learned counsel for applicant and Sri Chakrapani Vatsyayan, learned counsel for respondents. Perused the record.

3. The facts in brief are that the applicant was initially engaged in the respondents' organization in the year 2010 and joined office at Roorkee. In the year 2016, he was

transferred from Roorkee to Lansdowne and worked upto 14.1.2019 in Lansdowne. Although, Lansdowne is earmarked as hard tenure station, where an employee can be posted to a maximum of 2 years, but from Lansdowne, the applicant was transferred to Kanpur on 28.1.2019 after spending 3 years. The grievance of the applicant is that within a period of less than 2 years, the applicant has been transferred from Kanpur to Coimbatore vide impugned order dated 20.10.2020 without any rhyme or reason and against the transfer policy of the department.

4. The submission of the learned counsel for applicant is that a bare perusal of transfer policy dated 28.3.2014, copy whereof has been annexed as Annexure No. A-7 to the O.A., clearly indicates that the normal tenure of 3 years can be decreased/reduced to 2 years on the discretion of PCsDA/CsDA, but not below 2 years. It is further contended that the applicant is suffering from Jaundice and his immune system is very weak and due to pandemic 2019, the applicant's life is at risk while covering such a long distance while travelling to Coimbatore, which is more than 2600 Kms. away from Kanpur.

5. It is next submitted that the applicant had preferred a representation before respondents but his representation was not considered and instead, an order dated 8.3.2021 was passed, whereby a direction was issued to stop the salary of the applicant due to his non-joining at the transferred place since March 2021. The aforesaid order dated 8.3.2021 (Annexure No. A-9), has also been challenged in the instant O.A.

6. It is lastly submitted that the applicant, under protest has joined at Coimbatore on 12.5.2021 and office of Coimbatore has also issued joining report vide letter dated 17.3.2021, in respect of the applicant (Annexure A-13) and thus the applicant has fulfilled the condition as per the law laid down by the Hon'ble Apex Court in the case of **S.C. Saxena vs. Union of India and others reported in (2006) 9 Supreme Court Cases 583**, therefore, now he can put forth his grievance relating to his health.

7. On the aforesaid grounds, it has been prayed that the impugned transfer order dated 20.10.2020 and impugned order dated 8.3.2021, whereby his pay has been stopped, be quashed.

8. As an Interim relief, it has been prayed that the operation of both the impugned orders be stayed.

9. In support of his contentions, learned counsel for applicant has placed reliance on a judgment dated 16.5.2014 passed by this Tribunal in O.A. No. 1416/2012.

10. Pet contra, Ld. Counsel for respondents has opposed the admission of the O.A. , by contending that the legal position has been well settled by Hon'ble Supreme Court through a catena of judgments that the transfer being an incidence and essential condition of Government Service, the court should not interfere in the matter of transfer, therefore, the O.A. is liable to be dismissed at admission stage. The medical certificate and receipts of medicines purchased by the applicant annexed by applicant are of February, 2021 and October, 2020 respectively. As per the medical certificate, the applicant was suffering from jaundice and doctor had advised him rest for 14 days w.e.f. 13.2.2021 to

26.2.2021. There is no evidence that he is still suffering from same ailment. In the O.A., he has stated that his immune system has become very weak due to Covid-19, but there is no iota of evidence that he ever suffered from Covid-19.

11. We have given our thoughtful consideration to the rival contentions of learned counsel for both the parties.

12. The applicant in para 4.20 of the O.A. has stated that he has already given his joining at the transferred place, namely Coimbatore on 12.5.2021. Copy of joining report dated 17.5.2021 has been annexed to the O.A. as Annexure No.A-13, which shows that the applicant has reported for duty at Coimbatore in the forenoon of 10th May, 2021.

13. In view of the above, no useful purpose will be served in keeping this matter pending and it is disposed off at the admission stage with the following directions to both the parties:-

- i) Applicant shall file a detailed representation ventilating all his grievances before the respondent concerned, who is the competent authority, within a period of 15 days from today along with certified copy of this order.
- ii) The respondents concerned shall decide his representation within 4 weeks thereafter in the light of their transfer policy and also considering family problem of the applicant.
- iii) Respondents are further directed to reconsider their order dated 8.3.2021, whereby the salary of the applicant was stopped, for the period during which he was absent.
- iv) The order so passed on the representation of the applicant, shall be communicated to the applicant without any delay.

v) It is made clear that we have not expressed any opinion on merit of the case.

vi) No order as to costs.

(Devendra Chaudhry)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

HLS/-