

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
(THROUGH VIDEO CONFERENCING)**

Original Application No. 332/00307/2021

Date of Order: This, the 12th day of October, 2021

HON'BLE MS. JASMINE AHMED, MEMBER (J)

Mukesh Kumar Nigam, aged about 55 years, S/o late I.D. Nigam, permanent resident of House No. 108/36 (B) P Road, Lenin Park Gandhi Nagar, Kanpur City and present resident of Staff Quarter H.No. 78 Sector C, Aliganj, Lucknow was posted on the post of Assistant Director-1 (ECR Cadre) in State Office of Khadi & Village Industries Commission, Faizabad (Ayodhya) Road, Lucknow and transferred to Bikaner.



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Applicant

By Advocate: Sri Deepak Shukla.

Versus.

1. Union of India through its Secretary, Ministry of Micro, Small & Medium Enterprises, New Delhi.
2. Chief Executive Engineer, Khadi and Village Industries Commission, 03 Irla Road, Vile Parle (West), Mumbai 400056
3. Director (Admin & H.R.), Khadi & Village Industries Commission, 03 Irla Road, Vile Parele (West) Mumbai-40056

4. State Director, Khadi and Village Industries Commission, Faizabad Road, Indira Nagar, Lucknow-226 016

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Respondents

By Advocate: Ms. Prayagmati Gupta

O R D E R (ORAL)



Learned counsel for the applicant states that the applicant, herein, has been transferred from Lucknow to Bikaner vide order dated 13.8.2021 (Annexure no.1), whereby three personnel have been transferred including the applicant. The other two personnel are one Sri Kartik A. Kulkarni, Assistant and another Sri Dinesh T. Mohite, Assistant. Learned counsel for the applicant drew my attention that while issuing the transfer order, the respondents have stated that “Sri M.K. Nigam, Assistant Director Gr.I (Ec.R) shall prepare proper charge handling/taking over note and send the same to this Directorate alongwith charge assumption/relinquishment report with countersignature of competent authority without fail”; whereas nothing has been mentioned/shown in the said transfer order against the remaining two personnel, who have been transferred alongwith the applicant. Learned counsel for the applicant states that it is very surprising that while issuing the transfer order, certain directions have been given to the applicant, herein, while no remarks has been

given to other personnel. Learned counsel for the applicant states that vide order dated 18.8.2021 the applicant has already been relieved. After getting the transfer order, the applicant preferred a representation to the respondents on 16.8.2021 (page 27 of the O.A.) wherein the applicant stated that taking into account his disability to the extent of 50% and also due to pandemic of Covid-19 as well as the education of his children, he may be allowed to retain at Lucknow upto March, 2022 and to adjust him in any place in the State of U.P.



2. Learned counsel for the applicant further states that the representation of the applicant against the transfer order has been rejected by the competent authority vide order dated 15.9.2021 (page 21 of the O.A). A bare reading of this rejection letter, it is clear that two points have been mentioned by the applicant in his representation dated 16.8.2021, but the same has not been mentioned at all by the respondents while rejecting the representation of the applicant and only it has been stated that the competent authority has not agreed to, but without assigning any reason on the two points/pleas raised by the applicant in his representation.

3. Learned counsel for the applicant also states that that the applicant is having four years service left and he is suffering from the disease of locomotive disorder and on this phase of service career, he may be accommodated in any

place in the State of U.P. In this regard, he drew my attention at page no.7 of para 4(ix) of the O.A., which reads as under:-

“That the post of Assistant Director G-1 is vacant in Divisional Office, Gorakhpur due to retirement of Sri Patram, the then Assistant Director, similarly at Divisional Office, Varanasi also vacant as well as the applicant may also post in CSP, Raebareilly nearest district from his native place and Home State. It is further submitted that the applicant is ready to accept his transfer/posting in CSP, Raebareilly, Varanasi and Gorakhpur respectively.”



Learned counsel for the applicant also states that the distance from Lucknow to Bikaner is about 913 Kms., which is difficult for the applicant to travel on the last phase of service career being a disabled person to the extent of 50%.

4. Learned counsel appearing on behalf of the respondents have vehemently objected the contentions of the applicant by stating that the applicant is a government servant having All India Transfer liability and transfer is an incidence of service and the applicant cannot claim to be posted at a particular station indefinitely. In support of her arguments, learned counsel for the respondents has placed reliance the decision of **S.L. Abbas Vs. Union of India & Others reported in 1993 AIR 2444** wherein it has been held that transfer is an incidence of service and the

guidelines does not confer upon the government employee a legally enforceable right.

5. Learned counsel for the respondents also drew my attention to para 20 of Disability Act wherein it has been mentioned that no Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service. Learned counsel for the respondents also submits that the applicant has been transferred to Jammu, Jharkhand and many other places and every time he had complied with the order of transfer and did not raise his voice against the transfer order, but this time when he has been ordered to be transferred to Bikaner, he made objection against the transfer order on the ground of disability. She also contends that no irregularity or arbitrariness has been caused to the applicant while he has been transferred from Lucknow to Bikaner.



6. Heard the learned counsel for the parties and perused the documents as available on record.

7. It is seen from the representation of the applicant dated 16.8.2021 wherein he has prayed for two relief(s); one is to retain him at Lucknow till March, 2022 on account of education of his children, his disability to the extent of 50% and pandemic of Covid-19; and another is that to accommodate him in the State of U.P. Learned counsel for the applicant drew my attention at page no. 7 (para 4.ix of the O.A.) wherein the applicant categorically states that



there are three vacant posts at Raebareilly, Varanasi and Gorakhpur. Learned counsel for the applicant contends that the applicant may be accommodated at any of the place viz. Raebareilly, Varanasi and Gorakhpur while implementing the order dated 15.9.2021 (page 21 of the O.A.). It is seen that while rejecting the representation of the applicant against the transfer order, the respondents have not commented anything on the request made by the applicant in his representation dated 16.8.2021 merely by saying that the competent authority is not agreed to. It is settled principles of law that if any order entails civil consequences, then reasons must be assigned in the order, but in the instant case the same is lacking. It is clear from the rejection order that no reason/ground has been assigned by the respondents while rejecting the representation of the applicant. Hence the order dated 15.9.2021 is a non-speaking order and the same is not legally sustainable in the eyes of law as the same neither discussed the points raised by the applicant in his representation nor dealt with the same while passing the rejection order. It is also noticed that the DoP&T has also issued guidelines/O.M. with regard to suspension of transfer order where the education of child of the employee is involved till the current academic session. It is also admitted by the learned counsel for the respondents that earlier whenever the applicant was transferred he had always obey the order of the higher authority and joined at the transferred place. It is also

noticed from the perusal of impugned order that the order dated 13.8.2021 is malafide as certain directions has been mentioned against the applicant, while no comments/remarks has been mentioned against the other two employees, who have been transferred along-with the applicant. This smacks malafide on the part of the respondents and the same is also bad in the eyes of law. The applicant has categorically stated in his representation that he may be accommodated till March, 2022 keeping in view the examination of his children and further the order dated 15.9.2021 is a non-speaking order, the same is bad in the eyes of law and is liable to be quashed.



8. In view of the above, order dated 15.9.2021 is quashed. The transfer order dated 13.08.2021 in so far as it relates to the applicant shall be kept in abeyance till current academic session i.e. March, 2022. In the event, the respondents feel that as per routine transfer guidelines, the applicant is to be transferred, then he may be accommodated at the places viz. Raebareilly, Varanasi and Gorakhpur as has been given by the applicant in para 4 (ix) of the O.A. and the same is found to be correct. No costs.

(Ms. Jasmine Ahmed)
Member-J

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