

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD**

**Original Application No. 13 of 2002 (U)**

day this the

*8<sup>th</sup>*  
day of

*June*  
2007

**Hon'ble Mr. K.S. Menon, Member (A)**

V.K. Yadav S/o Shri D.S. Yadav, Aged about 50 years R/o 8-A,  
New Road, Dehradun-248001.

Presently serving as an Upper Division Clerk (UDC) in the Office of  
the Commander Works Engineer, Dehradun.

**Applicant**

**By Advocate Sri A.K. Dave**

**Versus**

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Engineer-in-Chief, Army Headquarters, DHQ Post Office, Kashmir House, New Delhi.
3. Chief Engineer, Central Command, Lucknow.
4. Chief Engineer, Bareilly Zone, Sarvatra Bhavan, Bareilly Cantt. Bareilly.

**Respondents**

**By Advocate Sri Saumitra Singh**

**O R D E R**

**By K.S. Menon, Member (A)**

The present O.A. is filed against the order dated 09.04.2002 (Annexure A-I) passed by the respondent No.1, whereby in pursuance of Central Administrative Tribunal, Allahabad, Judgment dated 25.05.2001 the representation of the applicant dated 22.03.2001 was rejected and respondent no.3 was directed to implement the transfer order of the applicant, transferring him to AGE (I) Talbehat and report compliance by 15.05.2002.

The facts of the case stated briefly are as under: -

2. The applicant joined the respondent establishment at IMA, Dehradun as a Lower Division Clerk (LDC) w.e.f. 22.04.1972. Due to his unblemished record, the applicant was granted second upgradation and is presently working as Upper Division Clerk (UDC) in the Office of the AE I, Raiwala under CWE, Dehradun in the grade Rs.5000-150-8000 and has been discharging his functions to the utmost satisfaction of the authorities concerned. The applicant had a massive heart attack on 08.12.1999. After hospitalization and based on medical advise the applicant remained on leave upto 24.04.2000 which was duly sanctioned on 08.05.2000.

3. The respondents vide their letter dated 05.02.2000 issued a warning list for posting to hard tenure stations, in which the applicant's name was included. The applicant requested for cancellation of a hard tenure posting on medical grounds vide his representation dated 18.02.2000. He had also attached medical certificates from the Competent Authorities who had advised to avoid hard tenure stations and posting to such places like high attitude and was advised to avoid extraneous activities as this could be dangerous to his health.

4. The respondents despite the medical certificates of the competent medical authorities attached with the representation, rejected his request vide their order dated 10.05.2000. The applicant felt the rejection was not based on any valid ground, submitted a Review Application dated 25.05.2000 for cancellation of his posting order on medical ground. This Review Application was forwarded by CWE I, Dehradun with a strong recommendation for sympathetic consideration as the applicant's problems were genuine. In this Review Application, the applicant had mentioned that he was unmarried and has to support his five family members including his aged mother, a brother who is mentally retarded and two unmarried sisters who are fully dependent on the applicant. The Review Application was forwarded by C.E., Bareilly Zone, Bareilly to the CE CC Lucknow on 19.06.2000 with the following recommendations: -

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**Paragraph No.3:** - The individual has again submitted another application dated 25 May 2000, bringing out the chronology of his apathy, which is forwarded herewith duly recommended. The case of the individual being an utmost genuine one, deserves review of the decision of your HQ, taking into consideration the following factors: -

(a) A hard /tenure station is identified as such when certain amenities/facilities are not available. Talbehat, a hard station, may not be having adequately equipped Hospital for treatment of a heart patient at a time of need of such aid.

(b) A heart patient will require immediate medical aid in case of any emergency, which may not be available at Talbehat.

(c) It is opined by CMO Dehradun that it is not safer to the individual to travel independently. Talbehat is at far fledge distance from Dehradun. The individual is bachelor and it may not be possible for him to take some body's assistance for traveling.

(d) The individual has to undergo medical treatment continuously, which may be disrupted at Talbehat, thereby endangering to his survival.

**Paragraph No.4:** - Your endeavour is requested in this case to cancel the posting of the individual at present.

Based on the above recommendation, the CE CC, Lucknow deferred the move to Talbehat vide Order dated 23.06.2000 by a year i.e. upto 30.06.2001 with a stipulation that the applicant should move on 01.07.2001. In the same order, the applicant was advised to move a fresh representation if he so desired to the competent authority. On the basis of this letter, the applicant was subjected to a fresh Medical Enquiry examination by the C.M.O., Dehradun, who in turn gave a certificate reiterating the earlier advice that the applicant had been advised not to work at hard tenure, high attitude station and is in constant need of medical attention/facility. In view of this, the applicant made another representation for deletion of his name from the hard tenure posting as he was a heart patient (Annexure A-13). This representation was also rejected by the CE CC, Lucknow vide his letter dated 23.11.2000 addressed to CWE, Bareilly with a remark that the ailment reported by the individual does not qualify for exemption of tenure posting as laid down in policy of the Army Headquarters E in C Branch letter No. 79040/E IC U) dated 31.08.1994 CWE Bareilly was further directed to implement the

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transfer order or to take action as per Rule 38 of CCS (Pension) Rules, 1972, where the individual had an option to either proceed on retirement on medical invalidation or to accept a lower post which would not require outstation posting. The applicant contends that the Army Headquarters letter dated 31.08.1994 stipulates that disabled persons should not be posted under tenure station if the disability prohibits him from movement/functioning etc. He maintains the respondents have rejected his claim for permanent deferment of hard tenure posting in an arbitrary manner. In view of this, he approached the Secretary, Ministry of Defence by filing a fresh petition for permanent deferment of a hard tenure posting on medical grounds. His case was not forwarded to Ministry of Defence but was rejected at the level of CE CC, Lucknow. Aggrieved the applicant filed an O.A. No. 28/2001 before this Tribunal. The Tribunal disposed of the O.A. with directions to the respondents concerned to forward the case to Secretary, Ministry of Defence for consideration and passing appropriate orders, vide order dated 25.05.2001. In compliance of this Tribunal's Order, the case was referred to the Secretary, Ministry of Defence. The applicant contends that even the respondent No.1 i.e. Secretary, Ministry of Defence without applying his mind as no reasons have been given in the order, rejected his claim with a non-speaking order dated 09.04.2002 (Annexure A-I). Based on this order of the Ministry of Defence, CE CC Lucknow directed vide letter dated 25.04.2002 to C.E. Bareilly to implement the posting order and report compliance by 15.05.2002. Aggrieved by this order, applicant filed the present O.A. No. 13/2002. This Tribunal in its interim order dated 13.05.2002 referred to the CE, Bareilly's letter at page 46 of the O.A. wherein inter-alia it states that immediate medical aid required for to heart patient is not available at Talbehat where the applicant stands posted. The Tribunal had sought a reply from the respondents whether medical facilities for heart patients were available at Talbehat, also the latest health status of the applicant and to indicate whether he can be transferred out and till then status quo with regard to the applicant would be maintained. Respondents in their short

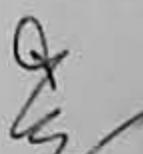
counter dated 28.07.2002 indicated that Talbehat has only first aid facilities including B.P. Check up and no cardiologist exist at Talbehat. They therefore, sought this Tribunal's permission to post to applicant to Mhow instead where all medical facilities including for heart patient exist. As regards the medical status of the applicant, the respondents have annexed (annexure CA-II) the medical report of the Cardiologist Doon Hospital, Dehradun addressed to C.M.O. Uttarakhand indicating that the applicant requires constant medical attention, regular check up from Cardiologist and avoid to exert fast, upstair, uphill and cold climate and not any opinion on transfer.

5. The respondents do not dispute most of the facts/events as mentioned in the O.A. Their main line of argument is that the applicant since his appointment on 22.04.1972 till date has been in and around Dehradun station i.e. a period of over 33 years, that too in a service having transfer liability. The first time he was posted out of Dehradun was vide the Order dated 20.04.2000 which he has been resisting by first filing O.A. No. 28 of 2002 and then the present O.A. No. 13/2002 (U) after the Secretary, respondent No.1 has rejected his request for cancellation of posting order. Respondents maintain that such a situation reflects badly on general discipline and morale among employees in the Organisation and sets a bad precedent. Considering his heart condition, the Department is offering to transfer him to Mhow (instead of Talbehat) near Indore, where all medical facilities for heart patients at par with Dehradun are available. As soon as the warning list was issued the applicant submitted a representation dated 18.02.2000 duly supported by medical certificates requesting deletion of his name from the list of hard/tenure posting, but his prayer was turned down by CE CC, Lucknow vide letter dated 10.05.2000 and he was asked to be relieved for his posting to Talbehat, as it was felt that the medical opinion did not bring out any serious disability, hence his posting cannot be cancelled. However, based on his subsequent representation regarding his health and other domestic problems, CE CC, Lucknow granted one year deferment of his posting upto

30.06.2001, with instructions that he be relieved on 01.07.2001. Since the deferment was only for a year, the applicant represented once again on 14.09.2000 for deletion of his name from the list of tenure posting ~~for~~ever. This was however rejected with directions that the transfer should be implemented by 01.07.2001 or action should be taken as per rule 38 of CCS (Pension) Rules 1972 vide order dated 25.04.2001. Referring to the applicant's point made in 4.19 and 4.20 of the O.A., the respondents maintain that the Engineer-in-Chief's Branch tenure posting policy stipulates that a disabled person should not be transferred to a tenure station, however, they contend that in the instant case the applicant has never been declared disabled by the medical authorities and hence the applicant's contention on this point does not stand and deletion of his name permanently from the list of tenure posting would set a wrong precedent for other employees. Respondents state that in compliance with Central Administrative Tribunal's Order dated 25.05.2001, the applicant's representation was forwarded to the Secretary, Ministry of Defence for consideration, who passed a speaking order rejecting the applicant's prayer on 09.04.2002.

6. On the issue of medical claims being reimbursed by the respondents as brought out by the applicant to highlight the fact that the authorities were fully aware of his medical condition, the respondents confirm that medical claims which were admissible, were paid to him.

7. In support of their proposal to transfer him to Mhow, the respondents state that the applicant has an All India Service liability including field service. His request for permanent deletion of his name from the list of hard tenure posting on grounds of self sickness and domestic grounds (which are common in nature) cannot be accepted due to the bad precedent it will create. In view of the non-availability of adequate and appropriate medical facilities for heart patient at Talbehat, the respondents now propose to post him to Mhow near Indore, which has all the facilities for heart patients and critical emergent cases are



referred to Indore, which is nearby. They further contend that C.M.O., Dehradun in his medical report has advised regular medication/check up from a Cardiologist and to avoid to exert fast, upstair, uphills and cold climates hence a transfer to Mhow would ensure all this. No opinion regarding transfer was expressed. In view of the above, they have sought this Tribunal, approval to effect the transfer to Mhow. The learned counsel for the respondents has relied on a Central Administrative Tribunal, Jabalpur Bench Order dated 03.11.1989 as mentioned in paragraph no.21 of their Counter as per which transfer is an administrative matter and the Court would not interfere unless there is some basic illegality or it is perverse or malafide. Hence, they maintain the O.A. is devoid of merits and is liable to be rejected.

8. Heard the counsel for the parties and perused the pleadings.

9. At the outset I have to observe that the pleadings are voluminous in terms of short counter, counter and supplementary counter and the rejoinder to all these apart from the O.A. However, there appears to be a considerable amount of repetition of various points/facts in each of them. I am therefore confining my analysis to the core issues contained in this case.

10. The applicant joined on 22.04.1972 as a Lower Division Clerk with an All India transfer liability. From then on till date <sup>he has</sup> has been in and around Dehradun i.e. for more than thirty five years, 27 years and a half of which was prior to commencement of his heart ailment in December 1999. The remaining 8 years has also been in the same station due to judicial interventions. Considering the applicant has an All India transfer liability and being retained thirty five years in the same station indicates that the respondents have been fairly considerate towards the applicant who cannot expect to be permanently retained in the same station, his heart condition notwithstanding. The respondents are well within their rights to enforce the transfer

policy keeping in view the health condition of the applicant and the medical advise and opinion.

11. There appears to be no dispute about the heart problem of the applicant as evidenced by the certificates from various medical authorities and other letters from his superiors as in Annexure A-7, A-9, page-45 of the O.A., A-10, page 53 and 54 of the O.A. Some of these letters also contain specific strong recommendations to cancel his posting order. In the face of such overwhelming evidence of his fragile health due to his heart condition, it is beyond one's comprehension how the respondents ordered his posting to Talbehat which has no adequate and appropriate medical facilities for heart ailments. The respondents went a step further in rejecting, at the Ministry's level, the applicant's representation which was duly supported by medical certificates and strong recommendations from his superiors and subsequently deferred his posting by one year. This act of the respondents smacks of total disregard of the health condition of the applicant and having accepted his situation, there was no point in deferring the posting and instead should have amended it to a more congenial place where medical facilities for heart ailments were available.

12. It was only after this Tribunal passed an order dated 13.05.2002 in which it categorically sought whether Talbehat had necessary medical facilities for heart patients that the respondents replied that Talbehat had no such facilities for heart patients and in lieu thereof they proposed to amend the transfer order to Mhow which had all the medical facilities for heart ailments at par with Dehradun and specialized facilities at Indore which is nearby. The applicant in the averments in the Short Rejoinder Affidavit and Supplementary Affidavit has stated that the applicant is a bachelor and is on a restricted diet and requires constant attention during an emergency. He has an ailing old mother, a mentally retarded brother and two unmarried sisters who are fully dependent on the applicant, the applicant, therefore, needs sympathetic consideration permitting him to continue in

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Dehradun. The applicant had initially been requesting cancellation of the impugned order posting him to Talbehat, subsequently in his representations he had requested that his name may be deleted from the warning list permanently itself due to his heart condition and domestic compulsions. Impression gained here is that once the applicant realized that the prospect of a posting to Talbehat was out of the way, he began emphasizing permanent deletion from the warning list and retention in Dehradun. This stand of the applicant is difficult to accept. The applicant argues that Mhow does not have all the medical facilities though no proof in support thereof has been provided by him. He further contends that Mhow is also a hard/tenure station and has relied on GE CC, Lucknow's letter No.9013004(b 2007/02/EICC) Appendix "A" dated 13.10.2006 copy of which was made available subsequently wherein under the heading "Hard Tenure Posting Batch 2007 for J.E. (Civ.) Warning List". CE (S) Mhow has been shown, thereby implying that Mhow is also a Hard/Tenure station. However, the applicant by his own submission in paragraph no.8 of the Supplementary Rejoinder Affidavit has referred to Appendix A of the policy letter dated 27.09.1999 wherein details of criteria have been given for declaring a station as hard/tenure. Applicant has however not been able to conclusively establish that wrt. the above criteria Mhow falls short of it and hence detrimental to him from the medical facilities point of view. Respondents in their supplementary counter affidavit have clarified that declaring a station as hard/tenure is in order to facilitate the employees serving in that station to avail of free concessional facilities like free ration, other allowances and monetary benefit, but does not mean medical facilities are not available. Respondents have further clarified that Mhow is neither hilly nor colder than Dehradun where all medical facilities are available.

13. In paragraph no.9 of their Supplementary Affidavit, the respondents have pointed out that the applicant since joining the post of Cashier of GE, Dehradun which is a critical post, he voluntarily opted for, he has not availed of leave for almost one

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year for any medical check up which is not understandable if his health condition is critical. They contend that his condition may have improved and perhaps he does not need the frequent medical attention which was required earlier.

14. The applicant counsel has also drawn my attention to the policy letter on Posting, Transfer of Group 'C' or 'D' employees of MES issued by Army Headquarter Engineer in Chief Branch, New Delhi dated 22.11.1989 (RA-I) wherein it has been laid down that normal age limit for a tenure station is 52 years. Subordinates above 52 years may also be posted for a shorter tenure but none to be retained beyond 55 years. It also stipulates that Government servants should not be transferred preceding three years from their retirement except at their request to a station of their choice. At the time, the posting orders were issued the applicant was well within these age limits, hence he has no valid argument. As regards three years prior to retirement, the applicant retires in 2012 (as per date of birth shown in page 9 of the C.A.) hence this clause is not applicable in his case. The arguments put forward against Mhow by the applicant, therefore, lacks merit and hence cannot be accepted.

15. Before I sum up it must be said that it is well established that the scope for interference in transfer matters by the Tribunal is limited. However, given the peculiar circumstances of this case, judicial interventions were warranted and made in the past in the interest of natural justice. It is also not within this Tribunal's jurisdiction to give an approval whether the applicant should be posted to Mhow or not.

16. In view of the above and taking note of the applicant's length of stay in the same station, his medical condition and the medical opinion on record and at the same time the need to adhere to laid down policies of the department, to the extent feasible, I am of the view that the ends of justice would be met if the applicant is transferred to a suitable station within the ambit of the laid down policies of the department where he can

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conveniently move his family so that his and their needs are taken care of. The respondents as a model employer should strive to ensure this.

17. The O.A. is, therefore, disposed off with the above directions. No order as to costs.

*J. M. M.*  
**Member (A)**

/M.M./