

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 408 OF 2003

ALLAHABAD, THIS THE 30th DAY OF SEPTEMBER 2005

HON'BLE MR. D.R. TIWARI, MEMBER (A)

Suresh Chandre Dwivedi, S/o late Shri J.N. Dwivedi, A/a 52 years presently posted as Asstt. Audit Officer in the office of Accountant General (Audit) II, U.P. Allahabad.

..... Applicant

(By advocate : IN-PERSON)

V E R S U S

1. Union of India, through Comptroller & Auditor General of India, 10, Bahadur Shah Jafar Marg, New Delhi.
2. Accountant General I (Audit), U.P. Lucknow 6th Floor C.G.O. Complex, Alenganj- Lucknow.
3. Principal Accountant General (Audit), U.P., Allahabad.

..... Respondent.

(By Advocate : Shri A. Sthalekar)

O R D E R

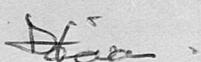
By this O.A. filed under section 19 of the A.T. Act, 1985, the applicant has prayed for the following relief(s):-

"i) to issue an order or direction of a suitable nature for calling upon and quashing the transfer order if any issued transferring the applicant from the Commercial Audit Wing, Lucknow to Civil Audit Office, Allahabad and to further also to quash the telegraphic relieving order dated 5.4.2002 issued by the office of A.G.-II, Lucknow, relieving the applicant with immediate effect from 5.4.2002 afternoon (Annexure A-1).
ii) to issue an order or direction of a suitable nature directing the respondent authorities to return the applicant back to the Commercial Audit Wing, Lucknow from the Civil Audit Office, Allahabad within a period to be specified by this Court".

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2. Briefly stated, the applicant was initially appointed as an Auditor in the Commercial Audit Wing, Lucknow and was granted promotion from the post of Section Officer on 2.5.91 in the Commercial Audit Wing, Lucknow after being declared successful in the Departmental Section Officers Grade Examination (Civil) held in the year 1990. He has submitted that his posting as Section Officer in the Commercial Audit Wing was as per provisions of paras 177, 189, 190, 206 and 212 of chapter 5 "Subordinate Accounts Services" of the Manual of Standing Orders (Admn) Vol-1 2nd edition prevailing at the time of promotion of the applicant as Section Officer. It has been pleaded that out of 19 employees who passed S.O.G.E in 1990. The posting of the applicant alone was made at Commercial Audit Wing, others were promoted as Section Officers at Civil Audit Office, Allahabad. He has contended that his posting was done by Cadre Controlling Authority i.e. A.G. (Audit-1), Allahabad. The Commercial Audit Wing Lucknow is a separate and distinct office and due to acute shortage of S.O.G.E (Commercial) is made by the Cadre Controlling Authority after seeking approval of C & A.G. of India and consent of the concerned employee in public interest.

3. All of a sudden, the applicant was transferred from Commercial Audit Wing, Lucknow to Civil Audit Office, Allahabad and was relieved by Telegraphic order dated 5.4.2002 issued by the office of A.G.-2, Lucknow. Being aggrieved by this order, the applicant has filed the instant O.A. and has challenged this



order on various grounds mentioned in para 5 of the O.A. The first ground is that transfer order has not been in the public interest and it has been passed in violations of provisions of Manual of Standing Orders (Admn) Vol-1 2nd and 3rd edition issued by C. & A.G. Office of India. The second ground of challenge relates to allegation of malafide and bias attitude of Senior Officers including Smt. A.G. Mathews, the Assistant Controller General Office of C & A.G New Delhi. Third ground taken is that the impugned order has not been passed by Cadre Controlling Authority and without prior sanction of C & A.G of India. Lastly, he has pleaded that he has filed appeal against the same but that has not been decided by the Appellate Authority. As such, it has been pleaded that the O.A. deserves to be allowed and the impugned order be quashed.

4. The respondents, on the other hand, have contested the O.A and filed a detailed counter affidavit and argued that the claim of the applicant is against the provisions regarding transfer policy. It has been submitted that the applicant was appointed as Auditor in the Civil Audit Wing at Allahabad and posted at Lucknow in the Commercial Audit Wing where there was a vacancy of the post of Auditor. In the year 1990, he appeared in the Departmental Section Officer Grade Examination (Civil) and qualified the examination. He was posted on the post of Section Officer in the Commercial Audit Wing against an existing vacancy but he continued to belong to the Civil Audit Wing and as such his services were

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transferable to the Civil Audit Wing, Allahabad. It has been further argued that for purposes of transferring an official who belongs to the Civil Audit Wing but his services are lent to the Commercial Audit Wing, sanction of C. & A.G of India is not necessary. The Accountant General is the competent authority to issue transfer order in such cases as per administrative exigencies and requirement. It has been stated that there was no change of cadre involved as the applicant had never appeared or qualified in S.O.G.E. (Commercial) and his services were only lent to the Commercial Audit Wing and therefore, there was no sanction of the C. & A.G of India for posting in Commercial between Audit Wing as he continued to belong to the Civil Branch. It has also been submitted that the representation dated 26.4.2002 and 27.5.2002 have already been rejected by order dated 26.4.2002 and repeated representation do not need any further order (Annexure CA-3). In view of this, respondents have prayed for dismissal of the O.A. as this being meritless.

5. During the course of the argument, the applicant appeared in-person and reiterated the facts and the legal pleas from his pleadings in the O.A. He also submitted written argument which is being taken on record. His main emphasis to challenge the impugned order was that the same has been passed by the Authority who is not competent to pass this order. Next limb of argument was that the transfer order is vitiated by malafides as he made certain complaints against Smt. G. Mathews, a Senior Officer who became

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very biased against him. He has also argued that the Manual of Standing Order has been violated and for this reasons, he concluded that the impugned order deserves to be quashed.

6. The counsel for the respondents has emphatically denied the contention and claim made by the counsel for the applicant and has submitted that there has been no violation of the Manual of Standing Order as the applicant has confused the transfer order with that of the change of cadre. He has quoted the paras of the Manual which relates to change of cadre. It has also been argued that assertion of malafide has to be proved and the officer against whom certain allegation are made, has to be arrayed as a party in the O.A. so the settled legal position is that bald allegation would not make the malafides in any case. He has neither any case of malice in law nor a case of malice in fact. Counsel for the respondents have also relied on the judgment of the Hon'ble Supreme Court in the case of Gujarat Electricity Board Vs. Atmaram- 1989 (10) A.T.C 396 (S.C) wherein it has been held that transfer of an employee is an incident of service and the employee has no right to get posted to a particular place and transfers cannot be avoided merely on the ground of pendency of representation or personal difficulty. As such, the O.A. is meritless and deserves to be dismissed.

7. I have heard counsel for the parties very carefully and perused the pleadings. I have gone

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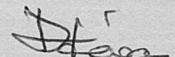
through the written argument filed by the applicant in-person.

8. The only question which falls for consideration is the validity of impugned order. The impugned order is the transfer of the applicant from Commercial Audit Wing, Lucknow to Civil Wing at Allahabad. In this connection, the law is well settled that the transfer of an employee who has an all India transfer liability is an incident of service. The Apex Court in a number of cases have laid down that who should be posted where should be left to the discretion of the Administration. The Courts and Tribunals are not expected to interfere in the matters of transfer except on the ground of malafides or violation of statutory Rules. If one examines the present case in view of this settled legal position, it will be clear that the applicant has an all India transfer liabilities and there has been no violation of statutory Rules, in the facts and circumstances of this particular case. In so far as the question of malafide is concerned, I am of the considered view that the applicant has done nothing more than merely making allegation of malafides and I do not find anything which can be construed as biased attitude of the respondents. However, there is only one aspect which needs consideration relating to decision on the representation. His representation has been rejected and the order is very cryptic, I wish the respondents would have passed a reasoned and speaking order while disposing of the representation of the applicant so as

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to leave no ground for him to agitate on the issue. Taking every aspect of this case in view, I find that the O.A has no merit and is dismissed.

9. The O.A. is disposed of in terms of the orders and observations made in the preceding para. Cost easy.


Member-A

Manish/-