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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: this the 2nd day of May, 2008

ORIGINAL APPLICATION NO.916 2007

Hon'ble Mrs. Meera Chhibber, Member-J
Hon'ble Mr. N.D. Dayal, Member-A

Kapil Kishore Lal, S/o late Bindeshwari Lal Srivastava, R/o Village and Post Office Mijhaura, Distt: Ambedkar Nagar, presently posted as Divisional Accounts Officer Grade II, in the office of Executive Engineer, Tubewell Division, Faizabad.

...Applicant.

By Adv: Shri M.K. Mishra and Sri V.K. Shukla

V E R S U S

1. Union of India through Secretary, Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training), New Delhi.
2. Accountant General (A&E), II UP Allahabad.
3. Deputy Accountant General (Works) in the office of Accountant General (A&E), II UP Allahabad.
4. Executive Engineer, Tubewell Division, Faizabad..

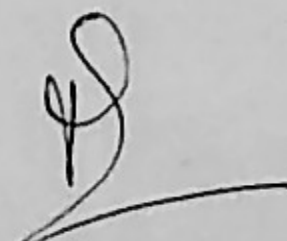
...Respondents.

By Adv: Shri S. Chaturvedi

O R D E R

By Hon'ble Mrs. Meera Chhibber, Member (J) :

Contempt Petition has been filed alleging disobedience or the interim order. Perused order dated 17.09.2007. On 17.09.2007 counsel for the applicant had made a statement that applicant is on medical leave though no document to that effect was annexed. Respondents were directed to maintain status quo for 14 days with an observation that further



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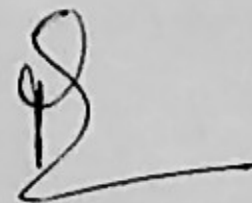
continuance of interim order shall be considered on next date.

2. In the Contempt Petition notices were issued, but on 10.04.2008 it was directed to be listed alongwith OA No. 916/07. Therefore, today we have heard both Contempt Petition as well as OA. We shall first deal with OA. In OA applicant has challenged order dated 07.06.2007 whereby he has been transferred to Chamauli.

3. It is submitted by the counsel for the applicant that he was posted as Divisional Accounts Officer Grade II in the office Executive Engineer, Tubewell Division Faizabad. His wife is also working in Faizabad under State of U.P. At the time of cadre bifurcation, options were called from the employees. Applicant had given his option to be retained in State of UP which is evident from the lists prepared by the respondents.

4. He has challenged his transfer on the following grounds:

- i. His spouse is working at Faizabad therefore as per respondents' own guidelines read with DOP&T OM dated 23.08.2004 (page 43) he should not have been posted to Uttrakhand.



ii. Though in the order it is mentioned temporary transfer but no time limit is mentioned.

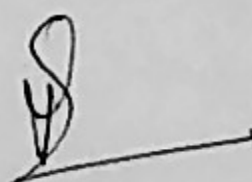
iii. Lists have not been prepared properly and persons are being transferred by adopting the policy of pick and choose.

iv. There are still 130 vacancies in State of UP therefore there is no justification to transfer him to Uttrakhand.

v. He has given representations (page 46 and 48) but the same have not been decided till date.

5. In the nutshell counsel for the applicant submitted transfer is contrary to the guidelines prepared by the respondents.

6. Respondents have opposed this OA. They have taken preliminary objection that earlier applicant had challenged the policy itself by filing OA No. 477/07 alongwith other and stay was also sought but by a detailed order interim order was rejected on 09.05.2007. Therefore, now applicant can't challenge the transfer order as it is issued based on the said policy. Even otherwise counsel for the respondents submitted this is only temporary transfer as per the guidelines in para 3 (b) and all others who were party in OA 477/07 have already joined at the place of



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posting except the applicant. He also referred to the judgments of *S.L. Abbas Vs. Union of India and others* and *S.C. Saxena Vs. Union of India and others* to state that applicant must report at the place of posting and then give his representation. He also referred to another judgment dated 16.08.2007 passed in OA No. 659/07 given in identical case which was dismissed by this Tribunal.

6. On merits they have explained that as per letter dated 17.11.2006, Headquarters office had directed to separate the Divisional Accounts Offices/Divisional Accounts Cadre in the reorganised state w.e.f. 01.05.2007 therefore, applicant alongwith others comes under purview of transfer to Uttranchal. A transfer Committee was formed for implementation of the cadre separation policy in respect of allocation of staff on separation of cadre in the office of re-organized States with effect from 01.05.2007. The aforesaid Committee had finalised the list of transferee to the re-organized State taking due consideration of all aspect circulated vide Headquarters letter No. 909 NGE (App.)/32-2006 dated 17.11.2006. This policy allows the office to send the junior most people in each cadre to the re-organized State. No malafidies have been alleged. Moreover, no representation has been given by the applicant. In any case he would be brought back so he must report at the place of posting. He invited our attention to the



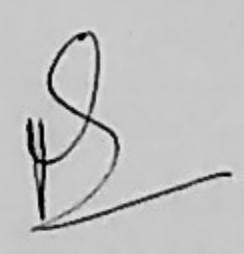
clarification dated 12.04.2006 duly circulated as issued by respondents wherein it is clearly mentioned that no employees shall be exempted from transfer on the ground that his/her spouse is employed at the same station. They have also prayed that the OA may be dismissed as policy is being applied uniformly for all the employees.

6. We have heard ~~the~~ counsel for the applicant and respondents both. The impugned order dated 07.06.2007 reads as under:

1. Shri Kapil Kishore Lal DAO-II (P. No. 1115) is transferred from the office of the Executive Engineer, Tubewell Div Faizabad to the office of Executive Engineer, Ty. Div Tharali, Chamoli.
2. He will also be treated as relieved from additional charge, if any, held by him.
3. This order is issued in continuation to office order no. DAG(Works)Cell/Utl/04/dated 1.5.2007 whereby the cadre was operated between Uttar Pradesh and Uttrakhand and officers opting for Uttar Pradesh in excess of the sanctioned strength for the state of Uttar Pradesh were required to be temporarily posted to the Uttrakhand State to be posted back to the opted state on availability of subsequent vacancy."

Perusal of the same shows applicant has been transferred only temporarily with a clear rider that he would be posted back in opted state on availability of vacancies. It is seen that neither in the representation annexed by the applicant nor in para 15 of the OA it has been mentioned that vacancies in his grade are available at such and such place. On the contrary a vague averment is made as follows:

"while 130 division is vacant at the present time under the UP State Government for the employee of Accountant General (A&E)-II UP Allahabad."



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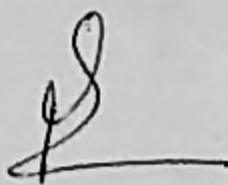
It the applicant has definite knowledge that vacancies in his grade are available, he should make specific~~ation~~ representation to that effect to the authorities so that they may consider it. In the representation applicant has only talked about her spouse and has relied on OM dated 23.8.2004 however this OM was dealt with by the Hon'ble Supreme Court in the case of **Union of India and others Vs. S.L. Abbas reported in 1993(4)SCC 357** wherein it was clearly held as under :

"While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The same guideline however does not confer upon the Government employee a legally enforceable right. Executive instructions are in the nature of guidelines. They do not have statutory force."

7. Moreover, in the instant case respondents had issued clarification on 12.04.2006 page 26 to 27 of counter affidavit wherein it has clearly mentioned in para C as follows:

"C. No employees shall be exempted from transfer on the ground that his/her spouse is employed at the same station."

It has to be kept in mind that this was not transfer in normal circumstance, had to done due to the policy for allocation of staff on separation of cadres in the office of reorganized state. This aspect had earlier been also agitated and matter had gone upto Hon'ble Supreme Court Of India. Hon'ble Supreme Court made it clear that on formation of a new state, the transfer



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of employees have to be made in order to maintain the new office therefore, it is not necessary to take consent of the employees before sending them on deputation to new state. It was also observed that the arrangement which is continuing shall be allowed to be continued till new policy is implemented. It is thus clear that on principle Hon'ble Supreme Court had also approved the transfer of employees in given circumstances. Thereafter, respondents formulated guidelines which are annexed at Page 22 of counter affidavit. In para (b) and (c) thereof it was clearly mentioned as follows:

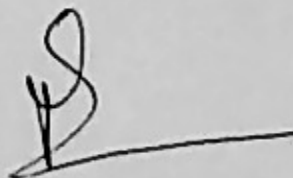
"b. If the number of the optees is less than the required strength of the newly created/re-organized office, persons (non-optees) in each cadre in excess of the required strength of the old office, will be posted to the newly created/re-organized offices on deputation basis on usual terms.

Where sufficient volunteers are not available to go on deputation, the junior most persons in each cadre may be sent on organized offices. However, in case vacancies arise in old offices they will be reverted back on seniority basis, starting from the senior most first.

b. The widows appointed on compassionate grounds and the employees who are to retire within the next two years shall be exempted from such transfer. Group 'D' and Staff Car Drivers shall also be exempted from such transfer. For others, in the case of working spouse in the same offices, if any of them is allocated to such deficit office the other may also opt for that office; he/she will be accommodated."

This guidelines itself was challenged by the applicant alongwith others by filing OA No. 744/07 and stay of the operation was also sought but by a detailed order dated 09.5.2007 Coordinate bench of this Tribunal rejected the interim prayer by observing as follows:

"In so far as the transfer of individual is concerned the policy itself speaks of "temporary transfer" vide para 3 (b) and as such since temporary transfer means

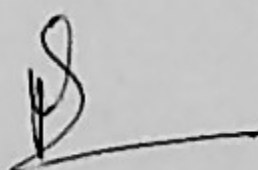


transfer for a shorter period, the respondents may, subject to exigencies of service, shift the officers concerned on temporary transfer with the attendant benefit thereof, as was done in the past."

We would therefore agree with the counsel for the respondents that another OA against transfer issued under the same policy would not be maintainable in normal circumstances. However, counsel for the applicant submitted that though in the order it is mentioned he is being sent on temporary transfer but no time limit is mentioned. We would agree with the counsel for applicant on this point that respondents should sent them on temporary transfer initially for 6 months/ 1 year and if need be to ~~extended~~ the same by giving the reasons.

8. Counsel for the applicant also relied on Clause C of the guidelines as Quoted above but he is misreading it. It is only for those cases where spouse is also working in the same office that effort is required to be made that in such cases if the spouse also gives option she would be accommodated which is not the case here as applicant's wife is not posted in same office therefore, on this count, it cannot be stated that transfer is contrary to the guidelines.

9. Counsel for the respondents has relied on another judgment dated 16.08.2007 in OA No. 659/07 but perusal of same shows it is in different context. In the said case, applicant therein was transferred as there were complaints against him.



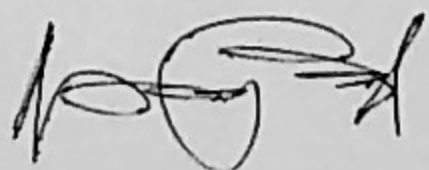


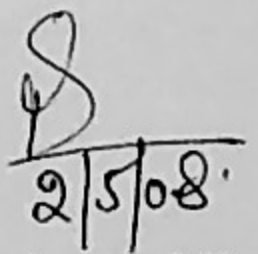
10. The only relevant portion which would be relevant in present case ^{is judgment B} of Hon'ble Supreme Court in the case of S.C. Saxena Vs. Union of India reported in 2006 SCC (L&S) 1890 wherein it was held as follows:

"A government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. Such tendency of not reporting at the place of posting and indulging in litigation needs to be curbed."

11. In view of the above nothing more need be stated except a direction to the applicant to report at the place of posting within a week from today and then give representation to the authorities stating therein his problems if any and also availability of vacancies in his grade in State of UP. In case he gives such a representation, we are sure respondents would consider the same and pass reasoned orders thereon.

12. With the above directions, this OA is disposed off. No order as to costs.


Member (A)


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Member (J)

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