

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCNOW BENCH LUCKNOW**

ORIGINAL APPLICATION No.489 /2005

Lucknow this, the 24th day of August 2006.

HON'BLE SHRI. M. KANTHAIAH, MEMBER (J)

A.K. Munjal aged about 57 years S/o Late Mohan Lal Munjal R/o 11-Type V, Akansha Parisar, Pocket B Sector F, Jankipuram Lucknow.

...Applicants.

By Advocate Shri A. Moln.

VERSUS

Union of India through

1. Secretary, Ministry of Mines, Shastri Bhawan New Delhi-110001.
2. Director General, Geological Survey of India, 27 J. L. Nehru Road Kolkata-16.
3. Deputy Director General, Geological Survey of India, Sector E, Aliganj, Lucknow 226024.
3. Deputy Director General (ME), Engineering and Transport Division Geological Survey of India, Salt Lake, Kolkata.

...Respondents.

By Advocate Shri Manoj Singh.

ORDER


By Hon'ble Shri M. Kanthalah, Member(J)

This is the application filed by the applicant to quash the impugned order Ex.-1 Dt. 8.9.2005 passed by 2nd Respondent transferring the applicant from Lucknow to Jaipur with all

consequential benefits, on the ground of violation of transfer policy and also the case of "malice in law" with the following averments.


2. The applicant who has been working as Director (ME) in the Geologically Survey of Indian (G.S.I.) at Northern Region, Lucknow has been transferred to Jaipur on the ground of Public Interest covered under impugned order by Ex -1 Dt. 8.9.2005. In his place, Shri G.K. Misra, Director (ME) is being transferred from Kolkata and while the senior most officers Shri J. Singh Director (ME) is being transferred from Jaipur to Kolkata. The reasons for transfer of Shri Singh from Jaipur to Kolkata is the senior most Director and to the post him in the superannuation post of Shri M. Srinivas, in the post of Deputy Director General (ME) on 30.11.2005, which arises out of administrative exigency with the transfer of Shri J. Singh, from Jaipur to Kolkata, the applicant has been posted there at Jaipur from Lucknow and Shri G.K. Misra, is being transferred from Kolkata and posted in the post of the applicant, making a triangle of transfers.

Though there is a justification for transfer of Shri J. Singh from Jaipur to Kolkata, but there is no justification for transfer of the application from Lucknow to Jaipur and bringing Shri G.K. Misra, from Kolkata to Lucknow in the place of the applicant and thus entire exercise of transfer of the applicant is being done in order to accommodate Shri G.K. Misra at Lucknow. Otherwise, it was simple and straight to meet the administrative exigency by transfer of Shri G.K. Misra from Kolkata to Jaipur itself instead of disturbing the applicant and transferring him by means of EX. -A-1 impugned transfer orders from Lucknow to Jaipur.



He further pleads that the transfer policy indicates that firstly transfers are to be effected to the extent of "absolute necessary" to meet the functional requirements and as the G.S.I. is a scientific department, where development of vested interests is supposed to be a minimum, there is no need to resort the urgent transfers as a general tool. He also made allegation that his transfer from Lucknow to Jaipur is in gross violation of the provisions of the transfer policy on the ground that he has not completed the tenure of 5 years at Lucknow and further he has got less than 3 years of service before superannuation and such officers are to be posted at the place of his choice. Thus, he alleges that his transfer from Lucknow to Jaipur is not only against transfer policy but also with bias, which amounts to "malice in law" and it requires interference of this court. Though he submitted an application on 13.9.2005 to the first Respondent informing all the facts and the violation of transfer policy, there has no response from him, hence filed this application questioning the validity of impugned order Ex-A-1, under which he has been transferred from Lucknow to Jaipur.

3. The respondents have filed counter affidavit stating that the competent authority is authorized to make an assessment regarding the operational requirement and transfers are done accordingly considering the overall need of the organization but not with any mala fide intention. All the transfers are done in the interest of public service as well as by taking into consideration of the earlier request of the applicant and there is no deviation of transfer policy and also stated that to minimize the expenditure under the heads 'DTE' a minimum number of transfers are done, which are absolutely



necessary in connection with operational need. They also admitted that normally officers are not disturbed for 4 to 5 years in a station as for as possible but in this case, the applicant was transferred from Western Region, Jaipur to Northern Region Lucknow in January 2003 and he had requested for cancellation of his transfer vide letter dated 4.12.2002 stating that he belong to Ganga Nagar area of Rajasthan and after retirement he wanted to settle there and thus sought for cancellation of his transfer from Jaipur to Lucknow but at that time his request could not be acceded to and now the same has been considered. As per transfer policy, the officer who have less than 2 to 3 years of service before superannuation could be considered posting ^{their} there home town or in a place for choice as for as possible and as such he has been transferred to Jaipur considering his earlier request. They further stated that the transfer of the applicant has been done on the basis of functional need of the organization as well as considering the earlier request of the applicant, and thus prayed to dismiss the application.

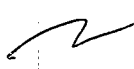
4. The applicant filed Rejoinder Affidavit reiterating the pleas taken in the main application and denied the reasons shown by the Respondents for his transfer and also stated that his earlier representation dated 4.12.2002 have already been rejected by the respondents on 19.12.2002 and thereafter considering such request after lapse of three years and transferring him to Jaipur itself shows malice on the part of the respondents.

5. The applicant has filed documents by Ex.A-1 to A.6, where as the respondents have filed Ex. R-1.

6. Heard both sides.

7. The point for consideration is whether the applicant is entitled for the relief as prayed for.

8. The admitted facts of the case are that the applicant has been working as Director (ME) in the Geological Survey of India (GSI) Northern Region, Lucknow since 27.01.2003. Earlier, in the year 2002 while he was working at Jaipur in the same capacity of Director (ME), he was transferred to Lucknow by transfer order Ex.A dt. 26.4.2002 and since 27.01.2003 he has been working at Lucknow in the same capacity of Director (ME). It is also not in dispute that the applicant made an application for cancellation of his transfer to Lucknow by making a representation dated 4th December, 2002 on the ground that he intends to permanently settle at Jaipur as he belongs to Ganga Nagar area of Rajasthan and most of his relatives are residing in and around Rajasthan. Ex. R.1 dated 4th December 2002 is the copy of such representation of the applicant. After considering the said request of the applicant, the respondents have passed orders stating that it is not possible to accede to his request and the earlier order on 1.4.2002 stands and Ex A-6 dt. 19.12.2002 is the said orders of the respondents under which, the request of the applicant for cancellation of his transfer from Jaipur to Lucknow was negatived. It is also not in dispute that the applicant is having less than 3 years of service for his superannuation. In pursuance of the impugned order Ex. A-1 dated 8.9.2005, the applicant has been transferred from NR Lucknow to WR Jaipur whereas Shri J. Singh who was director (Geol) at Jaipur has been transferred to Kolkata and Shri G.K. Mishra who has been working as Director (ME) at Kolkata has been transferred to N.R. Lucknow in the place of the applicant which is making a triangle of



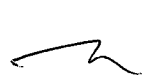
transfers. After receiving the said transfer orders, the applicant made a representation to the respondents but the same has been rejected. Ex-A5 dated 13.9.2005 is said representation of the applicant for cancellation of his transfer from Lucknow to Jaipur, but after considering the said request the respondents have rejected the same.

9. The case of the applicant is that there are guidelines framed for effecting transfers but the respondents were violated such transfer policy guidelines and acted malice against him and ^{thus questioned} ~~they exercised~~ the impugned order covered under Ex.A-1. But the respondents contents that they have transferred the applicant in the interest of public service and in accordance with the transfer policy and also considering his earlier request for transfer to Jaipur.

10. In view of the rival contentions of the parties, the following are the main points framed for discussions.

- i. Whether the transfer of the applicant from N.C. Lucknow to C.W. Jaipur under Ex.A-1 by the Respondent is against the guidelines of Transfer Policy and amounts the case of "Malice In Law".
- ii. Whether the transfer of the applicant has been effected due to earlier request of the applicant and in the interest of Public service.
- iii. To what relief.

11. Point No.1:- It is the main case of the applicant that the Respondents has violated many of the guidelines of transfer policy in transferring him from Lucknow to Jaipur which amounts to "Malice In Law" and thus questioned the impugned order covered under Ex. A-1




dt. 8.9.2005. One of the guidelines as per transfer policy covered under Ex.A-4 that the officers would be allowed to continue for 5 or 6 years in normal stations and the applicant has not yet completed such duration, since he joined at Lucknow on 27.1.2003 only, which clearly supports the arguments of the applicant that there is violation of transfer guidelines by the respondents.

The applicant also complains of violation of guidelines of transfer policy referred at 2.27 in Ex.A-4 that the officer having less than 2-3 years of service before superannuation would be considered for posting in their home state or in a place of his choice. Admittedly, the applicant on attaining superannuation, going to retire on 30.06.2008, which is less than 3 years of service. But the respondents did not consider the place of choice of the applicant, before issuing impugned transfer order Ex.A-1 Dt. 08.09.2005, which also clearly shows violation of its own transfer policy by the Respondents.

12. The reasons for transfer of Sri J. Singh, Senior most Director (ME) from Jaipur to Kolkata in the place of Shri G.N. Misra, Director (ME), with an intention to post him in the vacant post of Shri M. Srivastava, Deputy Director General (ME), due to his superannuation 30.11.2005 which is due to administrative exigency is not in dispute.

It is the case of the applicant that instead of effecting his transfer from Lucknow to Jaipur, the transfers are effected only between Shri J. Singh, senior most Director, from Jaipur to Kolkata and Sri G.N. Misra from Kolkata to Jaipur making "Straight lines of transfers" as per transfer policy to meet the administrative exigency and because of his transfer from Lucknow to Jaipur and Shri G.N. Misra from Kolkata to Lucknow making a triangle of transfers which is




violation of the provisions of the transfer policy . The respondents have admitted the same stating that to minimize the expenditure under the heads of "DTE" a minimum number of transfers are done, which are absolutely in connection with operational need.

But there is no proper explanation from the respondents to adopt a triangle of transfers instead of "DTE" method, effecting the transfers of the applicant from Lucknow to Jaipur, which itself effecting their objective and stand of a minimum number of transfers are to be done in connection with operational need.

From the above discussion, it is clear that there is transfer policy and guidelines are framed for operational requirement and considering over all need of the organisation and they ^{have} ~~were~~ ₂ violated such guidelines in transferring the applicant from Lucknow to Jaipur and as such the applicant is justified in questioning the impugned order Ex.A-1 on such grounds. Hence this point is decided in favour of the applicant.

13. Point No.2:- The case of the ~~applicant is that~~ respondents is that the applicant ^{made} ~~make~~ an earlier request for his retention at Jaipur and in view of the request he has been transferred to Jaipur and also taken a ground ^{of} ~~in~~ ₂ interest of public service.

It is also the contention of the applicant that on earlier occasion in the year 2002, when he was working as Director (ME) at Jaipur, he was sought to be transferred from Jaipur to Nagpur in the place of Sri S.C. Bahal, without any justified reasons and only to accommodate certain persons; Again, it was amended asking the applicant to join on transfer to Lucknow and retained Sri S.C. Behal at Nagpur itself and



because of such transfer proceedings, his transfer from Jaipur was differed for 6 months and thus he joined at Lucknow on 27.1.2003 which is not in dispute. Ex. A-2 dt. 1.4.2002, Ex. A-3 dt. 3.6.2002 reveals the said earlier transfer orders relating to the transfer of the applicant from Jaipur to Nagpur and by modification to Lucknow in the year 2002.

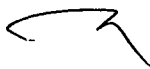
At the time of transfer of the applicant from Jaipur to Nagpur on 1.4.2002 and thereafter to Lucknow by way of modification, the applicant had submitted his representation Ex.R-1 Dt. 4.12.2002 for cancellation of his transfer order and for being retained at Jaipur itself, on the ground of his ^{family} fully necessities and also with an intend to ² setter permanently at Jaipur after his retirement. But after examination of the said representation, the Respondents declined for retention of the applicant at Jaipur and due which, he was forced to join at Lucknow on 27.1.2003. Ex.A-6 Dt. 19.12.2002 is the said orders of the respondents declaring to consider the representation of the applicant for cancellation of his transfer orders from Jaipur.

14 The respondents main contention is that the applicant has been transferred from Lucknow to Jaipur considering the earlier request of the applicant Ex-R-1 Dt. 4.12.2002, besides the reasons of functional need of the organisation. But when the said rejection for cancellation of his transfer orders from Jaipur to Lucknow was declined by the respondents under Ex-A-6 Dt. 19.12.2002 and started earlier orders shall stands, then the applicant was forced to join at Lucknow on 27.1.2003 itself and after more then three years, now basing on earlier disposed representation Ex.R-1 Dt. 4.12.2002, the applicant

has been transferred from Lucknow to Jaipur is not at all a justified ground which also supporting the allegation of the applicant that the arbitrariness against him and favoritism in favour of Shri G.N. Misra by Respondents.

15. If the respondents ^{have} ~~has~~ considered the representation of the applicant covered under Ex.R-1 Dt. 4.12.2002 without passing any adverse orders covered under A-6 Dt. 19.12.2002, or at least considered such request immediately after joining at Lucknow, there is some justification in the arguments of the respondents that the applicant has been transferred to Jaipur considering on his earlier request Dt. 4.12.2002. Similarly, no consent or at least opinion was taken from the applicant, in respect of his earlier request for transfer to Jaipur, before passing of this impugned orders covered under Ex.A-1 Dt.8.9.2005, without any of these, transferring the applicant from Lucknow to Jaipur after his stay here from more than 3 years, on the ground of his earlier request is not at all a justified ground to substantiate the transfer order of the applicant by the respondents and further it supporting the allegation of the applicant that this transfer has been effected only to accommodate Sri G.N. Misra at Lucknow by showing bias against him. It also further supporting the arguments of the applicant that though there is no necessity to touch his transfer from Lucknow for effecting the transfers of senior most Director Sri J. Singh from Jaipur to Kolkata in the place of Shri G.N., Misra and vice versa.

Though the respondents have contended that the transfer of the applicant is on the ground of interest of public service, no such



material is placed against the applicant that his transfer has been effected in the interest of Public service.

In view of the above discussions, the respondents have fail^e to substantiate their grounds for transfer of the applicant from Lucknow to Jaipur either on the ground of his earlier request or on the ground of interest of Public service thus, this point is decided against the respondents.

16. Point No.3:- Point No.1 is decided I favour of the applicant and Point No.2 is decided against the respondents.

It is the observation of the Apex Court in many of the cases, that the court should not interfere with a transfer order, which is made in public interest and for administrative reasons. But in the instant case, the respondents have failed to satisfy the requirements of any public interest or administrative reasons and further the applicant has satisfied the bias attitude of the respondents in transferring him from Lucknow to Jaipur, in violation of guidelines of transfer policy.

In the result, the application is allowed and the impugned transfer order Ex-A-1 is set-aside, effecting the transfer of the applicant from Lucknow to Jaipur alongwith all consequential benefits. No costs.


(M. KANTHAIAH)
MEMBER (J)

24.8.06

/ak/