

Central Administrative Tribunal Lucknow Bench Lucknow

Original Application No. 516/2006.

This, the 10 day of November 2006.

Hon. Mr. M. Kanthaiah Member(J)

R.L. Pathak aged about 43 years, son of Shri R.S. Pathak, resident of 714, Azad Muhal, sadar Bazar, Lucknow.

...Applicant.

By Advocate Shri Praveen Kumar.

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. The Chief Engineer, Central Command, Lucknow.
3. The Garrison Engineer (E), Lucknow.

..... Respondents.

BY Advoate Shri S. K. Tewari.

Order

By Hon. Mr. M. Kanthaiah Member(J)

The applicant who has been working on the post of Superintendent B/R Grade II (Junior engineer Civil) since 5.7.2004 has filed the Original Application to quash the impugned transfer order Annexure A-1 dated 17th October 2006 shifting him from GE (E) Lucknow to CE Lucknow Zone and by way of interim relief, he sought stay of operation of impugned transfer order.

2. Heard both sides.
3. The point for consideration is whether the applicant is entitled for grant of interim orders for stay of operation of impugned transfer order Annexure A1 dated 17th October 2006.
4. It is the main contention of the applicant that he has been

transferred from GE(E) Lucknow to CE Lucknow zone which is in gross violation of transfer guidelines and also contended that the respondents have transferred him to accommodate others whose names are shown at Serial No. 6 and 8 of the impugned transfer order. It is also the contention of the applicant that he is the Area President of their recognized Association and ~~the~~ he is ^{bound} to raise the grievances of the members of the association and due to which he has been transferred against the guidelines of transfer policy covered under Annexure A-3. Thus, sought stay of operation of transfer orders by way of interim relief. The respondents have filed objections for grant of interim reliefs denying the allegations of the applicant.

5. It is the case of the applicant that as per Para 43 of transfer guidelines covered under Annexure 3, transfer in the cadre of JEs (Engineers, Surveyor) has to be effected only after completion of 3 years but without completing his tenure of three years, effecting his transfer by the respondents is nothing but gross violation of guidelines and as such, it has to be set aside.

6. Para 43 of Annexure A-3 shows that the transfer of JEs will be moved on turnover from executive/sensitive posts to staff and vice versa after every three years and after continuous six years service in sensitive appointment. Admittedly, it is not in dispute that the applicant has been shifted from a sensitive post to staff and he has not completed 3 years in the present post at GE (E) at Lucknow. The said guidelines is not helpful to show that he got right to continue three years and the respondents have not right to effect such a shifting within three years period. Further, the orders of transfer covered under Annexure-1 shows that the posting/transfer under locol turnover 2006, which is in the interest of state. The impugned transfer order shows that the posting/transfer of the applicant has been effected in the interest of state moving him from executive side to staff i.e. from the branch of GE Lucknow to CE Lucknow zone. It is also the contention of the respondents that the applicant has been working on executive/sensitive posting for the last 10 years and if the same is correct, the applicant has no ground to take any

shelter under para 43 of transfer policy covered under Annexure A-3.

Further, when it is the case of the respondents that the applicant who has been working in the executive/sensitive post has been shifted in the interest of state, interference of this Tribunal and also grant of stay of operation of impugned transfer order is not at all justified.

6. The applicant did not attribute any malafidies on the part of the respondents for shifting him from one branch to another at Lucknow but stated that to accommodate some of the employees he has been shifted and also ^{is} suspected ^{that} he being the leader of their association, the respondents have taken such decision. To attribute any malafide on the part of the respondents, nothing is placed on record and as such it is not at all possible to give any finding in this respect. As such, the said arguments are not helpful to the applicant for claiming interim relief.

7. In respect of third ground that he being the leader that is President of their association, the respondents have shifted him is not at all a justified ground to question the impugned transfer order as his transfer or shifting has been effected within Lucknow city itself but only changed from one unit to another and as such, there is no weight in such objections of the applicant.

8. In view of the above discussions, the applicant has not made out prima facie case and balance of convenience is also not in his favour for grant of any interim order, staying operation of transfer covered under Annexure-1. Hence, the claim of the applicant for grant of interim orders for stay of operation of impugned transfer order is liable to be dismissed and as such the same is dismissed. *to be filed within 4 weeks.*
W.L.O. on 15-12-06 for admissibility.

(M. Kanthaiah)
Member(J)

10.11.06