

**CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH**

**O.A.No.517/2006**

On this day of Friday dated 12<sup>th</sup> January 2007.

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

Radhay Shyam, aged about 48 years , son of Late Shri Ram Asrey Verma, resident of 2/229, Vibhav Khand, Gomti Nagar, Lucknow.

... Applicant.

By Advocate:-Shri Praveen Kumar.

Versus.

Union of India through

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

... Respondents.

By Advocate:-Shri K.K. Shukla.

**ORDER**

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

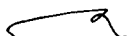
The applicant who has been working on the post of Surveyor Assistant Grade-II known as Junior Engineer (QS&C) in the office of 3<sup>rd</sup> respondents i.e. GE at Lucknow has filed the Original application against the impugned transfer order(Annexure-1) dated 17.10.2006 shifting him from GE(E) , Lucknow to HQ CECC, Lucknow under local turnover on the ground that the said transfer is against the transfer policy and also to accommodate others with the following averements.

2. The applicant has been working since more then 21 years in the department without any complaint but on 2.5.2005, he was transferred from Lucknow to Bhopal Zone without following the due procedure against which when he preferred O.A. 208/2005, the tribunal had quashed the impugned transfer order dt. 2.5.2005. Since then , the respondent have tried to harass him and ultimately

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2nd Respondent had succeeded in transferring him by issuing the present Impugned order 17.10.2006 (Annexure-1), which is in arbitrary manner and on flimsy ground with malicious intention.

3. He further stated that the said order is in gross violation of the transfer policy of the department. He alleged that the respondents shifted him to accommodate one Shyam Prakash who has been shown at Sl. No. 6 in the impugned order and he has not completed his three years mandatory service at previous place of posting. He also further stated that the impugned order is an outcome of arbitrariness and colourable exercise of powers and as such it is liable to be quashed.
4. The respondents have filed their Counter stating that there is no violation of transfer policy in transferring the applicant. and the transfer order has been issued as per the transfer policy which relates to turnover from Executive / sensitive staff to the staff. Alongwith the applicant, 11 others employee have been transferred under impugned transfer order. He further stated as per transfer policy, a person can be transferred any where and at any time in the interest of organization and in the exigency of service notwithstanding the other provisions of the transfer policy. Further the applicant did not attribute any malafides on the part of the respondents for his transfer. Thus, he prayed to dismiss the original application.
5. The applicant has filed Rejoinder Affidavit, reiterating his pleas taken in the Original application.
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 who has been working on the post of Junior Engineer (QS&C) in the office of 3<sup>rd</sup>



respondents i.e. GE at Lucknow has been transferred from GE(E), Lucknow to HQ,CECC, Lucknow under local turnover under impugned transfer order-Annexure-1 dated 17.10.2006. Against which, he made representation to the respondents and the same is pending without any decision. Annexure- 2 is the copy of representation dated Nil. There is a transfer policy for Group -C and D persons of the 2<sup>nd</sup> respondent. Annexure-A-3 is the copy of said policy. In the year 2005 when the applicant was transferred from Lucknow to Bhopal zone vide order dated 2.5.2005, he preferred O.A. 208/2005 on the file of this tribunal and the same was allowed by quashing the impugned transfer order.

9.It is the contention of the applicant that respondents have transferred him under impugned order Annexure-1 which is against the transfer policy and he has been transferred to accommodate their own man and also made allegation that the respondents have started harassing him, when he challenged earlier transfer order dated 2.5.2005, when he was transferred from Lucknow to Bhopal. The respondents have denied such allegation of the applicant and stated that the transfer of the applicant is in accordance with the transfer policy.

10.It is the main contention of the applicant that he has been transferred without completion of 3 years terms in the present post, which is against the transfer guidelines of the department (Annexure 3) and relied on para-43 of it which shows as follows:-

"Para-43:- The JEs (Engineers, Surveyor) and supervisor B/S Gde I and II 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. They will be moved to CE/Cs WE office. While computing the period of tenure in sensitive appointment, entire service profile of individual will be considered irrespective of stay in the present Unit/stations/complexes. In case there is only

one Division/Sub Division in stations/complexes, they will be transferred to another stations/complexes. Accordingly case will be protected to next higher authority well in time"

11. Admittedly, the applicant who has been working a Junior Engineer shifted from Executive/ Sensitive post to staff.

12. It is not the case of the applicant that earlier to this present post of GE (E/M), he was in the post other than executive/ sensitive, either at the time of his earlier transfer order Dt. 2.5.2005 and subsequent to it. Without furnishing such details, it is not open to the applicant to confine to the present posting alone, for claiming benefit under para-43 of the guidelines.

13. When it is not the case of the applicant, that he has not completed 3 years period in executive/ sensitive post, he cannot seek protection of Para-43 of transfer guidelines. Further the guidelines given in Para-43 cannot be confined for completion of 3 years period at a particular station. It is also not proper on the part of the applicant who has been admittedly working in sensitive post, to insist for continuation there, in spite of the opinion of the department for his shifting.

14. Paragraph 64 of the transfer policy of the department (Annexure

3---) says as follows;-

" Notwithstanding any thing in these instructions contained in SOP, a posting in the interest of organization and due to exigency of service will always take precedence."

15. The recital of the impugned transfer order (Annexure-1-) shows that the applicant <sup>along</sup> ~~also~~ with 11 others have been transferred under local turnover 2006, in the interest of state.

16. When such a authority is given to the Respondents department under para-64 of Annexure-3, it is not open to the applicant to insist either for cancellation of impugned transfer order or for continuation

in the same seat of sensitive post.

17. In view of the above observations, it is clear that there are no violation of guidelines of transfer policy (Annexure-3) by the respondents, in effecting the transfer of the applicant under Annexure-1 Dt. 17.10.2006.

18. Coming to the second ground that the respondents started harassing him, when he challenged earlier transfer order dt. 2.5.2005 and to accommodate, Sri Shyam Prakash shown in the impugned orders. If the local turnover posting/transfer of 2006, under impugned order has been effected only the applicant, then one can presume malice on the part of the respondent authority. Along with the applicants, when 11 other employees of the same cadre have been effected, it is not at all possible to attribute any motives with an intent to harass, such transfer has been effected by the respondent.

19. The applicant has not made any specific allegations against the respondents for his transfer and also not stated any of the incidents to attribute that it is an outcome of mala fide exercise by the respondents. If the applicant has been transferred from one place to other place which is a far distance and causes inconvenience either to him or to his family members, one can attribute motives. But in the instant case, the transfer of the applicant is from one office to another within the vicinity of Lucknow city only and such circumstances, causing of any loss or inconvenience also does not arise.

20. The learned counsel for the applicant relied on the following Judgments, in which the claims of respective applicants were allowed on the ground that the transfer was effected against govt. instructions and on bias.

1. (1989 9 ATC, 122 Madras Central Administrative Tribunal H.S.



Ajmani Vs. State of M.P.

2. O.A.No.489/2005 A.K. Munjal Vs. Union of India and Others  
Central Administrative Tribunal, Lucknow Bench Dt. 24<sup>th</sup> August  
2006.

21. But in the instant case, there are no such circumstances to show that the transfer of the applicant has been effected either on the ground of violation of transfer guidelines or on the ground of bias or malice intention, and as such the said citations are not applicable to the facts of this case.

22. In view of the above discussion, the applicant failed to establish that the impugned transfer order Annexure A-1 dated 17.10.2006 has been issued against the transfer policy of the respondents department and also with any malafides on the part of the respondents for interference of this Tribunal and as such the applicant is not entitled for the relief as claimed for quashing the impugned transfer order, transferring him from GE (E), Lucknow to HQ, CECC, Lucknow under local turnover.

23. In the result, the Original application is dismissed. No costs.

Pronounced on this day of 12<sup>th</sup> January 2007.

  
(M. KANTHAIAH)  
MEMBER (J) 12.1.07