

Central Administrative Tribunal Lucknow Bench Lucknow.

O.A. 125/2007.

This, the 30th day of July, 2007

Atul Shyam Trivedi agd about 46 years son of Late Sri Radhey Shyam Trivedi resident of House No. 210, Bania Mohal Sadar Bazar, Lucknow-02.

... Applicant.

By Advocate Shri Amit Chandra.

Versus

1. The Union of India, through Principal Secretary, Ministry of Defense, Government of India, New Delhi.
2. Engineer in Chef, Military Engineer Services, Engineer in Chief Branch, Army HQ, Kashmira House New Delhi 1100
3. Chief Engineer, HQ Central Command, Lucknow.
4. Chief Engineer, Chief Engineer Lucknow Zone, Lucknow.
5. C.W.E. 229, M.G. Road, Lucknow.

Respondents.

By Advocate Shri S.P. Singh.

By Hon'ble Mr. M. Kanthaiah, Member(J)

The applicant has filed this Original application challenging the orders of transfer dated 24.6.2006 (Annexure-1), wherein he has been transferred from Lucknow to CE Bhopal Zone and also consequential orders dated 1.7.2006 (Annexure-2) and order dated 28.2.2007 (Annexure-3) with the following averments.

2. The applicant who has been working as JE(QS&C) at Lucknow has been transferred to CE Bhopal under the orders of posting dated 24.6.2006 (Annexure-1) and he questioned the same on the ground that some of the employees who are longest

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stayee are available at Lucknow but without affecting their transfer, he has been shifted which is against the transfer policy covered under Annexure 11. It is also one of the ground that he got personal problems and his son is studying in class Xth and his wife is suffering from ill health and as such the said transfer will affect him. He contended that Shri Guruprasad who has one of the transferee to Meerut under impugned transfer order and his transfer has been cancelled subsequently. He also questioned the orders of the respondents covered Annexure 2 dated 1st July 2006 wherein, they have issued correction in respect of the name of the applicant and present posting of for his transfer from CWE Lucknow to CWE Bhopal Zone by way of amendment to the earlier order. He also further questioned the order of the respondents covered under Annexure 3 dated 28th February 2006, wherein the respondent authorities informed that no further deferment/consideration of posting of the applicant has acceptable by the competent authority.

3. The respondents have filed detailed counter stating that the posting of the applicant has been ordered in accordance with the posting policy and in the exigencies of services. In respect of some of the seniors of the applicant, the respondents stated that the names of Vimal Kumar and J.P. Verma are included in the list of posting to tenure station during 2006-2007 as per Para 18 of the posting policy. The persons who are due for hard tenure posting have been earmarked and their names have been included in the warning list as per their seniority but not according to station seniority as stated by the applicant. Further such postings will be



made on the basis of availability of vacancies. By way of supplementary counter, they also stated that M.P. Gupta and Vimal Kumar have been posted to Jabalpur vide order dated 29.6.2007 (Annexure SC-A1). The representation of the applicant in respect of his personal problems, they stated that they have considered such request and thus deferred his transfer~~ed~~ for 6 months up to the end of January 2007 under annexure 3. Thus, they denied the claim of the applicant stating that his posting has been ordered in accordance with transfer policy.

4. The applicant has filed rejoinder reiterating his pleas in the original application.

5. Heard both sides.

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

7. The admitted facts of the case are that the applicant who has been working as JE (QS&E) has been transferred from CWE Lucknow to CE Bhopal but there was mistake in the name of applicant and also his present posting at Lucknow which has been corrected by the respondents by way of amendment covered annexure 2 dated 1.7.2006. After receipt of the transfer order and amended order, the applicant made representation to the respondentst on 6.7.2006 (Annexure 7) stating that his son was studying in 10th class and his wife has been suffering with ill health and as such , he sought to delete his name from the posting orders covered under Annexure -1. After considering the said representation, the respondents authorities have differed such transfer for 6 months i.e. up to 31st July 2006 and in which they

have specifically mentioned that the posting of the applicant cannot be cancelled at this stage. Annexure A-8 dated 31st July 2006 is the copy of such deferment order. It is also not in dispute that Mr. M.P. Gupta and Vimal Kumar whom the applicant has referred as senior most in the station which he brought to the notice of the respondents in his representation covered under annexure 7. Subsequently, the respondents have affected the transfer of the said two individuals transferring them to Jabalpur and Annexure SC A1 dated 29.7.2007 clearly reveal the same.

8. In view of the rival contentions of the parties, the following are main points for discussions:

- I. Whether the posting of the applicant is against the transfer policy,
- II. Whether the representation of the applicant has not been properly considered by the department.
- III. Whether the respondents have affected the transfer of the applicant with malafide intention.

Point: I It is the main contention of the applicant that without affecting the transfers of long standing employees, transferring him from Lucknow is against the transfer policy and in support of it, he relied on Para 38 of transfer policy (Annexure RA-1). Further the respondents have not denied such policy of the department. The applicant contended that M.P. Gupta, Vimal Kumar and J.P. Verma are long standing at Lucknow and without touching their transfers, he has been shifted from Lucknow to Bhopal. Though their names are not listed in the impugned transfers proceedings (Annexure-1), subsequent proceedings

shows that M.P. Gupta and Vimal Kumar have been transferred to Jabalpur under the proceedings covered Annexure SC A1 dated 29.6.2007. Coming to the posting of J.P. Verma, another long standing employee, the respondents have stated that his name has been included in the hard tenure posting for the 2007 for JE (QS&C) warning list and thus not affected his transfer. When two of the employees who are having long standing at Lucknow when compared to the applicant have been transferred to Jabalpur and another employee J.P. Verma whose name has been included in the warning list for hard tenure posting, ^{it} ~~is~~ not open to the applicant to say that there is any violation of transfer guidelines in affecting his transfer. In view of such circumstances, the arguments of the applicant that he has been transferred without effecting long standing employees is not at all correct hence the same is not maintainable. Thus this point is decided against the applicant.

Point II After receiving the impugned orders covered under Annexure -1 dated 24.6.2006 and also amended order Annexure 2 dated 1.7.2006, the applicant made representation bringing out the educational problem of his son and also ill health condition of his wife. After considering the same, the respondents have deferred the transfer of the applicant for 6 months and while allowing such deferment, in exhibit A-8 and also in exhibit A-3 they have categorically replied that the request of the applicant for cancellation of the transfer cannot be allowed at this stage. Thereafter, the applicant has not made any further representation to convenience the authorities for cancellation of his transfers from Lucknow. But when the respondents have taken such a

decision on the representation of the applicant and after deferring such transfer for 6 months, the applicant is not justified to blame the respondents that they have not considered his request and acting against his wishes with ulterior motives. Thus, there is no force in the arguments of the applicant either for cancellation of his transfers or passing orders under Annexure -3 basing on the representation of the applicant.

Point III: The applicant has not made any allegations against the respondents that they have affected his transfer with any malafide intention or to accommodate any others intentionally. But it is the contention of the applicant that Sri Guru Prasad, one of the transferee along with him under impugned transfer orders (Annexure-1) has been cancelled subsequently and thus, he is also justified to seek such cancellation. Cancellation of transfer of one of the transferee under the impugned order or considering any request of such employee is entirely different and on such equation, the applicant is not justified to challenge the impugned order as his representation was already considered and taken decision by the competent authority. Thus, canceling or confirming the transfer of one of the employee in the list, is the discretion of the authority. At the same time, if we notice the contention of the applicant in respect of cancellation of transfer orders of Sri Guru Prasad, the respondents have not given any reply to such specific averment which itself creates doubt in the mind of the applicant. Whether such cancellation was made either on the representation of Sri Guru Prasad or by any other reason is only within the knowledge of the respondents. Though the cancellation

of transfer of Guru Prasad alone is not a sufficient ground to allow the claim of the applicant, ⁱⁿ the interest of justice, a direction is given to the respondents to reconsider the representation of the applicant once again taking note of his family problems and this is only an observation from this Tribunal since the respondents have cancelled the transfer of one of the employee in the impugned transfer order.

Point IV: Point 1 to 3 are decided against the applicants.

9. Applicant counsel relied on the following decisions in O.A. 489/2005 dated 24th August 2006, O.A. 567/2006 dated 22nd May 2007, O.A. 350/2005 dated 6th September, 2006 and O.A. 294/2006 dated 2nd August 2006 on the file of this Tribunal which are not applicable to the facts of this case on hand as the Tribunal opined that the transfer of the applicant in the above referred judgments are against transfer policy whereas, no such circumstances are prevailing in the instant case.

10. Thus there are no merits in the claim of the applicant to quash the order of transfer dated 24.6.2006 (Annexure 1) transferring him from Lucknow to Bhopal Zone and also above orders of the respondents covered Annexure-2 and 3 and thus O.A. is liable for dismissal.

11. In the result, the claim of the applicant to quash the impugned transfer order dated 24.6.2006 (Annexure 1) transferring him from CE Lucknow to CE Bhopal Zone is dismissed with an observation

that the respondents are directed to reconsider the request of the applicant for cancellation of his transfer in view of his family problems. No costs.



(M. Kanthaiah)

Member (J)

30.7.07

v.