

**Central Administrative Tribunal
Lucknow Bench Lucknow**

Original Application No.298/2007
This, the 26th day of September 2007.

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

R.C. Gupta, aged about 49 years, son of Sri L.B. Gupta, resident of IV/32, Kendranchal Colony , Sector 'E' Aliganj Lucknow, presently working as Junior Engineer in the office of Executive Engineer, Middle Ganga Division-I, Jal Tarang Bhawan, Aliganj, Lucknow-24.

Applicant.

By Advocate Shri R.B. Lal.

Versus

1. Union of India through the Secretary Central Water Commission, Ministry of Water Resources, New Delhi.
2. Chief Engineer, C.W.C., Upper Ganga Basin Organisation, Lucknow.
3. Superintending Engineer, Central Water Commission, Co-ordination, Officer of Chief Engineer, Upper Ganga Basin Organisation, Lucknow.
4. Superintending Engineer C.M.C. Hydrological Observation Circle, Varanasi.
5. Executive Engineer, Madhya Ganga Division 01, Jal Tarang Bhawan, Aliganj, Lucknow.

Respondents.

By Advocate Shri S.P. Singh.

ORDER

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

The applicant has filed this Original Application, to quash the impugned transfer order Annexure-1 Dt. 4.7.2007, transferring him from the office of Executive Engineer, Middle Ganga Division-1, Lucknow to the officer of Monitoring and appraisal Directorate,



Lucknow, on the grounds that he has not completed the tenure of three years and also not considered his representation inspite of recommendations by his immediate superior officers.

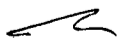
2. The respondents have filed Counter Affidavit denying the claim of the applicant that his transfer has been affected by the competent authority for the smooth functioning and also welfare of the administration. Further, he has been relied on 23.07.2007 (Annexure CA-1) and his representation was disposed of by the competent authority on 23.07.2007 stating that his transfer has been affected in the interest of department (Annexure CA-2). In respect of allegations made against the Chief Engineer, they stated that the said officer has not been impleaded by name or with specific allegations against him and as such, OA is liable for dismissal on the ground of non-joinder of necessary party.

3. The applicant filed Rejoinder Affidavit denying the pleas taken by the respondents, and also with additional grounds that his transfer is against the transfer policy and also without consultation of Respondent No.4 and 5, who are controlling field officers, with a bias and malafide intention when the retirement of Chief Engineer was on 31.07.2007.

4. Heard both sides.

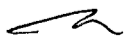
5. The point for consideration is whether the applicant is entitled for the relief as prayed for.

6. The admitted facts of the case are that the applicant, Junior Engineer, has been working in the officer of Executive Engineer (Respondent No.5) since 31.07.2007, after his transfer from Shillong. Annexure-1 Dt. 04.07.2007 is the impugned transfer order, under



which he has been transferred within one year of his earlier transfer. The applicant has been transferred from the field i.e. office of Executive Engineer to the administrative office at Lucknow itself. Annexure -SA-1 is the transfer policy and guidelines of the respondent department. Immediately, after the transfer, the applicant made representation for reconsideration and the same was recommended by controlling field officers, who forwarded the said representation for transfer of the applicant for cancellation. Annexure-2 is the copy of representation Dt. 07.07.2007 and Annexure-3 Dated 07.07.2007 is the recommendation of Superintendent Engineer. But after considering the said representation, the request for retention was rejected and Annexure-CA-2 Dated 23.07.2007 is the copy of said order. It is the case of the respondents that the applicant has been relieved w.e.f 23.07.2007 by intimation under Annexure-CR-1 Dated 17.07.2007. The applicant has filed this Original application on 19.07.2007. It is also not in dispute that the respondent No.2, who issued transfer order is going to be retired on 31.07.2007.

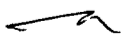
7. The applicant has challenged the impugned transfer order (Annexure-1) dated 04.07.2007 on the ground that it is against Clause -9, 12 and 17 of the transfer policy covered under Annexure-SCA-1. It is the case of the applicant that the transfers are to be ordered in the month of March and April and compliance of these orders served by May and June not to disturb the education of the children of the employees and thus, relied on Clause-9 of the transfer policy stating that his transfer has been effected in the month of July, 2007, which is against the transfer policy. No doubt, Clause -9 of transfer policy shows as far as possible transfers will be effected before May and June



not to cause any disruption to the education of the children of the employees. But in the instant case, the applicant has been transferred from the officer of Executive Engineer to the Administrative office of the Lucknow city only and as such causing of any educational disruption to his children and also any violation of transfer policy on that ground does not arise. Thus, the arguments of the applicant counsel on this ground is not sustainable.

8. The applicant also taken the plea that he has been working in the field i.e. in respect of procurement, handing in of stores, award of contracts and for such nature of work as per Clause-12 of the transfer policy, he should be retain and there for 3 years whereas, he has not even completed one year and thus agued that his transfer is against the transfer policy but Clause-12 of transfer policy says that employees who are working in the nature of work, involving procurement / handling of stores, award of contracts, etc. should not ordinarily be retained on that work for a period of more than 3 years. It also says that there shall also be periodical inter-sectional transfers (including technical directorates) so that normally no person remain in the same section. Directorate for more than 5 years. But the said clause does not give any of the right to the employee to claim that he should be retained there for 3 years as claimed by the applicant. When there is no minimum period fixed for such transfer, it is not open to the applicant to say that his transfer from that post within one year is against the Clause-12 of the transfer policy.

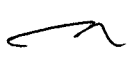
9. The applicant also contended that there is no prior approval of the members of commission controlling the particular cadre, for his transfer by the Chief Engineer (R-2) and as such the said transfer is



against the Clause-17 of transfer policy. The applicant also contended that Respondent No. 4 and 5 are the controlling field officers and as such their consultation has been required before transfer of the applicant and in the instant case, no such consultation was there with Respondent No. 4 and 5, which is a bias and malafide intention by the Respondent No.2, who was going to retire within few days of this impugned transfer order i.e. 31.7.2007.

10. Admittedly, the applicant has been working as Junior Engineer and he has been working under the control of Respondent No.4 and 5. There is no reference that the Respondent No.2 has consulted with the controlling field officers before affecting the transfer of the applicant and nothing is mentioned in Annexure-1 in respect of such prior approval as required under Clause-17 of transfer policy. The applicant also filed the recommendation letter of Superintending Engineer (Respondent-3) recommending for cancellation of the transfer of the applicant covered under (Annexure-3) dated 07.07.2007, appreciating the work of the applicant and also stating that his transfer is not at all desirable and further because of such transfer, the speed of works undertaken by the Govt. will be go down and also suggested to accommodate some other person in that post. From such recommendations of Respondent No.3 covered under Annexure-3 clearly shows that there was no occasion to effect the transfer of the applicant and further such transfer will also effect the smooth functioning of the particular field handed by the applicant.

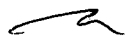
11. It also clearly establish that the Respondent No.2 did not consult the Respondent No. 3 and 4 before effecting the transfer of the applicant and also not taken any of their opinion , which also



shows that the decision taken by the Respondent No.2 is unilateral and without consulting the concerned controlling field officers, which is not at all desirable for smooth functioning of the office and further, it is nothing but against the Clause-17 of transfer policy.

12. It is not the case of the respondents that there was any complaint against the applicant in his functioning and further they also appreciated his working in the field. It is also the contention of the applicant that he has no knowledge of computer operation and typing and thus, stated that he has no knowledge of work to be undertaken by the new posting. When the applicant with short term of 10 months, while functioning with appreciation from his immediate field officers and when he has no knowledge of working in the new posting of Administrative office, taking such decision by Respondent No.2 transferring the applicant from the offer of Executive Engineer, Middle Ganga Division-1, Lucknow to the officer of Monitoring and appraisal Directorate, Lucknow is not at all justified and further there are no satisfactory reasons for affecting such transfer of the applicant. Though, the transfer is the incident of service and further the applicant has been accommodated within the same city of Lucknow, without giving any proper and justified reasons and also affecting such transfer of the applicant in hasty manner against the transfer policy clearly shows that the Respondent No.2 is not fair in issuing the transfer order of the applicant and in such circumstances such order is liable to be quashed.

13. The learned counsel for the respondents argued that the applicant has not taken any grounds in the Original application that the impugned transfer order is against the transfer policy and as such



the subsequent developments on such grounds by the applicant is not at all maintainable. No doubt, the applicant has not pleaded in the OA that his transfer has been effected against the transfer policy but by way of Rejoinder Affidavit, he has taken such specific pleas for which there is no denial from the respondents. Though such plea has not been taken in the OA but when taken in the Rejoinder Affidavit, it is the duty of the respondents to answer for such specific plea. But without giving any such reply for Rejoinder Affidavit pleas, it is not open to the respondents to raise objections that such grounds have not taken in the OA and as such the said argument is not at all tenable.

14. In view of the above discussions, it is clear that the transfer of the applicant covered under Annexure-1 Dated 04.07.2007 is against the transfer policy and the act of the Respondent No.2 effecting such orders in a hasty manner without consulting Controlling officers also shows that there was no fair on his part for effecting such transfers few days before his retirement, without any administrative exigency or public interest. Hence, the OA is allowed quashing the impugned transfer order Annexure-1 dated 04.07.2007, with a direction to the respondents, to continue the applicant, on the same post in the office of Executive Engineer, Middle Ganga Division-1, Lucknow. No costs.

(M. KANTHAIAH)
MEMBER (J)

26.09.2007

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