

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH**

**Original Application No.415/2007
This the 31st day of July 2008**

HON'BLE MR. M. KANTHAIAH, MEMBER JUDICIAL.

Smt. Vandana Srivastava, aged about 41 years, wife of Shri Sharad Kumar, resident of 60/138 (Kha), Jai Narain Lane, Hussainganj, Lucknow, presently posted as Data Entry Operator Grade 'A', E.D.P. Center, Pay Accounts Office (Other Ranks), Army Medical Corps, Lucknow-226002.

...Applicant.

By Advocate: Shri R.C. Singh.

Versus.

1. Union of India, through Secretary, Ministry of Defence Accounts, South Block, New Delhi-110001.
2. Principal Controller of Defence Accounts, Cariappa Road, Lucknow Cantt., Lucknow-226002.
3. Senior Accounts Officer (Administration), Office of Principal Controller of Defence Accounts, Cariappa Road, Lucknow Cantt. Lucknow-226002.
4. Manager, E.D.P. Center, Pay Accounts Office (Other Ranks), Army Medical Corps, Lucknow Cantt., Lucknow-226002.

... Respondents.

By Advocate: Shri S.K. Singh.

**Connected With
Original Application No.416/2007**

Smt. Neera Srivastava, aged about 45 years, wife of Shri Prabhat Kumar Srivastava, resident of D-1/18, Sector H, Jankipuram, Lucknow, presently posted as Data Entry Operator Grade 'C' E.D.P. Center, Pay Accounts Office (Other Ranks), Army Medical Corps, Lucknow-226002.

...Applicant.

By Advocate: Shri R.C. Singh.

Versus.

1. Union of India, through Secretary, Ministry of Defence Accounts, South Block, New Delhi-110001.
2. Principal Controller of Defence Accounts, Cariappa Road, Lucknow Cantt., Lucknow-226002.
3. Senior Accounts Officer (Administration), Office of Principal Controller of Defence Accounts, Cariappa Road, Lucknow Cantt. Lucknow-226002.
4. Manager, E.D.P. Center, Pay Accounts Office (Other Ranks), Army Medical Corps, Lucknow Cantt., Lucknow-226002.

... Respondents.

By Advocate: Shri Sunil Sharma.

ORDER

BY MR. M. KANTHAIAH, MEMBER JUDICIAL.

The applicants have filed separate OAs in respect of their transfers and also rejection order issued by Respondent No.2 by filing separate OAs on one and the same grounds and as such, these two matters have been heard jointly and thus common orders have been passed.

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2. The applicant, who was initially appointed as Junior Key Punch Operator joined her service in the office of Pay and Accounts Office (Other Ranks), Army Medical Corps, Lucknow on 04.06.1990. Subsequently, the post of Junior Key Punch Operator was designated as Data Entry Operator (DEO), Group-A in the year 1991. In the month of April, 2002, the applicant was transferred from Pay and Accounts Office (Other Ranks), Army Medical Corps, Lucknow to Pay Accounts Office (Other Ranks), SIKH Light Infantry Regimental Center,

Fatehgarh, where she joined on 01.04.2002 and worked there till the last week of June, and she was again transferred to Pay and Accounts Office (Other Ranks) Army Medical Corps, Lucknow and since 29.06.2004, she has been working at Lucknow. In the month of August, 2007, she came to know about her transfer vide transfer order Dt. 01.08.2007 to Pay and Account Office, Rajput Regimental Center, Fatehgarh and Respondent No.2 also issued transfer order Dt., 21.02.2007 (Annexure A-1), informed her that she would be relieved on 28.09.2007 (AN). Immediately, she made a representation Dt. 27.08.2007 (Annexure-6) requesting for cancellation of her transfer but the same was rejected vide order Dt. 11.09.2007, which the Respondent No.4 informed to her. The Respondent No.2 also granted interview on 25.09.2007 to the applicant in respect of her representation regarding cancellation of transfer but he did not consider the request of the applicant and thereafter, she has filed this OA on 27.09.2007.

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3. The applicant was initially appointed as Junior Key Punch Operator and she joined her services in the Officer of Principal Controller of Defence Accounts (Pension) , Allahabad in on 21.07.1987 and in the month of July, 1999 she was transferred to Pay & Accounts Officer (Other Rank) , Army Medical Corps, Lucknow and up on which, she joined at Lucknow on 01.08.1989. The post of Junior Key Punch Operator was designated as Data Entry Operator (DEO) Group-A in the year 1991. She was promoted as Data Entry Operator Group-B in the year 1995. The applicant was transferred from Pay & Account Office (Other Ranks), Army Medial Corps, Lucknow to Pay and Account Office

(Other Ranks), Rajput Regimental Center, Fatehgarh and she joined there on 01.04.2002 and worked till June 2004 till she was transferred to Pay & Accounts Office (Other Ranks), Army Medical Corps, Lucknow, where she joined on 26.09.2004 and since then she has been working at Lucknow. She was also promoted as Data Entry Operator Group-C on 01.04.2004, while working at Pay & Account Office (Other Ranks) Rajput Regimental Center, Fatehgarh. In the month of August, 2007, the Respondent No.2 intimated her in respect of her transfer order Dt. 01.08.2007 to Pay & Account Officer (Other Ranks), Rajput Regimental Center, Fatehgarh, upon which, she made a representation on 21.08.2007. She also received order Dt. 21.08.2007, in respect of her transfer order Dt. 01.08.2008 informing that she would be relieved on 28.09.2007. Thereafter, she also made a representation Dt. 24.08.2007 requesting for cancellation of transfer order but the same was rejected and thereafter, the Respondent No.2 also granted interview to the applicant for making her representation but he did not consider it for cancellation and thereafter, the applicant has filed this OA on 27.09.2007.

4. Both these applicants have filed OAs challenging their transfer orders Dt. 01.08.2007 (Annexure-A-1) and also rejection of their respective representations (Annexure-A-2) and continue them to serve in their respective posts in Pay & Accounts (Other Ranks) Army Medical Corps, Lucknow. But the respondents have filed Counter Affidavits and Supplementary C.A. denying the claim of the applicants.

5. The applicants have filed these OAs mainly on the following grounds:-

I). The impugned transfer order Dt. 01.08.2007 has neither been passed by the competent authority nor with his approval and as such the same is without jurisdiction, void-ab-initio and nonest.

II). The respondents have rejected the representations of the applicants in a mechanical manner, without taking note of their respective family problems.

III). The respondents have not framed any transfer policy for transfer of the Data Entry Operators Group-A and as such, the impugned transfer order thus deserves for quashing.

IV). Date Entry Operators working in other places of Faizabad, Varanasi and Bareilly have not been transferred to hard station and transferring the applicants again to hard station is illegal unjust, unfair and discriminatory.

V). The impugned transfer orders have neither been passed in Public interest nor in administrative exigency and as such the same is wholly illegal and bad in the eyes of Law.

Point No.I:-

6. It is the case of the applicants that the competent authority to transfer them from one Pay Accounts Officer to another such office is his appointing authority i.e. Deputy Controller of Defence Accounts (Other Ranks) North, Meerut Cantt. and the impugned order has neither been passed by the competent authority nor with his approval and as such the same is without jurisdiction, void-ab-initio and nonest. But the respondents have denied the same and stated that the Controller of Defence Accounts/ Principal Controller of Defence Accounts is the appointing for the applicants and as such he is the competent authority for issuing transfers of the applicants. They

further stated that the transfer of these applicants have been done by the competent authority, who is Principal Controller of Defence Accounts. Admittedly, both parties have not filed the copy of transfer order Dt. 01.08.2007.

7. When, it is the case of the applicant that only Deputy/ Joint Controller of Defence Accounts are their appointing authority but not the Controller of Defence Accounts, the duty and burden lies on the applicants to substantiate the same. But the applicants without filing any documents in support of their stand, throwing their responsibility on the respondents is not at all maintainable. In the absence of any documents like appointment order, earlier transfer orders the applicants are not justified in questioning the transfer orders issued by Principal Controller of Defence Accounts, hence, this point is decided against the applicants.

Point No.II:-

8. It is the case of the applicants that the respondents have rejected their representations in respect of cancellation of their transfers from Lucknow to Fatehgarh (Hard Station) without assigning any reasons. It is also an admitted case of the parties that even after rejection, the Respondent No.2 gave an opportunity to the applicants to make oral represent action of their respective grievances and after hearing such grievances, he did not agree for cancellation of such transfers. When the Respondent No.2 did not satisfy with the representations of the respective applicants, he rejected the same and for which non-furnishing of reasons for rejections is not at all justified and the said grounds is not at all maintainable. Further, even after such rejection, the Respondent No.2 heard the grievances of the

applicants orally and in such circumstances finding fault on the part of the Respondent No.2 that rejection orders are not reasoned is not at all justified ground, for allowing the claim of the applicants hence, this point is decided against them.

Point No. II & IV :-

9. These points are interlinked with each other and as such discussed in common. The applicants have taken a ground that the respondents have not framed any policy for transfer of the Data Entry Operators Grade 'A' and the impugned transfer orders are totally based on pick and choose policy. The respondents have denied the same stating that there is a transparent transfer policy as contained in Para 368 to 380 of O.M.-Part -I, Vol-1 (Annexure-CA-1) and the transfers of the applicants had been done strictly on seniority basis and also in the light of such provisions that the periodical transfers are necessary and will be effected under certain circumstances i.e. to repatriate individuals serving at tenure and difficult stations and to give all members a chance to serve at popular stations of their choice as far as possible. They further stated that the periods for rotation of staff in hardship stations need not be fixed or inelastic. On perusal of Annexure-CA-1, it is clear that policy is there for transfer of the cadre of the applicants framed by the department.

10. The applicants states that they have not been dealt with in a just and fairness and not in accordance with such transfer policy and contrary to it they have again been transferred to hard station where they have already served for about 2 years. Under Para-369 of the policy, the Board Principles, while effecting transfers of staff have been given to the controllers in respect of classification of tenure/

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hardship stations and also popular stations and also fixing three years period should be appropriate in most cases, giving liberty to the controllers to reduce the period suitably in exceptional cases, where such reduction is warranted and further the period of rotation of staff in hardship stations need not be fixed or inelastic. Though, it provides authority to the controllers for formulating their detailed transfer policies to suit their own particular circumstances, no such detailed policies have been framed by the controller.

11. Admittedly, the applicants have completed more than 3 years at Lucknow, which is termed to be popular station and as such they have completed their tenure. The main grievance of the applicants is that they have already worked in hard station and again posting them to such hard station is discriminatory and malafide. But in the transfer policy, when there is no such restriction for working only for one tenure, it is not open to the applicants to find fault on such ground.

12. It is also the case of the applicants that there are several Date Entry Operators working in various other Pay Accounts Offices (Other Ranks) at Faizabad, Varanasi and Bareilly, who have not been transferred to hard station, but the applicants, who have already completed their tenure at hard station are again being transferred to hard station, is illegal, unjust and discriminatory.

13. The respondents case is that Faizabad and Varanasi station are not tenure stations and having the authorisation of 4 to 5 DEOS, who have been posted from Lucknow station and therefore, it is not possible to transfer again these DEOS to Fatehgarh from Faizabad/Varanasi.

14. It is also the case of the respondents that Respondent No.2 office is responsible for making payment of pay and allowances of other ranks of Army personnel through IRLA and in order to speed up and make correct payment and allowances of Jawans, the data processing work, which was being handled at Lucknow was decentralized and is being done at present by four DDP Centers and one EDP Center located at Varanasi, Faizabad, Fatehgarh and Lucknow respectively. Consequently the Data Entry Operators, who were recruited and posted in EDP were transferred to these stations strictly on seniority basis. They further say that Fatehgarh being difficult station, its tenure for Data Entry Operators has been fixed for two years only by the office after completion of which the Data Entry Operators are posted back to EDI Center, Lucknow and accordingly the transfer of the applicants have been made strictly in order of seniority basis. It is also their case that Data Entry Operators posted at Bareilly are not under jurisdiction of Principal Controller of Defence Accounts.

15. The respondents have not disputed in respect of the grievances of the applicants that several Data Entry Operators working at Faizabad and Varanasi have not been transferred to Fatehgarh, which is hard station, where they have been again posted after completion of one tenure. Further from the pleadings of the respondents, it is clear that the DEOS posted at Fatehgarh are being again posted back to EDI Center, Lucknow, at their request after completion of two years. Thus, it is clear that the respondents are giving impression that they are effecting the transfers of Data Entry Operators from Lucknow to hard stations Fatehgarh and vice-verse for accommodating the employees , who makes request for Lucknow, after working two years



in hard station Fatehgarh. At the same time, it is not the case of the respondents that Data Entry Operators working at Faizabad and Varanasi, have not been transferred to Lucknow and further the transfers of Data Entry Operators working at Lucknow and hard station Fatehgarh are restricted, between two centers only. Without effecting the transfers of Data Entry Operators working at Faizabad and Varanasi to hard station Fatehgarh at any time, again transferring the applicants to such hard station after completion of one tenure naturally causes prejudice to the applicants and it also amounts to discrimination, which is not desirable for smooth functioning of the administration.

16. No doubt, the respondents are justified in effecting such transfers of its officers to hard stations again and again if there are any complaints or any latches on the part of applicants but no such circumstances are placed by the respondents.

17. It is the case of the respondents that the applicants have been transferred to Fatehgarh (Hard Station) on administrative ground, since they are the longest stayee at Lucknow and basing such seniority, they have been transferred to hard station to replace Sri Shambhu Nath and H.R. Gautam, who have completed more than 3 years and made request for Lucknow. It is also the categorical case of the respondents that only officers from Lucknow are being transferred to Fatehgarh (Hard station). Admittedly, some of the officers, who never worked in Fatehgarh (hard station), are available and without touching them transferring these applicants again to work in such hard stations is not at all convincing and it also amounts to unfair and unjust.



18 As regards the transfers of the other two stations i.e. Fatehgarh and Varanasi, it is the case of the respondents that there is no fixed tenure and admittedly, the officers have been working since more than 4 years and most of them never worked in hard station.

19. Para-369 of the transfer policy of the department (Annexure-CA-1) also authorized the controllers to formulate their detailed transfer policy to suit their own particular circumstances. But the Respondent No. 2, has not formulated any guidelines/ Transfer Policy to suit their particular circumstances.

20. But without framing any guidelines, the Respondent No.2, who is exercising the discriminatory powers in effecting the transfers of his officers on his own norms stating that there is no fixed tenure for transfers of the officers of Faizabad and Varanasi are concerned and also the transfers of officers to Fatehgarh (hard station) has to be made only from Lucknow and not from other two stations and also taking only the seniority basis amongst the officers serving at Lucknow is nothing but discriminatory and also giving scope for attribution of malafides.

21. The said norms of the Respondent No.2 are continued further, some of the officers have to work in Fatehgarh (hard station) any number of terms and at the same time giving opportunity to some of the officers facilitating them not to work in hard station at any time, which is unjust, unfair and also discriminatory.

22. In view of the above circumstances without framing any transfer policy, the act of the Respondent No.2, in transferring the applicants again to Fatehgarh (hard station) after completion of one tenure,

leaving other Data Entry Operators, who have not been transferred to such hard station at any time is discriminatory.

23. In view of the above circumstances, the act of Respondent No.2, who is authorized to formulate their own norms transferring the applicants again to Fatehgarh (Hard Station) after completion of one tenure leaving others Data Entry Operators, who have not been transferred to such hard station at any time is discriminatory that too without any transfer Policy/Guidelines and as such the act of Respondent No.2, in transferring the applicants is liable to be set-aside. Thus, these two points have been decided in favour of the applicants.

**Point No. V:-**

24. It is the case of the respondents that the applicants have been transferred on administrative exigency and in public interest on the ground that these applicants are the longest stayee at Lucknow whereas, the Shambhu Nath and H.R. Gautam, who have been working at Fatehgarh (Hard Station) have completed more than two years and they made request for Lucknow and as such, it was necessitated for the authorities for transferring of these applicants on administrative grounds. Admittedly, some of the Data Entry Operators who never worked in Fatehgarh (Hard Station) though, they have completed 4 or 5 years in the present station and without effecting the transfers of such persons, transferring the applicants again to work in Hard station after completion of one tenure is not at all justified to say that these applicants have been transferred on the ground of administrative exigency or in Public interest. Thus, there are no merits

in the stand taken by the respondents on such grounds of administrative exigency or in Public interest.

25. In view of the above discussion, it is clear that applicants have made out the case stating that the Respondent No.2 have effected their transfers without any transfer policy/ Guidelines transferring again to Fatehgarh (Hard station) even after completion of one tenure without touching some of Data Entry Operators, who never worked in such hard station is unjust, unfair and discriminatory and as such, the transfer orders covered under Annexure-A-1 are liable to be quashed.

In the result, both these OAs are allowed by quashing impugned order covered under Annexure-A-1 in their respective OAs. No costs.

(M. KANTHAIAH)  
MEMBER (J)

31.09.2008

/AMIT/