

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 269 of 2009

Reserved on 3.4.2012

Date of Decision 13th April, 2012

Hon'ble Mr. S.P. Singh, Member-A

R.R. Sharma, Aged about 57 years, S/o late Sri D.D. Sharma, R/o MIG 1/208, Sector C, Priyadarshini Colony, Sitapur Road, Lucknow

.....Applicant

By Advocate : Sri R.C. Singh

Versus.

1. Union of India through the Secretary, Ministry of Agriculture, Department of Agriculture, & Co-operation, New Delhi.
2. The Secretary, Government of India, Ministry of Agriculture, Department of Agriculture & Cooperation, Krishi Bhawan, New Delhi.
3. Plant Protection Adviser, Directorate of Plant Protection Officer, Quarantine & Storage, NH-4, Faridabad.
4. Plant Protection Officer (E), Central Integrated Pest Management Centre, Sector E, Jankipuram, Lucknow.
5. Dr. P.S. Chandurkar, Plant Protection Adviser, Directorate of Plant Protection Quarantine & Storage, NH-4, Faridabad.
6. Dr. S.K. Verma, Plant Protection Officer/ Incharge Central Integrated Pest Management Centre, Sector E, Jankipuram, Lucknow.
7. Sri Krishna Kumar, Assistant Plant Protection Officer, Central Integrated Pest Management Centre, Sector E, Jankipuram, Lucknow.

.....Respondents.

By Advocate :Sri K.K. Shukla.

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O R D E R

This O.A. has been instituted for the following main relief(s):

- "(i) *The Hon'ble Tribunal may kindly be pleased to quash/set-aside the impugned order dated 27.5.2009, contained as Annexure no. A-1 and the relieving order dated 1.6.2009 contained in Annexure no.A-2 to the O.A.*
- (ii) *the Hon'ble Tribunal may kindly be pleased to direct the respondents to allow the applicant to remain at Lucknow as per the tenure provided in transfer policy and pay him salary as and when the same falls due in consequence of quashing/setting aside of the impugned orders."*

2. The applicant was working as Assistant Plant Protection Officer (non-gazetted Group 'B' post) at the time of institution of the O.A. In pursuance of transfer policy for the Directorate of Plant Protection Quarantine & Storage (PPQS), the applicant was transferred, alongwith 12 officers, vide office order no. 59 of 2009 dated 27.5.2009 (Annexure-1 to the O.A.) By this transfer order, he was transferred from CIPMC, Lucknow to LWO, Jaisalmer in public interest with immediate effect. Since the transfer had been made in public interest, the applicant was entitled for TA/ joining time as per rules.

3. Consequently, the applicant was relieved w.e.f. 1.6.2009 (A.N.) from CIPMC, Lucknow vide office order of Central Integrated Pest Management Centre, Lucknow (CIPMC) dated 1.6.2009 (Annexure-2 to the O.A.).

4. This O.A. was, therefore, filed by the applicant as he felt aggrieved with office order dated 27.5.2009

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(Annexure -1 to the OA) and office order dated 1.6.2009 (Annexure -2 to the O.A)

5. The applicant made several representations to respondent no.2 requesting him to cancel the impugned order of transfer, but no heed was paid to the representations annexed as Annexure nos. 6, 7, & 8 to the O.A.

6. M.P. no. 1394 of 2009 was filed by the applicant for amendment challenging the order dated 30.6.2009 rejecting representation of the applicant dated 9.6.2009. By the rejection letter, the respondent no.3 informed the applicant that his transfer from Lucknow to Jaiselmer has been ordered on administrative grounds (Annexure -12 to the O.A.).

7. M.P. No. 1993/2009 was filed by the applicant with prayer to stay the transfer order. However, this Tribunal passed the following order on 17.9.2009.

"M.P. no. 1993/2009 has been filed by the applicant with a prayer to stay the transfer order and allow the applicant to resume duty at Lucknow. We have gone through the records. Earlier an interim order dated 3.7.2009 to the effect that no coercive action will be taken against the applicant till disposal of the O.A, has already been passed. Therefore, we do not find any ground to stay the impugned transfer order and direct the applicant to resume duty at Lucknow. However, it is made clear that in case the applicant wants to go and join at the new place of posting, he may do so. Joining at new place of posting will be subject to outcome of this O.A."

8. It has been pleaded by the applicant that another officer namely I.P.S. Tomar, who was transferred alongwith the applicant, but later-on the order of Sri Tomar was cancelled on personal grounds (Annexure-5 to the O.A.). He further pleaded that his transfer is punitive as the same has been affected when the

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applicant had made several complaints against respondent nos. 3 & 4 regarding malpractice committed by them to the benefit themselves (Annexure-9 & 10 to the O.A.). He further pleads that there is no uniform policy in the department as the officials are transferred and adjusted by even transferring the post from other offices and regions which would be evident from perusal of Annexure -13 to the O.A.

9. On the other hand, the official respondents have contested the claim of the applicant by filing a detailed Counter Reply refuting the averments made by the applicant by stating that it is a routine transfer order issued in public interest transferring 12 officers including the applicant. The applicant happens to be one of the transferred official mentioned at sl. No. 4 in the order dated 27.5.2009. It is said that the aforesaid transfer order has been passed by the competent authority i.e. Plant Protection Adviser to Government of India in pursuance of transfer policy for the Directorate of PPQ&S conveyed by DAC vide letter no. 20-38/99 PP-II dated 11th April, 2002 and 31st March 2003. Since all these transfers have been made in public interest and as such the incumbents were entitled to TA/joining time as per rules. Further, transfer is an incidence of service to which the applicant belongs and no statutory condition of service is, therefore, violated by this transfer order.

10. The respondents further plead that the transfer order of the applicant was made on administrative grounds in public interest. The applicant has been

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transferred to Field Station on investigation on Locust, Jaiselmer by the aforesaid transfer order dated 27.5.2009. Accordingly, the applicant was relieved from his duties by the Officer Incharge of CIPMC, Lucknow on 1.6.2009. Hence, the present O.A. is not maintainable before this Tribunal on the ground of jurisdiction alone.

11. It is further pleaded by the respondents that the allegations levelled by the applicant in the O.A. are baseless, misconceived and on the basis of presumption and assumption. As per the settled law of Apex Court strict proof of malafide burden lies upon the applicant. His representation dated 9.6.2009 was earlier decided by the respondents vide their letter dated 30.6.2009; a copy of which has been enclosed as Annexure no. CA-3 to the Counter Reply filed by the respondents. From the face of the record, it will be quite apparent that not only the applicant, but other 11 officers were also transferred from one place to another in exigencies of service and also in public interest.

12. It is also pleaded by the respondents that in pursuance of transfer order dated 27.5.2009 and relieving order dated 1.6.2009, the applicant joined his services on 20.10.2009 (F.N.) at the transferred place i.e. Jaiselmer, which would be evident from the perusal of Annexure CA-6 to the Counter Reply filed by the respondents.

13. M.P. No. 2008 of 2011 was filed by the respondents on 19.8.2011 as Supplementary Counter

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Reply. It says that on 6.7.2011, the competent authority disposed of representations of the applicant dated 31.5.2009, 19.6.2009 and 23.6.2003 rejecting once again applicant's request for transfer back to Lucknow on the ground that a disciplinary proceeding relating to some irregularities during his posting at CIPMC, Lucknow is still under progress (Annexure-1 to Suppl. Counter Reply). The applicant was however, given option for any two stations for being considered for posting in his home State.

14. The respondents state that allegations made by the applicant regarding malice against respondent nos. 5 to 7 are without any strict proof and is wholly misconceived. Infact the respondent nos. 5 to 7 have only discharged their official duties and functions as per statutory rules and regulations. Thus, there is no question of malice or prejudice in capacity of official functions of the official respondents.

15. Further, the order relating to Sri I.P.S. Tomar was cancelled on his personal grounds as his wife was suffering from Breast Cancer and, therefore, he was allowed to remain posted at Faridabad. There is no such case in the case of the applicant, who is in habit of jumping to conclusion on surmises without ascertaining the facts of the case.

16. The learned counsel for the applicant has placed reliance on the following case laws:

- (i) Dr. Avneesh Kumar & Others Vs. Director, Indian Veterinary Research Institute, reported in 1999 (17) LCD 419
- (ii) N.K. Suparna Vs. Union of India & Others reported in 1991 (15) ATC 1

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The case of **Dr. Avneesh Kumar** (supra) deals with the requirement of an effective appointment order to be communicated to the person concerned. Learned counsel for the applicant has relied upon para nos. 29 to 34. The validity of the order passed by the statutory authority discharging statutory function be judged by the reasons mentioned in the order and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. The facts and circumstances in present O.A. are distinguishable. In the present O.A, specific rulings of the Apex Court relied upon by the respondents in cases of transfer of Government servant are very clear and are more appropriately applicable,

In the case of **N.K. Suparna** (supra), the Tribunal had summoned the file maintained in the office of respondent no.2 i.e. Deputy Director General (Finance), New Delhi relating to impugned transfer of the applicant and connected file of the office of respondent no.3. On the date of hearing the file was produced before the Tribunal for scrutiny. On going through the said file, the Tribunal concluded that the impugned order of transfer is not only malafide, but is also a penal one. In the present O.A. no such file was summoned by the Tribunal nor any application for production of such relevant file or records was ever made by the applicant in this O.A. So, on the basis of facts and circumstances, the cited case can easily be distinguished.

17. The learned counsel for the respondents has cited the following case laws:

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- (i) Shilpi Bose & Others Vs. State of Bihar Civil Appeal No. 5418 of 1990)
- (ii) Union of India v. S.L. Abbas reported in 1994 SCC (L&S) 230
- (iii) Union of India & Others Vs. N.P. Thomas (Civil Appeal No. 3933 of 1992).
- (iv) N.K. Singh v. Union of India & Others reported in (1994) SCC 98
- (v) Rajendra Singh Vs. State of U.P. reported in (2009) 15 SCC 178
- (vi) State of M.P. & Another Vs. S.S. Kourav & Others reported in (1995) 3 SCC 270

The Hon'ble Supreme Court in the case of **Shilpi Bose(Mrs.) and Others v. State of Bihar and Others** reported in **1991 Supp.(2) Supreme Court Cases-659** observed that the court should not interfere with the transfer order issued in public interest or for administrative reasons unless the transfer orders are made in violation of any mandatory/statutory rule or on the ground of malafide. The relevant observations of the Hon'ble Apex Court are as under:-

"The courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order; instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

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In the case of Union of India v. S.L. Abbas
reported in 1994 SCC (L&S) 230 observed as under:-

"An order of transfer is an incident of Government service. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The same guideline however does not confer upon the Government employee a legally enforceable right. Executive instructions are in the nature of guidelines. They do not have statutory force."

In the case of N.K. Singh v. Union of India & Others reported in (1994) SCC 98 the Hon'ble Supreme Court held that :

"6.....the scope of judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides and violation of any specific provision....."

In the case of Union of India Vs. N.P. Thomas
reported in AIR 1993 SC 1605, the Hon'ble Supreme Court has held as under:

"In the present case, it cannot be said that the transfer order of the respondent transferring him out of Kerala Circle is violative of any statutory rule or that the transfer order suffers on the ground of malafides. The submissions of the respondent that some of his juniors are retained by Kerala Circle and that his transfer is against the policy of the Government posting the husband and wife in the same station as far as possible cannot be countenanced since the respondent holding a transferable post has no vested right to remain in the Kerala Circle itself and cannot claim, as a matter of right, the posting in that circle even on promotion."

The Hon'ble Supreme Court in the case of Rajendra Singh Vs. State of U.P. reported in (2009) 15 SCC 178 has been pleased to hold as under:

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"The Courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from malafide".

In the case of **S.S. Kourav & Others** (supra), the Hon'ble Supreme Court has held that the Courts or Tribunals are not appellate forums to decide on transfer of officers on administrative grounds. The wheel of administration should be allowed to run smoothly and the courts or Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decision shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background foundation."

18. In view of catena of judgments by Hon'ble Supreme Court regarding scope of judicial review of transfer order and position as mentioned above, I do not find any scope to interfere with the transfer order dated 27.5.2009 and relieving order dated 1.6.2009. Further the orders passed by the competent authority rejecting the applicant's representations in this regard for the reasons mentioned therein are also well reasoned and speaking orders. No infirmity is found in these orders which are fully in conformity with statutory rules. These orders have been passed by the competent authority. There is no violation of any statutory rule as transfer being incidence of service for the applicant. In the Supplementary Counter Reply filed alongwith M.P. no. 435 of 2012 it has been stated that the applicant has been promoted to the post of Plant Protection Officer (Ento.) and posted at Central

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Pest Management Centre, Kolkata (W.B.) vide Directorate of PPQ&S, Faridabad Office Order no. 318 of 2011 issued vide F. No. 2-5/2011 Admn. dated 31st October, 2011. Copy of these letters dated 25.10.2011 and 31.10.2011 have been annexed as Annexure no.1 & 2 to the said Supplementary Counter Reply. The applicant holding a transferable post has no vested right to remain in a particular place or region. The O.A. has no merit and is liable to be dismissed.

19. The O.A. is accordingly dismissed with no order as to costs.



**(S.P. Singh)
Member(A)**

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