

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

LUCKNOW

O.A. No. 307/2003

Lucknow this the 2nd day of Nov., 2004.

HON. SHRI M.L. SAHNI, MEMBER(J)

1. Ajai Kumar Hajela, aged about 47 years Son of Late Sri Damodar Das Saxena, resident of 117/474, Pandu Nagar, Kanpur presently functioning as Superintendent, Central Excise Lucknow Commissionerate, Head Quarter, 7-A Ashok Marg, Lucknow.
2. Jayanta Bhowmik, aged about 49 years Son of Late Sri S.K. Bhowmik, resident of 464, Vayu Vihar Harjinder Nagar, Kanpur. Presently functioning as Superintendent, Central Excise, Commissionerate, Lucknow.

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Applicants

By Advocate Shri D.P. Srivastava.
Versus

1. Union of India through the Secretary (Ministry of Finance) Department of Revenue, Government of India, New Delhi.
2. The Chief Commissioner, Customs & Central Excise, 19-C, Vidhan Sabha Marg, Lucknow.
3. The Commissioner, Central Excise, 117/7, Sarvodaya Nagar, Kanpur.

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4. The Commissioner, Central Excise,
7-A, Ashok Marg,
Lucknow.
5. The Additional Commissioner,
(P&V) Central Excise
Commissionerate, Kanpur.
6. The Assistant Commissioner,
Custom & Central Excise,
Tulsi Ganga Minar, 19-C,
Vidhan Sabha Marg, Lucknow Respondents.

By Advocate Shri S.P. Singh.

O R D E R

This O.A. has been jointly filed by two applicants namely S/Shri Ajai Kumar Hajela and Jayanta Bhowmik challenging the validity of the orders dated 14.5.2003 whereby their representations for transfer from Lucknow to Kanpur Commissionerate of the Central Excise has been rejected. They have also assailed the order of transfer dated 9.6.2003 whereby a number of Superintendents posted at Lucknow and at Kanpur Commissionerates have been transferred. They have prayed for quashing of the orders dated 14.5.2003 (Annexure -1 and 2 respectively) passed in their case and also for directing the respondents to re-consider their representations regarding transfer from Lucknow Commissionerate to Kanpur Commissionerate in accordance with transfer policy as contained in Annexures 4 and 5 and accordingly revise the transfer order dated 9.6.03 passed in respect of some other Superintendents as listed in Annexure 3.

2. Detailed facts, as stated in the O.A. are not found relevant because the applicants are



concerned with their own transfer from Lucknow Commissionerate to Kanpur Commissionerate on the basis of transfer policy being followed in the department. Their challenge to the transfer order dated 9.6.03 (Annexure -3) in respect of other officials of the two Commissionerates is also found irrelevant.

3. I have heard the learned counsel for the parties and have given my thoughtful consideration to their pleadings.

4. The learned counsel for the applicant has also placed a copy of the order passed in O.A. 669/03, to which reference was made in the O.A., and therefore, it was directed that the learned counsel should apprise of the final decision in the said case ^{because} ~~Copy~~ of the interim order ~~therein since~~ ^{while} had been relied upon while seeking interim relief on behalf of the applicants. ~~By~~ filing copy of the order in O.A. 669/03 it is also stated by the learned counsel for the applicant that the copy of other order in O.A No. 674/03 since could not be obtained, therefore, the same would be produced as and when ~~made~~ available. However, after perusal of the order in O.A. No. 669/03 it has been found that this order has also no relevance to the present case of the applicant, who have been seeking their transfer from Lucknow Commissionerate to Kanpur Commissionerate on the basis of transfer policy as placed at Annexure 4 and 5 by the applicants.

5. The learned counsel for the applicant has drawn my attention to para 5 of Annexure 4 at page 6 which reads as follows:

"It was pointed out by representatives of Group C and Ministerial officers association that at the time of bifurcation of erstwhile Kanpur Commissionerate, the officers were posted

to Kanpur Commissionerate on the understanding that they will stay in Lucknow Commissionerate (erstwhile Kanpur II Commissionerate) for one year and that this practice will continue till the vacancies of Lucknow Commissionerate are filled up by promotion or by fresh recruitments. They requested for repatriation of all such officers of Kanpur posted in Lucknow Commissionerate. In this regard vacancies in Group C and Ministerial cadre between Kanpur and Lucknow Commissionerates should be ascertained by a Committee of both the Commissioners, and the officers still willing to stay at Lucknow be permitted to do so and the remaining vacancies should be filled up by promotion besides allowing them to opt for any of the Commissionerates in U.P. on Inter Commissionerate Transfer. In this regard those having longest tenure in Kanpur should be posted first on the basis of a panel prepared by both the Commissioners."

6. My attention is also drawn to Annexure 5 whereby the above policy was amended to the extent "that the practice of transfer and posting on one year formula between Kanpur and Lucknow will henceforth be dispensed with in the forthcoming Annual general Transfer. Accordingly, posting from Kanpur to Lucknow on promotion from Inspector to Superintendents, request of Superintendents posted outside Kanpur during last several years to be considered in the next AGT to remove the existing imbalance in the Zone."

7. It is contended on behalf of the applicants that since the applicants belong to Kanpur Commissionerate but were transferred to Lucknow Commissionerate, therefore, the benefit of the amendment as stated above, and contained in Annexure 5 is available to them but the authorities concerned rejected their

representations by passing cryptic order without giving any reasons and justification for not ^{acceding to} ~~considering~~ their requests. Their representations are placed at Annexures 6 and 7 and orders passed by the authorities thereon are Annexures 1 and 2 respectively. The impugned order states that the request of the applicant made till date had been considered but their requests have not been found fit to be acceded to.

8. Annexure 6 is the representation of the applicant No.1 who has requested for his transfer to Kanpur Commissionerate on the following grounds:

"(A) Self sickness. I have developed back trouble and constant swelling in left leg (Diagnosis enclosed) as a result of which my movement are restricted and many precautions have been advised like sitting straight, no lifting of weight, hard bed and avoid over exertion. Frequent journey to Kanpur which I am compelled to undertake in the prevailing circumstances is causing recurrence of pain and may result in further aggravation of the problem.

(B) The problem of looking after my physically handicapped brother suffering from Muscular Dystrophy. The disease is of a kind that he requires constant personal attention.

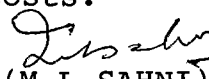
(C) Problem of study of the wards as they are studying in schools with ICSE syllabus."

9. The applicant No.2 has made request for transfer on the ground that his wife was working in a Nationalized Bank (PNB) and was presently posted in Krishna Nagar Branch, Kanpur and it is no more possible for her to get a transfer on request to her place of ^{choice} ~~posting~~ as she had already availed all her chances for "request-transfers."

10. The case on behalf of the respondents as pleaded in the Counter reply is that the orders dated 14.5.2003 have been passed in accordance with transfer policy who further submitted that the applicants were not transferred on the basis of longest stay at Kanpur Commissionerate as envisaged by the policy relied upon by the applicants because the applicant No.1 was posted at Farrukhabad Division, earlier falling under the jurisdiction of Kanpur Commissionerate when the same was bifurcated and later on Farrukhabad Division came under the jurisdiction of Lucknow Commissionerate. The applicant No. 2 has been posted at Central Excise Commissionerate on promotion to Superintendent grade while incumbents figuring in order dated 9.6.2003 (Annexure 3) were posted at Lucknow Commissionerate on the condition that they would be repatriated to Kanpur and the policy Annexures 4 and 5 had been formulated to be applicable to those officers who had been transferred/posted at Lucknow Commissionerate on posting ^{under} ~~for~~ one year formula. According to the respondents, the transfer of the employees is an administrative discretion and the applicants had no vested right to claim posting at a particular place and that their request had been considered by the Competent Authority who passed the impugned orders dated 14.5.2003, which are perfectly legal and valid. It is also contended that it is not required of the Competent authority to state any reason or justification for rejecting the representations of the employees concerned; and that the impugned order rejecting the request ~~to~~ transfer has been passed keeping in view the prevailing transfer policy applicable in the Department. Regarding applicant No.2, it is stated by the respondents that after rejection of the representation, the applicant moved another representation enclosing therewith a certificate of employment of his wife dated

17.5.2003 and the said representation shall be considered as and when the vacancy in the grade of Superintendent is available in the Kanpur Commissionerate. The copy of certificate of employment of wife of applicant No. 2 has been filed ~~from~~^{on} the record of this O.A. and is placed at page No. 41, which is dated 17.5.2003. This fully justifies the contention of the respondents because the order impugned is dated 14.5.2003 and the representation Annexure-7 of applicant No. 2, though is dated nil, which ~~had~~^{had by every} means, should be prior to 14.5.2003 when the request for transfer was rejected by impugned order Annexure No. 2. Enclosing a copy of certificate dated 17.5.2003 ~~which~~^{with}, Annexure 7 is a futile attempt on the part of the applicant No.2 to mislead this Tribunal.

11. Having considered the facts of the case in the entirety, ^{I find} that the applicants who had made request for transfer when could not succeed, filed this O.A without having any cause of action. Their challenge to the order of transfer dated 9.6.03 is nothing but a device to falsely create a cause of action, so as to find a way to get themselves transferred from Lucknow to Kanpur for reasons other than stated by them in their respective representations-Annexures 6 and 7 respectively. They have claimed that they are entitled to the benefit of the amendment in the transfer policy dated 4.3.2003 (Annexure 5) but from the perusal of the same as extracted above, I fail to find that either of them has any vested right on the basis of said amendment. The O.A. is accordingly found without any substance, hence is dismissed. No order as to costs.


(M.L. SAHNI)
Member(J)