

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

Original Application No.402/2006

20th
This the day of September 2007

HON'BLE MR. M. KANTHAIAH, MEMBER (J)

Girja Shanker Tripathi aged 42 years S/o Sri Krishana Gopal R/o Quarter No.8 ISPW Residential Complex Mahanagar, Lucknow

...Applicant.

By Advocate: Shri Deepak Shukla.

Versus.

1. Union of India, through the Secretary, Ministry of Home North Block, New Delhi.
2. Director Police Telecom, DCPW Block No.9 CGO Complex Lodhi Road, New Delhi.
3. Extra Assistant Director (Adm), DCPW Block NO.9 CGO Complex Lodhi Raod, New Delhi.
4. Senior Supervising Officer/Station Supdt. ISPW Station Mahanagar, Lucknow.

By Advocate: Shri S.P. Singh for Smt. Manjari Misra.

ORDER

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

The applicant has filed this OA, quashing the impugned order dated 31.07.2006 (Annexure-1), transferring him from Lucknow to Hyderabad and also impugned rejection order dated 31.08.2006 (Annexure-2) on the grounds that such orders is arbitrary and also violative of provision of Article 14 of the Constitution of India.

2. The respondents have filed Counter Affidavit denying the claim of the applicant stating that ~~that have passed~~ the orders covered under Annexure-1 and Annexure-2, ~~which~~ are in accordance with rules and law and thus there is no need of any interference of this Tribunal.

3. The applicant has filed Rejoinder Affidavit reiterating the pleas taken in the O.A.

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, who has been working as Dispatch Rider in the Inter State Police Wireless Station, Mahanagar, Lucknow, by impugned transfer order Anenxure-1 dated 31.07.2006, issued by the 3rd Respondent, he has been transferred to Hyderabad in public interest. After receiving impugned transfer order, the applicant made representation to cancel his transfer order on the ground that his children's are studying in Class IX and Class X at Central School, Lucknow and because of mid-secession, it will effect their studies. Annexure-7 is the copy of the said

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representation. But the respondents have rejected the request of the applicant and passed rejection order, covered under Annexure-2 dated 31.8.2006. It is also not in dispute that there are no transfer guidelines in respect of the cadre of the applicant. Though, the applicant has been transferred under the impugned order dated 31.7.2006, no body has been posted in his place and further, he has not been relieved.

7. After completion of pleadings, the applicant amended the OA, incorporating others grounds, which was allowed. But the respondents have not filed any Additional / Supplementary Counter Affidavit, denying such amended pleas of the applicant. Byway of amendment, the applicant has taken a plea that he has been transferred from Lucknow to Hyderabad to accommodate Sri Siya Ram, by canceling his transfer from Delhi to Hyderabad vide order dated 24.2.2006 and further the post of Dispatch Rider is not generally transferable and further, it is a non-promotional post. In view of such places, a finding is required for challenging the impugned transfer order, and also rejection order covered under Annexrue-1 and 2.

8. Though, the applicant has not taken any specific ground in the Original application, for quashing the impugned transfer order, but by way of amendment, he pleaded that the post of Dispatch Rider is not generally transferable, due to delivery of post in respective places of the city and the dispatch rider should be well acquainted and be able to locate the different addresses in the city. The respondents neither disputed nor denied such pleas of the applicant. It clearly shows that when the post of the applicant as Dispatch Rider while not generally



transferable, it is duty of the respondents to assign reasons for transfer of the applicant from Lucknow to Hyderabad.

9. The impugned transfer order Annexure-1 date 31.7.2006, nothing is mentioned except the ground in public interest. But they have not given any of the reasons of such public interest for such transfer. They have filed detailed Counter Affidavit, stating that in the FIR lodged by the then PAD (Office In-charge), Lucknow against the applicant, the applicant himself submitted his apology dated 31.7. 06 and also complaints by others against the applicant covered under Annexure-R-3 to the R-6 respectively also show the conduct of the applicant. They also further stated that the applicant is not at all a model employee and he is habitual to consuming excess liquor in the office premises, man-handling and quarrelling with his superiors, using un-parliamentary language and thus spoiling office atmosphere and also arrogant in nature.

10. Though the respondents have made such allegations against the applicant about his conduct and functioning during the office hours, there is no material to show that they have initiated any departmental proceedings against the applicant. Without initiating any such action mere making such allegations against the applicant and on that ground transferring him from this place to Hyderabad is nothing but shifting such problem and difficulty to other branch, which is not at all desirable in the interest of administration and on that ground the respondents are not justified to colour it in the public interest, they have effected the transfer of the applicant.

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11. It is also the specific pleas of the applicant that he has been transferred to Hyderabad only to accommodate another Dispatch Rider Shri Siya Ram, who is transferred from Delhi to Hyderabad has been cancelled subsequently. The respondents have not disputed nor denied such specific allegation of the applicant, which itself amounts admission of the respondents and such ground alone is sufficient to challenge the impugned transfer order of the applicant.

12. The applicant also challenged the rejection order covered under Annexure-2 dated 31.8.2006 on the ground that no reasons are assigned for rejection of his representation for cancellation of transfer. The recital of Annexure-A-2 also shows that no reasons are assigned by the authorities and it is simple order of rejection stating that request could not be acceded due to administrative reasons. But not furnished any such administrative reasons in Annexure-2 and also not explained such reasons in their Counter Affidavit. It is the duty of the respondent authority and mandatory on their part while exercising discretionary powers, furnish reasons for such rejection. The orders of rejection, without reasons is not at all a speaking order, and the same is liable to be quashed.

13. It is also the case of the applicant that the post of Dispatch Rider is non-promotional post and only ACP Scheme is applicable for which he got only one financial benefit and it is very difficult to manage family at two places because of studies of his children's at Lucknow. When there are no promotional opportunities to the post of dispatch rider, transferring such low paid employee to such a long distance place from Lucknow to Hyderabad is unwarranted, which itself shows



that the respondents department bent upon to shift the applicant from Lucknow with certain unjust reason for causing loss to him, which is not fair on the part of the department.

In view of the above circumstances, the applicant is justified in challenging the impugned transfer order covered under Annexure-1 dated 31.07.2006 and also rejection order dated 31.08.2006 ~ Annexure-2 issued by the respondents and as such they are liable to be quashed and thus entitled for relief as prayed for.

In the result, OA is allowed. No order as to costs.



(M. KANTHAIAH)

MEMBER JUDICIAL

20.09.2007

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