

**CENTRAL ADMINISTRITIVE TRIBUNAL
LUCKNOW BENCH**

O.A.No.515/2006
On this day of Friday dated 12th January 2007

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

Pradeep Kumar Nigam, aged about 46 years , son of Late Shri R.B.L. Nigam, resident of M/320,D-1, LDA Colony, Parag Road, Kanpur Road, Lucknow.

... Applicant.

By Advocate:-Shri Praveen Kumar.

Versus.

Union of India through

1. The Secretary, Ministry of Defence, New Delhi.
2. The Chief Engineer, Central Command, Lucknow.
3. The Garrison Engineer, Lucknow.

... Respondents.

By Advocate:-Shri G.K. Singh.

ORDER

BY SHRI M. KANTHAIAH, MEMBER (J)

The applicant who has been working on the post of Surveyor Assistant Grade-II known as Junior Engineer (QS&C) in the office of 3rd respondents i.e. GE at Lucknow has filed the Original application against the impugned transfer order(Annexure-1) dated 17.10.2006 shifting him from GE(EM) , Lucknow to CE, Lucknow Zone under local



turnover on the gourd that the said transfer is against the transfer policy and also to accommodate others with the following averments.

2. The applicant has been working since more than 21 years in the department without any complaint but on 2.5.2005, he was transferred from Lucknow to Jabalpur without following the due procedure against which when he preferred O.A. 207/2005 the tribunal had quashed the impugned transfer order dt. 2.5.2005. Since then, the respondent have tried to harass him and ultimately 2nd Respondent had succeeded in transferring him by issuing the present Impugned order 17.10.2006 (Annexure-1), which is in arbitrary manner and on flimsy ground with malicious intention.

3. He further stated that the said order is in gross violation of the transfer policy of the department. He alleged that the respondents shifted him to accommodate one Guru Prasad who has been shown at Sl. No. 9 in the impugned order and he has not completed his three years mandatory service at previous place of posting. He also further stated that the impugned order is an outcome of arbitrariness and colourable exercise of power and it is liable to be quashed.

4. By way of Supplementary Affidavit, the applicant stated that the respondents started harassment, since the date when he submitted a complain against a contractor, who was blue eyes person of the authorities. Nothing was done against the contractor but a memo was issued to him for giving explanation for the aforesaid notice. After submission of his explanation, the authority become annoyed and thus issued transfer order Annexure-3 is the copy of his explanation.

5. The respondents have filed their Counter stating that there is no violation of transfer policy in transferring the applicant and the transfer order has been issued as per provision Para 43 of the

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transfer policy which relates to turnover from Executive / sensitive staff to the staff appointed stating that the applicant has completed his tenure of more than 3 years of executive appointment. He further stated as para 64 of transfer policy, a person can be transferred any where and at any time in the interest of organization and in the exigency of service notwithstanding the other provisions of the transfer policy.

6. By way of Additional Counter Affidavit, the respondents stated that the applicant has been working on the job profile relating to the executive / sensitive appointment for the last more than 3 years w.e.f 1.6.2003 till date and as such he has been transferred from executive /sensitive to the staff side in accordance with the transfer policy. He stated that the applicant by concealing the material facts filed this O.A. in respect of the transfer of the Guru Prasad he states that the said Guru Prasad, never made any representation against his transfer . The applicant is a member of central service and he is liable to be posted in any where in India in the exigency of work and in pursuance of the transfer policy but his transfer is simply a local transfer done in in accordance with the transfer policy! In the impugned transfer order there are 12 candidate but expect the applicant no body has any grievances. Thus, he prayed to dismiss the original application.

7. The applicant has filed Rejoinder Affidavit, reiterating his pleas taken in the Original application and also in the Supplementary Affidavit and further stated that he has not completed his tenure of 3 years on sensitive posting i.e 3 years continuously.

8. Heard both sides.

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

10. The admitted facts of the case are that the applicant who has been

working on the post of Junior Engineer (QS&C) in the office of 3rd respondents i.e. GE at Lucknow has been transferred to CE, Lucknow Zone under local turnover under impugned transfer order Annexure-1 dated 17.10.2006. Against which, he made representation to the respondents and the same is pending without any decision Annexure- 2 is the copy of representation dated Nil. There is a transfer policy for Group -C and D persons of the 2nd respondent . Annexure-R Dt. 16th April 2003 is the copy of the said transfer policy. In the year 2005 when the applicant was transferred from Lucknow to Jabalpur zone vide order dated 2.5.2005 , he preferred O.A. 207/2005 on the file of this tribunal and the same was allowed by quashing the impugned transfer order. When there was an memo from the respondents , under letter date 17.1.2005, the applicant submitted his explanation and Annexure-3 is the copy of the same dt. 19.1.2005.

11. It is the contention of the applicant that respondents have transferred him under impugned order Annexure-1 which is against the transfer policy and he has been transferred to accommodate their own man and also made allegation that the respondents have started harassing him, when he challenged earlier transfer order dated 2.5.2005 when he was transferred from Lucknow to Jabalpur. The respondents have denied such allegation of the applicant and stated that the transfer of the applicant is in accordance with transfer policy.

12. It is the main contention of the applicant that he has been transferred without completion of 3 years terms in the present post, which is against the transfer guidelines of the department (Annexure) and relied on para-43 of it which shows as follows:-

"Para-43:- The JEs (Engineers, Surveyor) and supervisor B/S Gde I and II will be moved on turnover from executive/sensitive

posts to staff and vice versa after every three years and after continuous six years service in sensitive appointment. They will be moved to CE/Cs WE office . While computing the period of tenure in sensitive appointment, entire service profile of individual will be considered irrespective of stay in the present Unit/stations/complexes. In case there is only one Division/Sub Division in stations/complexes, they will be transferred to another stations/complexes. Accordingly case will be **protected** to next higher authority well in time"

13. Admittedly, the applicant who has been working a Junior Engineer shifted from Executive/ Sensitive post to staff. It is also not in dispute that he has been working in this executive post (E.8 Section) since June 2003, which is more than 3 years.

14. It is not the case of the applicant that earlier to this present post of GE (E/M), he was in the post other than executive/ sensitive, either at the time of his earlier transfer order Dt. 2.5.2005 and subsequent to it. Without furnishing such details , it is not open to the applicant to confine to the present posting alone, for claiming benefit under para-43 of the guidelines.

15. When it is not the case of the applicant, that he has not completed 3 years period in executive/ sensitive post, he cannot seek protection of Para-43 of transfer guidelines. Further the guidelines given in Para-43 cannot be confined for completion of 3 years period at a particular station. It is also not proper on the part of the applicant who has been admittedly working in sensitive post , to insist for continuation there, inspite of the opinion of the department for his shifting.

16. Paragraph 64 of the transfer policy of the department filed with C.A. as follows;-

" Notwithstanding any thing in these instructions contained in SOP, a posting in the interest of organization and due to exigency of service will always take precedence."

17.The recital of the impugned transfer order (Annexure-1) shows that the applicant along with 11 others have been transferred under local turnover 2006 , in the interest of state.

18.When such a authority is given to the Respondents department under para-64 of transfer policy, it is not open to the applicant to insist either for cancellation of impugned transfer order or for continuation in the same seat of sensitive post.

19.In view of the above observations , it is clear that there is no violation of guidelines of transfer policy filed with C.A. by the respondents, in effecting the transfer of the applicant under Annexure-1 Dt. 17.10.2006.

20.Coming to th second ground that the respondents started harnessing him, when he challenged earlier transfer order dt. 2.5.2005 and also when he made complaint against a contractor and relied on Annexure-3 Dt.19.1.2005 and to accommodate Sri Guru Prasad, SI .No. 9 in the impugned orders. If the local turnover posting/transfer of 2006, under impugned order has been effected only for the applicant, then one can presume malice on the part of the respondent authority. Along with the applicants, when 11 other employees of the same cadre have been effected, it is not at all possible so attribute any motive with an intend to harass, such transfer has been effected by the respondent.

21.In respect of the complaint against contractor and also calling of explanation from him, the recitals of Annexure-A3 Dt.19.1.2005 reveals that such incident had taken plea in the year 2004 which is prior to his earlier transfer order Dt.2.5.2005. Basing on such old proceedings, the department bore grudge and effected his present transfer is not at all convening and thus not tenable.

22.The applicant has not made any specific allegations against the respondents for his transfer and also not stated any of the incidents

to attribute that it is an outcome of malafide exercise by the respondents. If the applicant has been transferred from one place to other place within its distance place, it causes, inconvenience either to him or to his family members, one can attribute motives. But in the instant case, the transfer of the applicant is from one office to another within the vicinity of Lucknow city only and in such circumstances, causing of any loss or inconvenience also does not arise.

23. The learned counsel for the applicant relied on the following Judgments in which the claims of the applicant was allowed on the grounds that the transfer was effected against govt. instructions and on bias.

1. (1989 9 ATC, 122 Madras Central Administrative Tribunal H.S. Ajmani Vs. State of M.P.
2. O.A.No.489/2005 A.K. Munjal Vs. Union of India and Others Central Administrative Tribunal, Lucknow Bench Dt. 24th August 2006.

24. But in the instant case, there are no such circumstances to show that the transfer of the applicant has been effected either on the ground of violation of transfer guidelines or on the ground of bias or malice intention, and as such the said citations are not applicable to the facts of this case on hand.

25. In view of the above discussion, it is clear that the applicant has failed to establish that the impugned transfer order Annexure A-1 dated 17.10.2006 has been issued against the transfer policy of the respondents /department and also with any malafides on the part of the respondents for interference of this Tribunal and as such the applicant is not entitled for the relief as claimed for quashing the impugned transfer order, transferring him from GE (EM), Lucknow to CE, Lucknow Zone under local turnover.

26. In the result, the Original application is dismissed. No costs.

Pronounced on this day of 12th January 2007.


(M. KANTHAIAH)
MEMBER (J)

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Amit