

**CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH**

Original Application No.39/2007  
This the 14<sup>th</sup> day of September 2007

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

Hari Shankar Shukla S/o K.K. Shukla R/o 85/4, Vishkarma  
Mandir Lane, Maqbool Ganj, Lucknow.

...Applicant.

By Advocate: Shri Deepak Shukla.

Versus.

1. Chief Engineer (Head Quarter) Central Command Pin: 900450) C/o 56 Army Post Office, Lucknow.
2. Chief Engineer, Lucknow Zone Cantonment, Lucknow.
3. Commander Works Engineer, Lucknow, Cantonment, Lucknow.
4. Garrison Engineer (East), Lucknow Cantonment, Lucknow.
5. Chairman, Litigation and Conciliation Authority, Jt DG (Pers) Chief Engineer Head Quarter Central Command, Lucknow.

By Advocate: Shri S.P. Singh.

**ORDER**

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

The applicant has filed this Original application, to quash the impugned transfer order Dt. 08.12.2006 (Annexure-No.1-A) under which, he was transferred from Lucknow to the office of A.G.E. (I) R&D, Pithoragarh, (Hill area) on the ground that such orders are against transfer policy and also affecting the studies of his children.

*[Signature]*

2. The respondents have filed their Counter Affidavit opposing the claim of the applicant for quashing the orders of transfer on the ground that the same is affected in accordance with transfer policy and after providing an opportunity to the applicant.

3. The applicant has filed Rejoinder Affidavit reiterating the pleas as raised in the OA and denying the pleas taken by the respondents.

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 for the case are that the applicant has been working in the office of Respondent No.4 since 1997. Originally, he was appointed to the post of Lower Division Assistant in Madhya Pradesh in the year 1986, worked there till 1989. It is also not in dispute that from June 1989 to June 1992, he worked for three years in hard tenure station. While he was working in the office of Respondent No.4, he was promoted from LDC to UDC and posted from G.E. (E) Lucknow to CECC, Lucknow, but he declined to accept the promotion and intended to continue in the same cadre of LDC on the ground of his personnel and domestic problems, on which respondent department conceded to certain period. Annexure-A-2 Dt. 05 the January 2005 is the copy of promotion cum posting from LDC to UDC and Annexure-A-4 Dt. 24<sup>th</sup> February 2005 is the copy of order postponement of promotion up to 16.08.2005 issued by respondents.

7. Though the applicant made representation to the authorities for cancellation of his transfer on the ground that it will effect the studies of his children's but the respondents have not entertained such request of the applicant for retention at Lucknow on the ground of education of his children's. Annexure-6 is the transfer policy.



Annexure -7 is the list showing the names of 13 UDCs, who never worked in hard tenure station and the respondents have neither disputed nor denied the correctness of such list.

8. The applicant also sought interim relief to stay the operation of impugned transfer order, but the same was dismissed on 26.2.2007, with a direction to the respondents to reconsider the representation of the applicant and pass reasoned order as per transfer policy and rules within one month and in the meantime to file detailed Counter affidavit , enabling the Tribunal for disposal of main application without further delay at admission stage itself. Accordingly, the respondents considered the representation of the applicant and passed order Dt. 01.05.2007 rejecting the claim of the applicant and also filed a detailed Counter Affidavit in the main OA. In pursuance of such order, the respondents have passed orders covered under Annexure 6A Dt. 01.05.2007, rejecting the request of the applicant for cancellation of his transfer.

9. The main case of the applicant is that his transfer under impugned transfer orders is against the transfer policy and further he has been again transferred to hard tenure station without touching seniors and other employees , who never worked in such hard tenure station shows malafide intention of the respondent authorities. But the respondents have denied such contention of the applicant and thus opposed the claim of the applicant. Thus, it is necessitated to give finding on such grounds raised by the applicant, for quashing impugned transfer order (Annexure-1), effecting his transfer.

10. In respect of the claim of the applicant, that his transfer is ~~raised~~ <sup>relied</sup> against the transfer policy, he mainly ~~raised~~ <sup>relied</sup> on transfer policy covered under Annexure-6. Clause-9 of the transfer policy shows firstly the



longest stayee has to be shifted. Admittedly, the list furnished by the applicant covered under Annexure-7 shows that there are 13 UDC's, who are longest stayee than him and also they never worked in the hard tenure station at any time. The applicant has already worked at Heard tenure station for three years before he was transferred to this place is not in dispute.

11. Though, this tribunal directed the respondent authority to reconsider the objections raised by the applicants for his transfer on the ground that many seniors are available and his transfer is against transfer policy, the respondents have not given any reply for not touching longest stayee and also the officers who never worked in the hard tenure station. It clearly shows that the respondents have not followed the transfer policy and further transferring the applicant again to hard tenure station by leaving other officers untouched, who did not work in hard tenure station at any time clearly shows that the act of the respondents is not fair and also not in accordance with transfer policy in effecting the transfer of the applicant.

12. It is the contention of the respondents that before effecting the transfer they have issued Warning list informing the applicant to be posted to the hard tenure station but he did not give any reply and as such they effected the transfer presuming that the applicant was willing to go to such station.

13. The applicant who gave reply to the compliance order stating that such Warning list was never circulated to him and it was not informed to him by G.E (East), Lucknow and as such there was no occasion to him to file any objections. This plea of circulation of Warning list informing the applicant to his posting to hard tenure station is not pleaded in the counter but the same was mentioned in



the compliance order of the respondents dated 01.05.2007 at Para-13. The applicant in reply to such compliance order dated 4.6.2007 categorically denied circulation of warning list to him. When the applicant disputes the circulation of warning list to him, it is not open to the respondents to rely much on such warning list and to substantiate their stand of transfer of the applicant on the ground that no objection was raised by the applicant is not at all tenable. Further, when there is no such plea in respect of warning list, giving much importance on such objections and arguments advanced by the learned counsel for the respondents is also not at all maintainable.

14. Further, it is also the duty of the authorities to verify the employees who worked in hard tenure station and also the officer who never worked in such stations and to affect the transfers basing on the transfer policy. But the respondents without undertaking such exercise, they are not justified to blame the applicant that he has not raised objection for warning list or informing his earlier posting and working at hard tenure station is not at all sustainable. When transfer policy is in vogue, it is the duty and responsibility of respondent authority to implement it by preparing panel of available volunteers, longest stayees and also who never worked in hard tenure stations. Without touching any of them, again transferring the applicant to hard tenure station itself shows that there was no fair policy, while exercising discretionary power by the respondent authorities and also further shows with an intention to cause harm and loss to the applicant, they have affected such transfer.

15. From the above discussions, it is clear that the applicant proved his claim that his transfer covered under Annexure-1 is against the transfer policy covered under Annexure-6 and further posting him

again to hard tenure station without touching long standing officers that too who never worked in such hard tenure stations and in such circumstances, the applicant is justified in challenging the impugned transfer order covered under (Annexure-1-A), transferring him again to hard tenure station. Such act of the respondents also shows lacking of fairness on the part of department in effecting the transfer of the applicant again to a hard tenure station and under the said circumstances, he is justified in questioning the validity of transfer order.

16. In the result, OA is allowed questioning the transfer of the applicant, transferring him from Lucknow to the office of A.G.E (I) R&D, Pithoragarh covered under (Annexure-1-A). No costs.

  
**(M. KANTHAIAH)**  
**MEMBER (J)**

14-09-2007

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