

Central Administrative Tribunal Lucknow Bench Lucknow

O.A. No.263/2007
This, the 6 th day of November, 2007.

Hon'ble Mr. M. Kanthaiah, Member (J)

Vinay Mishra
Aged about 37 years
Son of Sri R.C. Misra
Resident of E-1224, Rajajipuram
Lucknow.

Applicant.

By Advocate Shri P.K. Srivastava

Versus

4. Union of India
Through the Secretary
Ministry of External Affairs
Government of India
Patiala House
New Delhi.
5. The Joint Secretary (C.P.V.)
Ministry of External Affairs
Government of India
Patiala House
New Delhi.
6. The Regional Passport Officer
Department of External Affairs
Government of India
Lucknow.

Respondents.

By Advocate Shri A.P. Usmani

Order

By Hon'ble Mr. M. Kanthaiah, Member (J)

The applicant has challenged the impugned transfer order dated 11.5.2007 (Annexure-1) transferring him from Regional Office Lucknow to Regional Office Chandigarh, and also orders dated 14.6.2007 (Annexure 2) and dated 10.7.2007,(Annexure CR-2) under which his representation for cancellation of transfer has been rejected. He questioned the impugned transfer order on the ground

that it is against transfer policy and in discriminatory manner and also stated no public interest involved.

2. The respondents have filed Counter Affidavit stating that the transfer of the applicant is in accordance with transfer policy and in the interest of public and further it is neither discriminatory nor with malafide intention and thus opposed the claim of the applicant.

3. The applicant has filed rejoinder, retreating the grounds taken in original application and also denying the pleas of the respondents in their counter affidavit. He further stated that as per the new transfer rules (CR-1) relied by the respondents, that the transfer of the applicant is beyond the preview of new transfer policy and the other ground on administrative reasons as shown in Annexure CR-2 is contradictory to their original stand of public interest.

4. The respondents have filed supplementary counter affidavit, after amendment of O.A. under which the applicant challenged orders covered under Annexure 3 dated 10.7.2007, stating that the representation of the applicant has been rejected on administrative grounds and transfer of the applicant has been effected in the public interest.

5. The applicant has filed additional rejoinder to the supplementary affidavit denying the grounds taken by the respondents to substantiate their action, for affecting the transfer of the applicant and subsequent rejection order dated 10.7.2007.

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6. Heard both sides.

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

8. The admitted facts of the case are that the applicant who was initially appointed on the post of Lower Division Clerk in the office of Respondent 3 on 18.6.1996, got promoted on the post of Upper Division Clerk on 23.2.2007 and continuing in the same office. Under the impugned order dated 11.5.2007(Annexure 1), he has been transferred from Lucknow to Chadigarh Zone, which is under challenge.

9. It is also not in dispute that the Govt. issued transfer policy in respect of the cadre of the applicant, who falls within the category of Non Gazetted Officers. Annexure 2 dated 3.9.1996 is the transfer policy for the year 1996 and Annexure CR-1 is the Revised Transfer Policy Transfer, 2007. Immediately, after receipt of transfer order, the applicant made representation-dated 15.5.2007, (Annexure 6) for cancellation of such transfer, but the same was rejected covered under Annexure dated 14.6.2007 (Annexure-2). Subsequently, during the pendency of this O.A., the respondent authorities have issued another rejection order dated 10.7.2007 (Annexure CR-2) due to which it was necessitated to the applicant, to seek amendment for challenging the said rejection order.

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10. The applicant has challenged the impugned transfer orders on the ground that it is against transfer policy of 1996 and also revised policy of 2007. But the respondents have mainly relied on revised policy of 2007 stating that the transfer of the applicant is in accordance with revised policy and in such circumstances, it is sufficient to confine only to the revised policy of 2007 instead of going into old policy of 1996.

11. In respect of Group C Staff, Revised Transfer Policy, 2007 says as follows:-

Transfers for Group C staff will be governed by the following terms and conditions: -

a). Usually transfer of UDCs and LDCs will be avoided. If it becomes necessary, transfer of UDCs and LDCs to Passport Offices located within Zones could be effected in public interest.

b). Transfers will be effected strictly based on length of stay of an official at a station except when it becomes necessary to transfer the official for the following reasons:-

- i) The official concerned, based on *prima facie* information available against him/her, is suspected to have developed vested interests and his/her continuance at that station is likely to be prejudicial to Government interests;
- ii) If transfer of an official is recommended by CBI or other security agencies;
- iii) On the basis of departmental proceedings it is established that the official concerned has been found guilty of serious irregularities and his/her continuance in that office is likely to be detrimental to public interest.

c).....

d). Transfers will be effected within the zone as given below:

- 1. Zone-I:
- 2. Zone-II:
- 3. Zone-III:

4. Zone-IV: Lucknow-Bareilly-Dehradun-Ghaziabad-Delhi-Bhopal.
5. Zone-V:
6. Zone-VI: Chandigarh-Jalandhar-Jammu-Srinagar-Amritsar-Shimla.
7. Zone-VII:
8. Zone-VIII:
9. Zone-IX:
10. Zone-X:
11. Zone-XI:

12. From the transfer condition of revised transfer policy, it is clear that usually transfer of UDCs and LDCs will be avoided. If it is necessary, in public interest they have to be transferred within their zones. But in the instant case there are no special circumstances, which forced the department to affect the transfer of applicant, by deviating usual transfer. Further, Clause (b), it has given the reasons or grounds for effecting transfer of such employee. It is not the case of the respondents that the applicant got any vested interest in this station or any recommendation from CBI or other security agencies for transfer or was there any departmental proceedings pending against him and similarly it is not their case that the applicants continuation is likely to be detrimental to public interest which are the reasons required for transfer under transfer policy of 1996 or revised of 2007. But none of such reasons are prevailing in the case of the applicant to satisfy that he has been transferred in accordance with the transfer policy.

13. Coming to the zones, as referred in clause (d), admittedly the applicant has been working in Lucknow Zone, which is Zone IV. But he has been transferred to Chandigarh, which is zone VI. When the policy clearly shows, in case, of such transfer in public interest, it has to be effected within the same zones that is zone IV only.

Instead the applicant has been transferred to zone VI, which is nothing but against transfer policy. If no transfer policy is available and no guidelines are framed, it is the will and pleasure of the department to effect transfer of its employees. But when certain guidelines are fixed and framed a policy for smooth furnishing of the administration and to adopt a uniform policy to all its employees without any discrimination, it is the basic duty of the department to honour such policy. If any violation of such terms of guidelines, is nothing but discrimination and giving scope for arbitrariness and vested interest, while effecting transfers. The learned counsel for the applicant also relied the following citation stating that in the absence of statutory rules in respect transfers, transfer guidelines which are administrative orders will prevail.(2001) 1 SCC page 637 Ramesh K. Sharma and another versus Rajasthan Civil Services and Others.

14. Through the impugned transfer order says that the transfer of the applicant has been effected in public interest, they have failed to show any of such grounds to attract public interest involved in the transfer of the applicant.

15. From the above discussion, it is clear that the transfer of the applicant is not in accordance with transfer policy but it is against such policy.

16. Even if the earlier policy of 1996 is taken into account, clause (b) of UDCs and LDCs transfer says that transfer will be effected strictly based on length of stay of an official at a particular station.

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It is the case of the applicant that he is the Junior most and many that is 27 of th longest stayee officials have been working in this station and without touching them effecting his transfer is also against the transfer policy.

17. Coming to the contention of the respondents, in the impugned transfer order annexure 1 and also in their counter affidavit they have taken a plea that the applicant has been transferred in public interest. In the first rejection order dated 14.6.2007(Annexure_ 2), no reasons are given but in the subsequent rejection order dated 10.7.2007 (annexure CR-2), it has been mentioned that the applicant has been transferred on administrative reasons. Basing on such reasons of rejection, the respondents have filed supplementary counter affidavit stating that the transfer of the applicant was on administrative grounds. From such plea, it is clear that the respondents have taken the subsequent plea of administrative reasons by giving up earlier ground of public interest and these conflicting versions clears shows that there is no clarity in the mind of the respondents authorities on which reasons, the transfer of the applicant has been effected and thus there is force in the argument of the applicant that the transfer is neither in public interest nor in administrative grounds.

18. The applicant has also challenged the impugned rejection orders covered under Annexure 2 and CR-2. Immediately after receipt of transfer order, the applicant made representation for cancellation of his transfer with reasons covered under Annexure dated 15.5.2007. After considering the said representation respondents have issued rejection order dated 14.6.2007 (Annexure 2), in which no reasons are assigned. But after filing this O.A.,

questioning the impugned transfer order (Annexur-1) and rejection order (Annexure 2), the respondents have passed another rejection order dated 10.07.2007 (Annexure CR-2) stating that the transfer of the applicant has been effected on administrative grounds. In his representation, the applicant has given specific reasons, how it is against transfer guidelines and also stated that when many other long stayee officials are available, without touching any of them, how unjustified in effecting his transfer. But in the rejection covered under Annexure 2 and Annexure CR-2, no reasons are assigned and thus they are not helpful to the applicant to know what is the reason for his transfer. Similarly such orders are not helpful, even to the Tribunal for reviewing the matter on which ground transfer has been effected and also reasons for rejection of his request for cancellation of transfer.

19. No doubt, the transfer of an employee is not only an incident but also a condition of service and courts should not interfere with transfer orders which are made in public interest or an administrative reasons. But in the instant case, the respondents authorities are not in a position to say whether the transfer of the applicant has been made either on administrative ground or in public interest and further no such reasons are given to satisfy any of such grounds. Further they have effected the transfer of the applicant, against their own transfer policy and not in a position to substantiate such transfer shifting from one zone to another zone. In view of such circumstances, the applicant is justified in questioning the validity of impugned transfer order and also rejection which are orders without any reasoning.

20. In the result, O.A. is allowed quashing the impugned transfer order dated 11.5.2007 (Annexure-1) and also rejection order dated 14.6.2007 covered under (Annexure 2). No costs.


(M. Kanthaiah)
Member (J)

06.07.07

v.