

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH**

Original Application No.504/2007

This the 22 day of May 2008

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

1. Harish Kumar, aged 40 years, son of Sri Satya Pal, resident of Village and Post Katithwari, District Meerut, U.P., presently working as Circle Organize, S.S.B., Jamunah under Bhinga Area, District-Shrawasti.
2. Sanjeev Singh Pal, aged about 39 years, son of Sri R.B. Pal, resident of 46-Sainik Nagar, Rai Bareily Road, Post Office-Kharika, Lucknow; presently working as Circle Organizer, S.S.B., Rupaidiha-1 Circle of Bahraich Area.

...Applicants.

By Advocate: Shri A.P. Singh 'Atal'.

Versus.

1. Union of India through the Secretary Department of Home, Ministry, Home Affairs, New Delhi.
2. Director General Sashastra Seema Bal, East Block-V, R.K. Puram, New Delhi.
3. Deputy Inspector General, Frontier Headquarter, S.S.B., Guwahati.
4. Sri Satyavrat, Inspector General S.,S.B. Frontier H. Qr. 11th Floor Kendriya Bhawan, Aliganj, Lucknow.

... Respondents.

By Advocate: Shri K.K. Shukla & Shri Rajendra Singh.

ORDER

BY MR. M. KANTHAIAH, MEMBER JUDICIAL.

The applicant no.1 and 2 have filed OA under which they challenged their respective transfers covered under Annexure-A-1 Dt. 28.08.2007 Dt. 13.09.2007 on the ground that they have been transferred with bias and malafide intention and to harass them. They have also attributed malice

against Respondent No.4 and further stated that it is against the transfer guidelines.

2. The respondent no.4 has filed Short Counter Affidavit on his behalf and on behalf of all the respondents, denying the allegations made by the applicant with a prayer to dismiss the application stating that no merits are there in the claim of the applicant.

3. The applicant has filed Rejoinder Affidavit denying the stand taken by the respondents and also reiterated his pleas in the OA.

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 no.1, who was appointed on 23.04.1999 on the post of Circle Organizer (CO) in SSB has been working as CO under Bhinga Area of Sharwashti District, whereas, the applicant no.2 was appointed as CO in SSB and has been working at Rupaidiha. During the year 2006, when the applicant no.1 was working at Nishangara (Nanpara) he was transferred to Jamunaha (Bhinga Area) on 12.05.2006 Annexure-A-3. Aggrieved by such transfer order he filed O.A.No.279/2006 on the file of this Tribunal and the same was disposed of on 09.06.2006 with a direction to the Respondent No.2 to decide the representation of the applicant within a period of 15 days. Annexure -4 is the copy of said order of the Tribunal in O.A.No.279/2006. Thereafter, he also made representation to his higher authorities against Respondent No.4 complaining that he threatened him in a meeting held on 17.06.2006 and for taking necessary action. Annexure-5 is the copy of the said representation Dt. 23.08.2007. Again within a period of 15 months of his earlier transfer applicant no.1 has been transferred from Jamunaha Circle of Bhinga Area to Guwahati Frontier Area and also issued order of relieving of the applicant Dt. 14.09.2007 covered under Annexure-7. The applicant also made

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representation to the respondent authorities for cancellation of his transfer order and Annexure-8 Dt. 5.09.2007 is the copy of the said representation.

7. In respect of the applicant no.2, he has been transferred from Rupaidiha –I Circle of Bhingra Area to Guwahati Frontier Area covered under (Annexure-1) Dt. 28.08.2007 at Sl. No. 3 and immediately he also made representation for cancellation of his transfer giving reasons. Annexure-9 is the copy of the said representation Dt. 13.09.2007. In pursuance of the order of Annexur-1, Respondent No.3 allotted the posting of applicants in Guwahati Frontier Area.

8. When there was no response from the respondent authorities on the representations of the applicants, they have filed this OA on 25.09.2007 questioning the transfer order covered under Annexure-1 issued by Respondent No.2 and also allotment of posting by the Respondent No.3 under Annexure-2. When the applicants have sought for stay of the impugned orders, this Tribunal declined to grant such relief but directed the authorities to dispose of the pending representations of the applicants and in pursuance of such orders, the respondents have passed orders Dt. 26.10.2007, rejecting the representation of the applicant no.2 which is at page 16, 17 and 18 alongwith short C.A. There is no decision in respect of representation of applicant no.1 covered under Annexure-8.

9. The applicants have challenged the impugned transfer orders Annexure-1 Dt. 28.08.2007 its consequential allotment order Dt. 30.09.2007 on the following grounds.

(i). The impugned transfer order is neither in Public interest nor in Administrative interest.

(ii). The transfer orders are in punitive in nature with bias and malafide intention to harass the applicants.

(iii). The applicants have been transferred during mid academic year which is against the transfer policy.

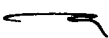
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(iv). To what relief.

Point No. 1 and 2:-

11. These two points are interlinked with each other and as such discussed in common. It is the contention of the applicant No.1 that the respondents have developed bias and negative attitude against him since 2005 when he made report against some of SSB persons in respect of their corrupt activities; Respondent No.4 bore grudge against him. It is also his case that Respondent NO.4 with malice and prejudice arbitrarily ordered him to stay boarder out post which is against Rules under Annexure-2 Dt. 21.03.2005. He says that his service conditions are governed by C.C.S. Rules and as such it would not be possible for his stay at border out post. Against which when he made representation Dt. 4.4.2005, but no action has been taken by the respondents. Thereafter, when he submitted an application for the post of DC 10/ Executive in 18 (Intelligence bureau) on deputation , Respondent NO.4 returned to forward his application to the competent authority. Though he made representation Dt. 06.01.2006 against the attitude of Respondent NO.4, but there was no response from him.

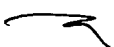
12. Further, he also alleged against Respondent No.4 that he openly threatened him in the meeting on 17.10.2006 in the presence of DIG and other officials and also abused him, for which he made representation to the higher authorities i.e. Respondent No.2 and Annexure-5 Dt. 23.08.2007 is the copy of such representation. On perusal of AnnexureA-4 in respect of incident happened in the meeting on 17.10.2006 in the Chamber of DIG, Gorakhpur, it shows that the Respondent No.4 used unparliamentarily language and also derogative remarks against the applicant and other COs in the presence of DIG, Commandant and Area Organizers . The apphcant no.1 also further contents that at the instance of Respondent No.4, he has been transferred again under Annexure-1.



13. In respect of all these categorical allegations against Respondent No.4 and his representations to Respondent No.4 and his higher authorities i.e. Respondent No.2 against the attitude of Respondent No.4, they neither denied nor disputed, and such conduct of the respondents itself established the stand taken by the applicant No.1, without any further proof.

14. Pleadings of both the parties also clearly shows that the respondents have disposed of the representation of the applicant No.2 alone. They have not decided the representation of the applicant No.1 Dt. 5.9.2007 (Annexure-8) inspite of direction given by this Tribunal Dt.28.09.2007. When the applicant no.1 filed earlier OA.No.279/2006, when he was transferred to Jamunaha Circle of Bhinga Area, Lucknow Frontier, it was disposed of with a direction to the Respondent No.2 to decide the representation of the applicant in respect of his transfer under Annexure-A-3 Dt. 12.01.2006. But the authorities have not taken any decision on such representations of the applicant. There are no reasons furnished for keeping the representation pending inspite of direction of this Tribunal. Further they have not stated any thing for their inconvenience in delaying the matter. Admittedly, all the other representations of the applicant under which he made allegation against respondent no.4 are also not decided by the concerned authorities. All these circumstances coupled with the specific allegations made against Respondent No.4 for his transfer under Annexure-A-1 clearly shows and proves that at the instance of Respondent No.4 the applicant no.1 has been transferred from Jamunaha Bhinga Area, Frontier Lucknow to Guwahati Frontier within 15 months period only with malafide and bias attitude.


12. It is specific case of the applicant that Jamunaha Circle has not been closed in the reorganization and only on the recommendation of the Respondent No.4, he has been transferred to Guwahati Frontier and also mentioned the same in his representation Annexure-8 Dt. 5.09.2007, which is not decided by Respondent No.2, inspite of directions from this Tribunal



and no reasons are assigned for not taking any decision. But while disposing of the representation (AnnexureA-9) of the applicant no.2, the authorities have stated that Shri Yogendra Singh was posed in the place of the applicant no.2 at Rupaidiha Circle. The reasons given for posting of Shri Yogendra Singh are that his present place of posting Chakia Circle under Lucknow Frontier had been closed but he had not completed his normal tenure in Frontier Lucknow and as such, he has been accommodated at Rupaidiha circle at Lucknow Frontier. From this, it is clear that authorities have accommodated Shri Yogendra Singh in Frontier, Lucknow. When the authorities have provided such opportunity to other COs i.e. Shri Yogendra Singh, accommodating the applicant no.1 in Frontier Lucknow there will no problem to accommodate the applicant no.1, who has been transferred only 15 months back and admittedly not completed his tenure in this Frontier. Immediately within such a short period and in the middle of academic year, transferring the applicant no.1 to Guwahati Frontier on the ground of reorganization of units or circles is not at all satisfactory and also throws doubt on the version of the respondents.

13. In view of the above circumstances there is justification in the arguments of the applicant complaining that at the instance of Respondent No.4, the applicant no.1 has been transferred from Frontier Lucknow to Guwahati Frontier within a short period of 15 months that too in the mid academic session of his children, which is against the transfer guidelines with bias and malice but not in public interest.

14. In respect of the claim of the applicant no.2, the respondents authorities have replied to his representation stating that he has completed his tenure at Rupaidiha circle of Lucknow Frontier and further it is not his case that any of the respondents are bias and malafide against him as in the case of applicant no.1 and as such there are no justified grounds to say that he



has been transferred with bias and malice. Hence point no.1 and 2 are decided only in favour of applicant no.1.

Point No.3:-


15. As per the transfer guidelines Annexure-6, the normal tenure of posting in SSB is 3 years and transfer orders will be issued in the month of March in view of academic session of the children of the employees. But in the instant case, the applicant no.1 has not completed such period. Further transferring him during August is nothing but against transfer guidelines of the department.

16. Coming to the applicant no.2, when it is the case of the respondents that he has completed his tenure of 3 years, considering his claim for cancellation on the ground of children education in not at all a justified ground.

17. In view of the above circumstances, this point is decided only in favour of applicant no.1.

Point No.4:-

Point 1, 2 and 3 are decided only in favour of applicant no.1 and as such his claim to quash transfer order Annexure-1 Dt. 28.08.2007, transferring him from Jamunaha circle of Bhinga Area under Lucknow Frontier to Guwahati Frontier issued by Respondent No.2 and also consequential posting order Dt. 13.09.2007 issued by Respondent No.3 is allowed and where as the claim of the applicant no.2 is rejected and thus OA is partly allowed only in respect of the claim of the applicant no.1. No costs.


(M. KANTHAIYAH)
MEMBER JUDICIAL
22.05.2008

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