

**Central Administrative Tribunal
Lucknow Bench Lucknow**

Original Application No.190/2009

This, the ^{10th} day of June 2009

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

Dr. Pramod Kumar Gupta aged about 54 years Son of Late
T.R. Gupta, Resident of A-787, Indira Nagar, Lucknow.

Applicant.

By Advocate Shri A. Moin.

Versus

1. Union of India through the Secretary , Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi.
2. The Director General , Department of Health Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi.
3. The Director (CHS), Department of Health, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi.
4. The Addl. Director (CGHS), 9-A, Rana Pratap Marg, Lucknow.

Respondents.

By Advocate Shri Atul Dixit.

ORDER

By Mr. M. Kanthaiah, Member (J)

The applicant has filed the O.A. with a prayer to quash the impugned transfer order Dt. 28.4.29 (Ann.A-1) transferring the applicant from CGHS, Lucknow to CGHS, Allahabad and to direct the respondents not to give effect or implement the impugned order and allowed the applicant to continue to perform his duties as usual at CGHS, Lucknow on the following grounds:-

- (i). The impugned order has been passed illegally and in arbitrary manner and in violation of Govt. Policy and decision

in respect of Govt. Employees which provides that working spouses shall be posted at the same station.

(ii). In the event of transfer in public interest the juniors most must go whereas, in the present case the applicant despite being senior most has been transferred and further longest stay at the place have been retained , which is in utter violation of the service rules.

(iii). The applicant has been transferred at the time when Model Code of Conduct issued by the Election Commissioner is in operation , which provides a complete ban on transferring the employees of central or state government.

(iv). Personnel and family difficulties of the applicant are to be taken into consideration before effecting the transfer of the applicant.

(v). To what relief.

2. The respondents have filed Counter Affidavit, denying the claim of the applicant stating that there are no justified grounds in challenging the impugned transfer order and as such prayed for dismissal of the OA. They also further stated that the applicant has concealed the material facts in respect of disposal of earlier O.A.No.450/2005 against him , and the said ground alone is sufficient for dismissal of the OA.

3. Heard both sides.

4. The point for consideration is whether the applicant is entitle for the relief as prayed for.

5. The brief facts of the case are that the applicant while working as Senior Physician at CGHS, Kanpur, he made a representation to the authorities requesting his transfer to Lucknow on the compassionate ground stating that his wife is working as Medical Officer in U.P. Government service and also made several other representation narrating his grievances and other difficulties in respect of his daughter and old aged mother. Thereafter, he was transferred to CGHS, Lucknow vide order dt. 19.1.1995 directing him to report for duty at CGHS, Policlinic, Lucknow vide order dt.

1.2.1995 by the Respondent No.4 (Ann.-A-4) and while he was working there, he was promoted as Specialist Grade-I on Non-Teaching and thereafter, as Consultant Medicine and consequently, his pay was fixed in supertime grade (Ann.A-6). While the applicant was working as Consultant Medicine at CGHS, Lucknow, he was transferred to CGHS, Allahabad vide order dt. 20.12.2004 (Ann.A-7) and aggrieved with such transfer order, he filed O.A.No.29/2005 on the file of this Tribunal and the same was disposed of 18.1.2005 with a direction to the respondents to consider the representation of the applicant (Ann.A-8). In pursuance of the direction to the Tribunal dt. 18.1.2005, the respondent have considered the representation of the applicant and cancelled his earlier transfer order and in that place Dr. Jitendra Prasad was transferred to CGHS, Allahabad (Ann.-A-9). Against the said transfer order of Dr. Jitendra Prasad, filed OA NO.450/2005, challenging the impugned transfer order dt. 31.8.2005 and the same was allowed on 8.7.2008. Ann.-B to objection is the copy of judgment and order is O.A.No.450/2005. It is also not in dispute that this applicant contested in the OA as Respondent No.5. Admittedly, none of the respondents have challenged the order of the Tribunal dt. 8.7.2008 and thus, it became final.

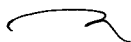
6. While, the applicant has been working as Consultant Medicine at CGHS, Lucknow, the Respondent No.1 issued the impugned transfer order dt.28.4.2009, transferring the applicant from CGHS, Lucknow to CGHS, Allahabad. The impugned order also shows that alongwith the applicant Dr. Ratan Gupta, Specialist Grade-II Pediatrician has also been transferred from GNCS, Delhi to Safderganj Hospital, Delhi and both these transfers have been effected in public interest.

7. The respondents have taken main objections stated that the OA is liable for dismissal on the ground of concealment of disposal of earlier O.A.No.450/2005 against him. The

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applicant, who is the private respondents in O.A.NO.450/2005 contested the said transfer order relating to Dr. Jitendra Prasad, who had been transferred from CGHS, Lucknow to CGHS, Allahabad by canceling the earlier transfer of the applicant. After due contest the said OA was disposed of. The applicant did not mention the disposal of OA NO.450/2005 in this OA. It is the main arguments of the respondents that the impugned order has been issued only because of allowing earlier O.A.No.450/2005 against the applicant but there is no reference of such connection with O.A.No.450/2005 in the impugned order and as such non mentioning of the fact of the said OA in the present OA is not at all suppression or concealment of material facts and the said objections of the respondents for dismissal of OA is not at all justified.

8 It is the case of the applicant that both wife and husband has to be accommodated in one place and in the instant case his wife who is Medical Officer working in Lucknow Zone and as such he has to be accommodated at Lucknow and on that ground he questioned his transfer from Lucknow to Allahabad. The respondents have filed Counter Affidavit, stating that the wife of the applicant is not posted at Lucknow and further such, a ground was also taken by the applicant in the earlier OANo.450/2005 and inspite of it the Tribunal did not allowed such. Admittedly, it is the case of the applicant that his wife has been working as Medical Officer at Lucknow Zone, which consist of more than 10 to 12 districts and it is not his case that she has been working at Lucknow city. When she has not been working in Lucknow city, it is not open to the applicant to seek his retention at Lucknow on the ground that his wife has been working in Lucknow Zone and as such, there is no force in the claim of the applicant and thus the same is decided against the applicant.



Point No.

9 It is the case of the applicant that the applicant is the senior most Consultant (Medicine) at the CGHS, Lucknow and he has been in service since 1982 whereas, the other two doctors i.e. Dr. Jitendra Prasad, who is working since 28.1.1993 and Dr. Ashok Kumar, who is working since 1.2.1994 and in the event of transfer in public interest, the junior most ought to have been transferred but in the instant case he being senior most effected transfer, which is against the norms. The respondents have filed the Counter Affidavit, stating that the applicant working as Consultant (Medicine), which post is not available at Lucknow as on day and the said post being promotion post from the post of Medical Specialist and Consultant (Medicine) can be posted even on the post of Medical Specialist only if no such Specialist is available, which is not the case in the present manner. Now there are only 2 sanctioned post of Medical Specialist at CGHS, Lucknow and both are presently filled up. It is also the case of the respondents that the applicant is working at Lucknow on the post of Specialist M(Medicine) at CGHS, Lucknow

10. In respect of the allegations of junior or senior they stated that the applicant is presently occupied the post of Consultant (Medicine) in which there is no sanctioned post at CGHS, Lucknow and as such the claim of the applicant is not justified.

11. Admittedly, both the doctors i.e. Dr. Jitendra Prasad and Dr. Ashok Kumar, whom the applicant claimed his juniors, they have been working on the post of Medical Specialist at CGHS, Lucknow, which are sanctioned post. It is not the case of the applicant that he has been working on the sanctioned post of Medical Specialist at CGHS, Lucknow for comparing his services with the juniors doctors for claiming any comparison asking for his retention either on the ground of senior or on the ground of longest stay. If the post of the applicant and other juniors doctors are one and

the same such claim of the applicant is justified but no such circumstances are prevailing in the instant case and further the applicant, while working at Lucknow over and above at sanctioned strength of his specialists cannot claim such benefits. Further because of non joining of the applicant on the transferred post of Consultant (Medicine) at CGHS, Allahabad both sanctioned post at Allahabad are lying vacant, which is not at all desirable for the better administration and for utilization of the service of the applicant.

92 It is also pertinent to note that this applicant has taken this plea in the earlier OA NO.450/2005 where Dr. Jitendra Prasad, challenged his transfer, transferring him from CGHS, Lucknow to CGHS, Allahabad while canceling the transfer of the applicant herein, and this Tribunal discussed and negated for allowing his claim. Thus, there is no justification in the claim of the applicant questioning the impugned transfer order on the ground of senior most or longest stay of the officers. Hence, this point is decided against the applicant.

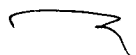
Pont NO.3:-

13. It is the case of the applicant that he has been transferred at the time when Model Code of Conduct has been issued by the Election Commissioner of India is in operation on account of General Election of Lok Sabha 2009, there is a ban for transferring the employees of Central Govt. or State Govt. from one station to other without prior permission of Election Commissioner but in the instant case no prior permission has been obtained. The respondents have filed Counter Affidavit, stating that no permission for issuing of transfer of the applicant is required because the Model Code of Conduct for General Election of Lok Sabha 2009, ban the transfer of official connected with the conduct of Election and the applicant is no way connected or concerned with the conduct of said Election. The applicant has not placed any material his

connection with the conduct of such Election and as such not covered by the ban of transfer as provided by the Model Code of Conduct. They also filed copy of Circular dt. 2.3.2009 issued by Secretary, Election Commission in respect of the application for Model Code of Conduct as Annn.-CR-4.

14. Para4 of the Mode Code of Conduct of issued by Election Commission shows that there shall be total ban on transfers of all officers/officials connected with the conduct of the election. It is also specific plea of the respondents that the applicant is in no way connected with the conduct of election and applicant has not placed any material to satisfy that he has been attached or connected with the conduct of the election and without satisfying the same he is not justified to claim any benefits on the ground of total ban on the transfer of all the officers/officials because of the Model Code of Conduct for the General Election of Lok Sabha 2009. Thus, there is no merits in the claim of the applicant as such this point is decided against the applicant.

15. The applicant has stated that his only daughter is medical student perusing her studies at Lucknow and his mother aged about 85 years and she has been suffering from various old age ailments and is under regular medial check-up and Medicare and needs constant attention. He further stated that there is no other male member who can take care of the family in the absence of the applicant and in the event of his transfer, his family would have to face untold misery and hardships. The respondents denied the said stand taken by the applicant stating that the applicant has taken such pleas even in the earlier OA NO.450/2005 and also further stated that so far as medical facilities are concerned the same are also available at Allahabad where is and therefore there is no problem for medial check-up etc. In respect of personal difficulties and family problems of the applicant, which he has to state before the authorities for consideration and only on such ground, no officer is

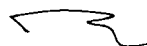


entitled to question the validity of transfer argument as such the said order is not at all maintainable. Thus, this point is also decided in favour of the applicant.

16. All the grounds taken by the applicant are decided against him. Though, the applicant has not taken any plea in respect of allegations of malice in law, advanced arguments on such grounds.

17. It is one of the arguments of the applicant that no reasons have been shown in the impugned transfer order and asking the Respondent No.4 to relieve the applicant immediately and he may not be granted any kind of leave itself shows the malice attitude of the authorities and the same itself patent malice in law. Admittedly, the recitals of the impugned transfer order dt. 28.4.2009 shows that the Respondent No.1 has effected the transfer of the applicant and other doctor in public interest and whereas, the applicant transferred to CGHS, Lucknow to CGHS, Allahabad and other doctor Ratan Gupta has been transferred to CGSI, Delhi to Safderganj Hospital, Delhi. The said order has been supplies to all the concerned including Respondent No.4 with a direction to relieve the applicant immediately and he may not be granted any kind of leave. Similarly request has also been made to the Additional Director, CGHS, Allahabad with a request to allowed the applicant to join his duties and his charge report in triplicate sent to this ministry and such a request was also given to the (H&FW), GNCT, Delhi in respect of the transfer of Dr. Ratan Gupta.

18. It is the argument of the learned counsel that asking the Respondent NO.4 to relieve the applicant immediately and he may not be granted any kind of leave itself shows a malice intention of the authorities and no such direction was given to the concerned in respect of other doctor. While effecting the transfers of the officers, it is duty of the authorities to take care of such accommodation and if necessary, it is up to the authorities to direct the concerned



authorities in respect of relieving the transferred officers, which is suitable in the interest of administration. Mere asking the Respondent NO.4 to relieve the applicant immediately and he may not be granted any kind of leave does not say that the authorities have passed such orders with any illegal intension and when they effected the transfer of the officers , it is upon the authorities to take suitable steps for its enforcement and as such the direction given to the Respondent NO.4 does not imply that the authorities have passed such order with any malice intention and as such , there is no force in the arguments advanced on such elevation.

19. Admittedly, the transfer is an incident of service and the apex court repeatedly emphasis^{ed} that the Court or Tribunals not to interfere in the transfer order unless the transfer order is issued due to malafide or in contravention of statutory rules or issued by incompetent authority but no such valid grounds have been raised by the applicant for challenging the impugned transfer order. Under the above circumstance, there are no justified grounds for interference of this Tribunal with the impugned transfer order and as such the OA is liable for dismissal.

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

(M. KANTHAIAH)
MEMBER (J)

10.06.09

/amit/