

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 53 of 2011

This the 26th day of April, 2011

Hon'ble Mr. Justice Alok K Singh, Member-J
Hon'ble Mr. S.P. Singh, Member-A

Sumant Gupta, Aged about 59 years, S/o late Gopal Krishan Gupta, R/O B-1/90, Sector G, Jankipuram, Lucknow.

.....Applicant

By Advocate : Sri A. Moin

Versus.

1. Union of India through Secretary, Ministry of Mines, Shaṣtri Bhawan, New Delhi.
2. Director General, Geological Survey of India, 27-Jawahar Lal Nehru Road, Kolkata.
3. Sri Laxman Singh Jain, Deputy Director General (G), Orrisa State Unit, ER. Bhubneshwar.

.....Respondents.

By Advocate : Sri S.P. Singh

ORDER

By S.P. Singh, Member-A

This O.A. has been instituted seeking following relief(s):

- “(i) to quash the impugned transfer order dated 1.2.2011 as contained in Annexure A-1 to the O.A. with all consequential benefits.
- (ii) to quash the order dated 7.2.2011 as contained in Annexure no.2 to the O.A. passed by respondent no.2

6/2

- (ii)(a) to quash the impugned order dated 14.2.2011 passed on behalf of respondent no.2 as contained in Annexure A-16 to the O.A. with all consequential benefits.
- (iii) to direct the respondents to allow the applicant to continue as Dy. Director General (HOD) at Lucknow with all attendant benefits.
- (iv) to directed the respondents to pay the cost of this application.
- (v) any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed."

2. The factual matrix of this case has been captured while passing the order dated 11.2.2011. The contents of order passed in this regard are reproduced below:

"3. Applicant's case is that he is presently posted as Dy. Director General, Northern Region, Lucknow w.e.f. 21.5.2009 and he took over the charge of Head of Department on 1.1.2010. He is a Group 'A' officer of Geological Survey of India. It is said that re-deployment / transfer of Group 'A' and 'B' officers in the GSI are governed by Human Resources Development and deployment policy No. HRD/GSI/Transfer Policy/2009 dated 7.1.2010. Respondent No.1 has also directed respondent No.2 vide order dated 3.5.2010 to strictly adhere to the provisions of the transfer policy without any discrimination. It is said that ignoring the aforesaid transfer policy, the impugned transfer order dated 1.2.2011 has been issued by respondent No.2, transferring the applicant from Lucknow to Hyderabad vice respondent No.3 from Bhubneshwar to Lucknow (Annexure No.A-1). As the applicant was on an official tour from 1.2.2011 till 4.2.2011, he returned back on 5.2.2011 and 5.2.2011 and 6.2.2011 being holidays, the impugned order was served upon the applicant on 7.2.2011. By means of an order dated 7.2.2011, the applicant has been requested to handover the charge to respondent No.3 (Annexure A-2), but he has not handed over the charge as yet and at the same time, the applicant preferred a representation dated 7.2.2011(Annexure A-5) but instead of passing any order on that representation, the respondent No.2 is pressing hard to hand over the charge .

4. Learned counsel for applicant submitted that the impugned order has not been passed in public interest and it is in violation of the transfer policy. Para 6.5 says that Group 'A' and 'B' officers in GSI with 2 years of residual service before superannuation, on request may be exempt from redeployment. It is said that the applicant has got only 7-1/2 months left to his retirement. Besides,

time schedule for general transfer in the context of Field Season Program (FSP) commence from April. Transfers outside the period of General Transfer can only be done to fill up a vacancy caused due to promotion, retirement or other unanticipated event on other on compassionate grounds. It is said that in the present case, no such cause has arisen. It is also said that applicant is third senior most Dy. Director General in India while respondent No. 3 is junior to the applicant. Presently, the applicant is functioning as Head of six States (U.P., Uttranchal, Punjab, Haryana, Himachal Pradesh and Jammu and Kashmir) but with his transfer to Hyderabad, he would be heading only 4 States (Andhra Pradesh, Karnataka, Tamilnadu and Kerala). It was also submitted that the applicant has been nominated as Chairman (vide page 9 of the Annexure SA-1) of the illegal and Unscientific Mining Committee of the State of U.P. by the Director General, in pursuance of the orders passed by the Hon'ble High Court of Lucknow Bench and as such his presence is vital to the issue pertaining to reporting the illegal mining and frequent consultation with the Additional Solicitor General of India. The said writ petition No. 1580/2009 is still pending. Lastly it was submitted that according to the order dated 7.2.2011 consequent upon his taking over charge of the office of Dy. Director General, (Geo.) Geological Survey of India, Northern Region, Lucknow this forenoon vide office order dated 1.2.2011, Sri Laxman Singh Jain, Dy. Director General (Geo) will function as the Head of Department, GSI, Northern Region, Lucknow from 7.2.2011 forenoon in the interest of public service. But at Sl. No.4, copy has been endorsed to the applicant with a request to handover the charge to Sri Laxman Singh Jain to enable him to function as Head of Department.

5. Learned counsel therefore, submitted that thus this order is self contradictory and in fact the charge of Head of Department has not been handed over.

6. Learned counsel for applicant therefore, submitted that at least status quo be maintained till further orders. He has also placed reliance on the following case laws:-

- i. **Dr. Jitendra Pratap Singh Vs. State of U.P. and another [2009(27) LCD 1425]**
- ii. **Sarvesh Kumar Awasthi Vs. U.P. Jal Nigam and others (2003) 11 Supreme Court Cases, 740.**
- iii) **Ramadhar Pandey Vs. State of U.P. and others 1993(SU3) SCC 0035 SC.**

In the case of Jitendra Pratap Singh (Supra), only 10 months were left for the superannuation of the petitioner who was a U.P. Govt. employee. Hon'ble High Court of Allahabad (Lucknow Bench) held that order transferring the petitioner at the fag end of the career was against the policy of the State Govt.

In the case of Sarvesh Kumar Awasthi (Supra), Hon'ble Apex Court held that transfer of officers is required to be effected on the basis of set norms or guidelines without allowing any political interference in regard thereto and the Chief Secretary of the U.P. was directed to file an affidavit pointing out the Rules and

S/L

Regulations for effecting transfers of officers including higher officers like District Magistrate.

In the case of Ramadhar Pandey (Supra), it was observed that from the record, it was not ascertainable as to whether or not the transfer policy was in public interest. In the absence of Counter Affidavit or even the relevant records, the court therefore, reached to a conclusion that no public interest was involved.

7. Learned counsel for the official respondents has vehemently opposed the prayer for maintaining status quo on the ground that respondent No.3 Sri L.S. Jain has already handed over the charge of his previous posting at Orissa/Jharkhand on 5.2.2011 in compliance of order dated 1.2.2011 and he has also taken over the charge of the office of Dy. Director General, GSI, Northern Region, Lucknow in the forenoon of 7.2.2011.

8. In reply to the submissions made from the side of the applicant, it was submitted that para 6.5 of the transfer policy in respect of less than 2 years of residual service is only advisory. In respect of time schedule for general transfer in the context of Field Season Program, it was pointed out that it pertains to JTS and STS officers while the applicant belongs to the category of Group 'A' officer working in senior administrative grade (SAG). In regard to nomination of the applicant as Chairman of the Illegal and Unscientific Mining Committee of State of U.P. by the Director General, in pursuance of the orders of the Hon'ble High Court of Lucknow Bench, it was submitted that necessary replacement would be made and it is the prerogative of D.G. to appoint the new incumbent or other suitable person as Chairman to perform the monitoring as desired by the Hon'ble High Court. In respect of case laws cited on behalf of the applicant, it was submitted that in the case of Jitendra Pratap Singh (Supra), the transfer policy of the State Govt. was involved whereas the respondent Geological Survey of India is a Central Govt. organization and every department has its own transfer policy. In case of Sarvesh Kumar Awasthi (Supra), it was said that the impugned transfer order has not been effected in violation of any guidelines. There is also no allegation of political interference. In respect of case of Ramadhar Pandey (Supra), it was said that the transfer order in question has been passed in public interest as mentioned in the order itself and it would be substantiated by filing Counter Affidavit for which opportunity may be given.

9. Therefore, learned counsel for the official respondents requested that the matter may be posted on 14.2.2011 so that he may seek complete instructions and may also file short/ detailed C.A. Meanwhile notice may also be sent to respondent No.3 by means of Dasti summons, if the applicant so desires.

10. In view of the facts and circumstances discussed hereinabove, at this stage without entering into the merit of the case, we do not find any ground for maintaining status

Sp.

quo. The matter be posted on 14.2.2011. The learned counsel for respondent may seek complete instructions and file short/detailed C.A.in the meanwhile. Simultaneously, Dasti summon/notice be also issued to respondent No.3 for which the applicant may take appropriate steps. In the meanwhile, the respondents may dispose of the representation of the applicant dated 7.2.2011 (Annexure A-5)."

3. Earlier an objection dated 14.2.2011 was filed against interim relief sought by the applicant. It was stated by the respondents therein that four officers of the same rank had been transferred and one Sri Laxman Singh Jain, Deputy Director General already joined the present place of posting in Geological Survey of India as Deputy Director General (G) and HOD, Northern Region, Lucknow on 7.2.2011. Photocopy of charge report dated 5.2.2011 and joining report dated 7.2.2011 were also annexed as Annexure nos. 1 & 2 to the Objection. It was further stated by respondents in para 2 of their objection that the applicant has filed the above noted Original Application challenging the order of his transfer dated 1.2.2011 from the post of Dy. Director General (G) and HOD GSI (NR), Lucknow to Dy. Director General (G) and HOD GSI (SR), Hyderabad. In order dated 1.2.2011 four officers of the same rank have been transferred and one Sri Laxman Singh Jain, Deputy Director General (G), Orissa State Unit (ER) Bhuvneshwar has been transferred to Dy. Director General (G) and HOD GSI at Lucknow. In para 5 thereof, the respondents have stated that the applicant is senior most Deputy Director General in the Department and as such after due consideration of all aspects, including functional requirement, he has been posted in the GSI (SR), Hyderabad having the largest territorial jurisdiction. More-over after restructuring of the GSI, a major part of the work of the erstwhile Marine Wing, Coal Wing and AMSE wing has come in the direct control of GSI (SR) and therefore, the department has rightly passed the order of posting in that region, the senior most Dy. Director General at Hyderabad. It was further stated that the applicant had been posted in Northern Region Headquarters, Lucknow for 18 years and in all he had remained in Northern Region for 21 years out of 35 years of total service (from 1975 to 2011) with Geological Survey of India. It was further stated in the objection dated 14.2.2011 that the

transfer policy dated 7.1.2010 provides clearly that clause of two years of residual service for retention at a particular place cannot strictly be applied to the Deputy Director General and upward (Senior Administrative Grade [SAG]/ Higher Administrative Grade [HAG] level posts because of the highest hierarchal level of functional requirement has to be given top most priority in the functioning of the department. It was further said that the transfer order dated 1.2.2011 has been passed after due consideration of the proposal for redeployment of the officers of Deputy Director General and upward level posts according to prescribed procedure exclusively laid down in transfer policy dated 7.1.2010 for such officers.. It is, therefore, a routine transfer order passed by competent authority. Applicant has all India transfer liability as condition of service and no statutory rule, therefore, is violated in present case. Photocopy of the letters dated 14.1.2011, 31.1.2011 and proposal for redeployment have been annexed as Annexure nos. 3, 4 and 5 to the Objection

4. The Official respondents also filed a detailed Counter reply wherein it was stated by the respondents that since the applicant refused to comply with the order even after passing the order of this Tribunal dated 11.2.2011, the respondent no.2 i.e. Director General, Geological Survey of India had no option, except to pass the order dated 21.2.2011 by which the applicant was relieved w.e.f. 21.2.2011 from the post of Deputy Director General, GSI, Northern Region, Lucknow with an instruction to take up his new assignment as Deputy Director General (G) and HOD, GSI (SR), Hyderabad. Copy of the order dated 21.2.2011 has been annexed as Annexure no. CR-1 to the Counter Reply. It was further contended that the respondent no.3 started to perform his duties as HOD, GSI, Lucknow from 21.2.2011 forthwith. The respondent no.2 had, in the meanwhile also, passed a reasoned and speaking order on 14.2.2011 rejecting the representation of the applicant dated 7.2.2011.

5. It was pointed out by the respondents that the **applicant is trying to mislead this Tribunal by way of taking the shelter of para 6.5 as well as para 5.1 to 5.5 of the transfer policy while ignoring the contents of para 8 of the same policy by means of which the respondent no.2 has been empowered for**

SpL

deployment of officers of HAG level and above on the basis of recommendations of the placement collegiums. It was submitted by the respondents that the transfer order dated 1.2.2011 has been passed in the interest of public service and functional requirement after due consideration of the recommendations and approval of competent authority as mentioned in the Objection filed on behalf of the respondents.

6. Heard the learned counsel for the parties and perused the material on record.

7. Learned counsel for the applicant gave a list of decisions on which he wishes to rely. At the first instance, he had given a list of cases which were included in the second time as well, but two new decisions were also included in the second list provided later. Learned counsel for the respondents objected inclusion of new cases in the list given. However, he pointed out that the decisions which have already been relied upon by the learned counsel for the applicant have no relevance to the present case and are in no way helpful to the applicant. He further stated that some of these case laws have already been dealt with by this Tribunal while passing the order dated 11.2.2011 refusing to allow for maintaining status quo. In this regard, he mentioned the following case laws:

- (i) **Sarvesh Kumar Awasthi Vs. U.P. Jal Nigam (2003 [11] SCC 740).**
- (ii) **Dr. Jitendra Pratap Singh Vs. State of U.P. & Others (2010[2] UPLBEC 1293).**
- (iii) **Ram Adhar Pande Vs. State of U.P. & Others (1993 [SU-3] SCC 35 .**

8. In view of the position as above, the remaining cases are being dealt with. **Union of India Vs. Muralidhara Menon, A.K. Munjal Vs. Union of India & Others and Pradeep Kumar Agarwal Vs. Director Local Bodies (1994) [1] UPLBEC 189.**

9. In the case of **Muralidhara Menon** (supra), the Apex Court dealt with the reversion of the petitioner from the post of UDC to the post of LDC in view of the fact that he was working in the post of UDC for a long time. In the cited case, the petitioner had filed specific undertaking to the department at the time of seeking

6/5

inter-change transfer in Income Tax where undertaking was given by the petitioner to forgo seniority on mutual/unilateral transfer. This is not true in the case of the present applicant and as such the facts are totally different to the present case.

10. The case of **A.K. Munjal** (supra) is also different on matter of fact as transfer guidelines dated 7.1.2010 were not applicable to the applicant in O.A. no. 489 of 2005. There was no constitution of committee provided in the extant transfer policy applicable in 2005 to consider and recommend deployment of SAG/HAG officers as will be obvious from perusal of order in case of A.K. Munjal (supra) of this Tribunal.

11. In the case of **P.K. Agarwal** (supra) the Hon'ble High Court had appreciated the joining of the petitioner, therein, in compliance of transfer order as anything contrary would have rendered the petitioner liable to the disciplinary action under the applicable service rules. This was done in consonance with the views expressed by the Apex Court in **Mrs. Shilpi Bose Vs. State of Bihar (AIR 1991 SC 532)**, **Union of India & Others Vs. S.L. Abbas (AIR 1989 SC 1433)** and **Gujrat Electricity Board Vs. A.S. Poshani**. In the instant case, the applicant has not yet joined his place of posting on transfer. On the other hand, he is showing reluctance to formally hand over the charge as HOD, Northern Region, to new incumbent who had already joined on transfer. This necessitated the Director General, GSI, to issue the specific order to hand over the charge of HOD to the new incumbent who had already joined at Lucknow .

12. From the above, it is crystal clear that the judgments relied upon by the learned counsel for the applicant are not helpful in any way to the present applicant.

13. The respondents' counsel has relied upon the following case laws:

- (i) **Airport Authority of India Vs. Rajiv Ratan Pandey (2009 [8] SCC 337).**
- (ii) **Union of India & Others Vs. Janardan Debanath & Another (2004 [4] SCC 245).**
- (iii) **Tushar D. Bhatt Vs. State of U.P. & Another (2009 [11] SCC 678).**
- (iv) **Rajendra Singh Vs. State of U.P. & Others (2009 [15] SCC 178).**

6/2

14. In the case of **Rajiv Ratan Pandey** (supra), the Hon'ble Supreme Court while considering the matter arising out of interim order has observed that in prima-facie view of Division Bench of Hon'ble High Court, the order of transfer suffers from strong malafides, but the fact of the matter is that there was not even whisper of malafide against the authority. In the said case, the Apex Court has also cited the decision rendered in the case of *State of U.P. Vs. Gobardhan Lal* (2004) 11 SCC 402). The Apex Court while considering the case of *Gobardhan Lal* laid down the ratio that any Government servant cannot contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. It was also observed by Apex Court that allegation of malafide must inspire confidence of the Court and ought not to be entertained on the mere seeking of it or on consideration borne out of conjecture or surmises and except for strong and convincing reasons, no interference would ordinarily be made with an order of transfer. That the burden of proving malafides is on a person leveling such allegations. Mere assertion or bald statement is not enough to discharge the heavy burden that the law imposes upon the person leveling allegations of malafides, it must be supported by requisite materials.

15. In the case of **Janardhan Debanath** (supra), the Apex Court in this case has ruled as under:

"..... Transfers unless they involve any such adverse impact or visit the persons concerned with any penal consequences, are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion, or termination and utmost latitude should be left with the department concerned to enforce discipline, decency, and decorum in public service which are indisputably essential to maintain quality of public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration."

16. In the case of **Tushar D. Bhatt** (supra), the Hon'ble Supreme Court has held as under:

"16. The legal position has been crystallized in a number of judgments that transfer is an incidence of service and transfers are made according to administrative exigencies.

6/2

18,Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever a public servant is transferred, he must comply with the order, but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer. If the order of transfer is not stayed, modified or cancelled the public servant concerned must carry out the order of transfer. In the absence of any stay of the transfer order, merely on the ground of having made a representation or on the ground of any difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other.

17. In the case of **Rajendra Singh** (supra), the Hon'ble Supreme Court while dealing with the transfer has held as under:

"8. *A government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment, but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires.*

9.In our opinion the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the

order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

18. Respondent no.3 and the new incumbent of the post filed Counter Affidavit dated 23.3.2011 stating that he had joined on 7.2.2011 in pursuance of the transfer order dated 1.2.2011. Only on joining at Lucknow, he came to know that the applicant had approached this Tribunal challenging transfer order dated 1.2.2011 and also that Tribunal did not find any ground to maintain status quo. Respondent no.3 is accordingly discharging his duties as Deputy Director General and HOD (NR), Lucknow.
19. Respondent no.3 further stated that as per records of office no leave application whether on medical or otherwise was submitted by the applicant to competent authority as the applicant is supposed to submit leave application to the place of his posting after release order dated 21.2.2011.
20. Para 8 of Transfer policy dated 7.1.2010 reads as under:
Assessment Committee and placement & Assessment Collegiums:

"8.1 (i) Assessment Committee shall be constituted in each Region consist of

- 1) Head of Department (HOD) of the Region.
- 2) DDG (Missions), and
- 3) Director (Training).

8.1.(ii) The Committee shall assess the officers of a batch for Mission Specialization in accordance with guidelines issued by HR Division from time to time.

8.2. The Director General shall constitute a Placement Collegium of Addl. DGs (Mission stream wise) consisting of the following:

- | | |
|---|----------|
| 1) Addl. D.G. (Mission concerned) | Chairman |
| 2) Addl. DG (Administrative support system) | Member |
| 3) DDG (Training Institute) | Member |

SP

4) Director (HRD)

Secretary

8.3 The DG, GSI shall order the deployment of officers on the basis of recommendations of the Placement Collegium. The Ministry of Mines will be the final authority for approval of the recommendations of the Placement Committee in respect of SAG level and higher levels of others".

In accordance with par of the Transfer policy, the applicant was transferred from DDG, GSI (NR), Lucknow to DDG GSI (SR), Hyderabad after considering the recommendations of the Committee and after due approval of the competent authority. Transfer order dated 1.2.2011 was issued in respect of five officers of DDGs in GSI only on such recommendations. The respondents filed Photostat copies of recommendations with the objection as mentioned hereinabove. The applicant is trying to mislead by resorting to para 6.5 as well as para 5.1 to 5.5 of transfer policy while at the same time, ignoring contents of para 8 of the transfer policy which empowers respondent no.2 for deployment of the officers on the basis of recommendations of the relevant placement collegiums. The transfer dated 7.1.2010 is, therefore, issued by competent authority in the interest of public intrest after considering the recommendations of Redeployment Committee as per relevant provisions of transfer policy keeping in view functional requirement of the departmental. There is no illegality involved.

21. It is further observed that transfer order dated 1.2.2011 has already been implemented and executed and respondent no.3 had already joined at Lucknow on 7.2.2011 after being relieved from Bhuvneshwar on 5.2.2011. The respondents have filed electrostat copy of relieving as well as joining of respondent no.3.

22. In view of the facts and circumstances stated in foregoing paras relating to submissions made by respondents, judgments of Hon'ble Supreme Court rightly relied upon by them and position mentioned as above, we do not find any scope of interference with transfer order dated 1.2.2011 and consequential orders issued by respondents dated 7.2.2011 and 14.2.2011 (Annexure A-16) rejecting the applicant's representation

Sp L

dated 7.2.2011 for reasons recorded therein. We also hold these orders as perfectly valid as no infirmity is found in these orders which are fully in conformity with statutory rules. The O.A. has no merit and is liable to be dismissed.

23. The O.A. is accordingly dismissed with no order as to costs.

S.P.S. 12
2.6.11
(S.P. Singh)
Member-A

Alok Kumar Singh
26.4.11
(Justice Alok K. Singh)
Member-J

Girish/-