

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 215/2011

This the 18th day of September, 2011

Hon'ble Sri Justice Alok Kumar Singh, Member (J)

Vijay Pratap Singh aged about 57 years son of late Sri Samar Bahadur Singh presently working as Divisional Forest Officer, Sohailwa Wild Life Division, District- Balrampur resident of Village Marui Krishnadaspur, Post Office- Paudhan Rampur, District- Sultanpur.

Applicant

By Advocate: Sri A.R.Masoodi

Versus

1. State of U.P. through Principal Secretary, Department of Forest, Bapu Bhawan, Civil Secretariat, Lucknow.
2. Principal Chief Conservator of Forest, U.P. Aranyan Bhawan, 17 Rana Pratap Marg, Lucknow.
3. Union of India through Secretary, Ministry of Forest and Environment, New Delhi.

Opposite Parties

By Advocate: Sri Sudeep Seth for respondents No. 1 and 2
Sri G.K.Singh for respondent No. 3

ORDER

BY HON'BLE SHRI JUSTICE ALOK KUMAR SINGH, MEMBER (J)

This O.A. has been filed for the following reliefs:-

- i) set aside the impugned order dated 25.1.2011 as contained in Annexure No. 1 to this original application.
- ii) Direct the respondents to allow the applicant to work in the capacity in which he was working prior to the passing of the impugned transfer order dated 25.1.2011 during the pendency of this Original Application.
- iii) Pass any such order or direction as the circumstances of the case may admit of.

2. The applicant's case is that he was posted as DFO, Sohailwa Wild Life Division, Balrampur. He was transferred vide order dated 25.1.2011 passed by respondent No.1 from the said post to the post of Dy. Director, Japan International Cooperation Agency (JICA) Lucknow which has been impugned in this O.A. Prior to filing of this O.A., he had approached the

Hon'ble High Court , Lucknow Bench by means of filing a writ petition No. 137/2011. But on the objection raised from the other side regarding jurisdiction, this matter was relegated to this Tribunal for decision on merit. The applicant joined as DFO, Sohailwa Wild Life Division on 19.6.2008. He was given additional charge of Sohagibawa Wild Life Division, Maharajganj on 31.8.2008.

3. The applicant's case is that the State Govt. has framed a transfer policy vide G.O. dated 21.4.2010 for the year 2010-11, during which no transfer has to be made unless it is inevitable in the conditions, such as medical, education of children or administrative reasons. In that case, transfer can be effected after prior approval from the Hon'ble Chief Minister through the Departmental Minister and if transfer is made in public interest , then it has to be done only by an order of Chief Minister. It is further said that the applicant has reason to believe that in respect of his transfer, approval of Hon'ble Chief Minister through Departmental Minister was not obtained. That during pendency of Writ Petition No. 137/2011 before the Hon'ble High Court, Lucknow Bench, the respondents placed reliance upon the recommendations of the Civil Services Board. But when the record was produced before the Hon'ble High Court, it revealed different position altogether. Therefore, the Hon'ble High Court was pleased to interfere and the opposite parties were directed to permit the applicant to remain at the present place of his posting. It has been further pleaded that the minutes dated 25.1.2011 of the CSB (Annexure No.3) do not reflect any element of urgency or public interest. In respect of the post of Dy. Director, where he has been proposed to be transferred , it has been said that even nature of duties attached to it are not known as also its equivalence with any cadre of IFS. No urgency is borne out from the aforesaid minutes to justify his transfer in mid session against the policy of no transfer session in this order. That the transfer is not based on bonafide exercise of power and it is rather based on extraneous considerations.



4. It has also been pleaded that the applicant has been very active in curbing the illegal activities which were prevailing in both the forest divisions. He has passed orders for confiscation of two trucks, four pickups, two jeeps, one tractor trolley, one motorcycle, thirteen Dunlops (Car) and cycles etc. for carrying of illegal forest produce and timber and declared them as State property. Recently, he confiscated a truck bearing No. UP-34/T-0694 belonging to one Mr. Hazi Sabir Ali, which was carrying huge quantity of Sagar Wood. Similarly, the applicant removed one Ram Prasad, Forest Guard for illegal felling of trees. One Mr. Mustafa, Minimum wage employee was also terminated and in another incident Forster Sri Ashok Kumar Yadav, Forest Guards Sri Rajesh Kumar Srivastava and Suresh Prasad have been suspended by him and disciplinary enquiry has been initiated against them. Further vide order dated 9.12.2010, the applicant passed a suspension order of one Mr. Nurul Huda, Forest Guard. These actions may be becoming inconvenient for the persons who were involved in such kind of activities. In the backdrop of the aforesaid facts, the impugned transfer order was assailed before the Hon'ble High Court in Writ Petition No. 137/2011, in which an interim order was passed on 10.2.2011 (Annexure 5). The respondents filed a counter affidavit on 18.2.2011 and requested for vacation of interim order. Then the case was listed on 19.4.2011 when the Hon'ble High Court directed the respondents to first comply with the interim order dated 10.2.2011. The respondents before complying with the order approached the Hon'ble Supreme Court by filing a SLP No. 12771/2011, which was mentioned to be listed on 4.5.2011. In the mean time, the Writ Petition also came up before the Hon'ble High Court on 4.5.2011 when the respondent No.1 apprised about the compliance of the interim order dated 10.2.2011. Thereafter, the respondents raised the point of jurisdiction and then the matter was relegated to this Tribunal by the Hon'ble High Court with a direction to the parties to maintain status quo for the period of 3 weeks or till disposal of the stay application

which is earlier. A direction was also given to the Tribunal that if the O.A. is filed before it, the stay application shall be considered within two weeks. In the SLP pending before the Hon'ble Apex Court the records pertaining to the transfer of the applicant were summoned and the matter was fixed for 13.5.2011. The records were shown to the Hon'ble Apex Court and while perusing the original file, the Counsel of the State Govt. requested before the Hon'ble Supreme Court that it does not propose to press the SLP, upon which the SLP was dismissed (Annexure -12).

5. Respondents No. 1 and 2 have filed C.A. saying that impugned transfer order has been passed in accordance with the policy laying down guidelines for transfer for the year 2010-11 as circulated vide G.O. dated 21.4.2010 under Sub Clause 7 of Clause 1. It has been further said that Civil Service Board comprising of the Principal Secretary of the Department, Head of the Department has convened meeting and in view of the immediate administrative exigency/ public interest, it has approved the transfer. About the post to which the applicant has been transferred, it has been said that this project has been set up in collaboration with the Japanese Govt. which provided soft loans on long term basis and this post was lying vacant. Denying the contention of para 4.8 to para 4.15 of the O.A., it has been said that the applicant has been guilty of certain misconduct during his past service. On account of that, vide order dated 24.5.2000, his two annual increments were stopped for the period of 3 years. He challenged it before this Tribunal by filing O.A. which was dismissed on 18.5.2000. Then again, vide order dated 3.5.2003, the annual increment of applicant was stopped for three years. Similarly, in respect of illegal cutting and transportation of 306 Khair trees plus 30 sheesham trees and 6 Sherus trees against the permission of 60 Khair trees, a show cause notice was issued to the applicant on 11.2.2011. Earlier, vide order dated 18.12.2009, punishment inflicting reduction by one stage in the time scale of pay for a period of two

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years was imposed upon him. Vide another order dated 9.6.2010, he was warned for his conduct.

6. In the Rejoinder Reply, it has been reiterated that there was no approval of the Hon'ble Chief Minister of the impugned transfer order. It has been simply authenticated by Special Secretary. As a matter of fact, there was no proposal forwarded by the department. Similarly, the recommendations made by the Civil Services Board were not forwarded through the concerned minister rather it was mentioned that the concerned Minister is out of station. Even in the absence of a valid proposal, the approval of the Chief Minister was sought which was authenticated to have been granted by the Chief Minister on 25.1.2011 itself but there is no mention whether the approval granted by the Hon'ble Chief Minister was oral or in writing. It has also been said that the perusal of clause 1 (7) of G.O. dated 21.4.2000 would show that it requires the orders to be passed by the Chief Minister himself/ herself whereas no such order was ever passed by the Hon'ble Chief Minister. Therefore, it is completely without authority of law.

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

8. The author of the impugned transfer order dated 25.1.2011 is State Govt. and according to their own Counter Affidavit, this impugned transfer order has been issued under sub clause 7 of clause 1 of the Govt. Order dated 21.4.2010, laying down the guidelines of transfer for the transfer year 2010-2011. The aforesaid transfer guidelines contained in G.O. dated 21.4.2010 is in Hindi. The provision of sub Clause 7 of Clause 1 is as under:- "जालिय में १०० सुरक्षा मंडी जी हुए कभी जी किसी भी कार्यक्रम को स्थानान्तरित किये जाने के अरादेश दिए जा सकेंगे।"

9. From the aforesaid provision, it is clear that under Sub Clause 7 of Clause 1, such transfer order has to be passed in public interest by Hon'ble the Chief Minister. The perusal of transfer order dated 25.1.2011 show that it has been issued by the Principal Secretary (Annexure -1). In

para 4.15 of the O.A., it has been specifically pleaded that while transferring the applicant, the approval of the Hon'ble Chief Minister through Departmental Minister was not obtained. It has been further pleaded that during the pendency of Writ Petition No. 137/2011 (S/B) before the Hon'ble High Court, the respondents had placed reliance upon the recommendations of Civil Service Board (CSB) which was to consider the proposal of transfer submitted by the Department. But the record pertaining to applicant's transfer which was produced before the Hon'ble High Court, revealed a different position all together. It has been further pleaded that on account of this reason, the Hon'ble High Court was pleased to interfere and the opposite parties were directed to permit the applicant to continue at the present place of posting. Further, it has been pleaded that the minutes of the CSB did not reflect any public interest. The electro stat copy of this minute has also been brought on record as Annexure No.3. The pleadings contained in this paragraph have been replied in the counter affidavit in para 14. There is simple denial of this pleading in formal nature. The above facts have not been specifically denied. However, it has been said that the order was passed in view of the administrative exigency or public interest and the reasons are not necessary to be mentioned in the order of transfer. In this paragraph of counter affidavit, there is no specific denial about not obtaining approval of the Hon'ble Chief Minister. As mentioned above, in para 4.5 , it has been specifically pleaded that prior approval of the Hon'ble Chief Minister was not obtained and this pleading has not been denied in the aforesaid relevant paragraph 14 of the counter affidavit. Had the approval of Hon'ble the Chief Minister been taken, it would have been positively averred in the counter affidavit. But, neither in this paragraph nor elsewhere in the entire counter affidavit, there is any such positive averment. In the Rejoinder Affidavit, it has been again said specifically by the applicant in para 3 that the record of the case has sufficiently revealed that there was **no approval of the Hon'ble Chief Minister as authenticated by the Special**

Secretary. Further, it has been averred that there is no mention whether the alleged approval granted by the Hon'ble Chief Minister was oral or in writing and therefore, the authentication by Special Secretary to Hon'ble Chief Minister has no meaning in the eyes of law. The opposite parties also did not file any Supple. Counter Affidavit to deny this significant and specific pleading contained in the Rejoinder Affidavit. The electro stat copy of the entire proposal (Annexure 3) also shows that the last signature is of Sri Mukesh Mittal, Special Secretary to the Hon'ble Chief Minister, U.P. who appears to has authenticated on behalf of the Chief Minister. But there is no signature of Hon'ble Chief Minister. Earlier at the time of hearing arguments on interim relief, when Counter Affidavit and Rejoinder Affidavits had not been filed, during the course of arguments, the original file of transfer were shown to the Tribunal containing the same minutes of which an electro stat copy is already on record as Annexure 3 above. By that time, the only pleading before this Tribunal as contained in the O.A. was to the effect that the approval of the Hon'ble Chief Minister through departmental Minister was not obtained. At that time, it was told that as the departmental Minister was not available, his approval was obtained ex-post facto. The transfer order was challenged on some other grounds also, which *prima facie* were not found to be in favour of the applicant. Therefore, interim relief was refused. But, now, the Counter Affidavit on behalf of other side has been filed and as mentioned above no where it has been claimed and pleaded that Hon'ble the Chief Minister accorded approval on the transfer file by putting her signature. Even an oral approval by the Hon'ble Chief Minister has not been pleaded. On the other hand, it has been now specifically reiterated by the applicant that there was no approval by the Hon'ble Chief Minister, which was authenticated by the Special Secretary. Therefore, the only in- inescapable conclusion to which this Tribunal reaches is that the impugned transfer order was passed without obtaining the signatures /orders of the Hon'ble Chief Minister though in the policy dated 21.4.2010 issued by the Govt. of U.P.

itself, under sub Clause 7 of Clause 1, under which this order is claimed to has been passed, it is specifically provided that it is only the Hon'ble Chief Minister who can pass orders in public interest at any time. It is worthwhile to mention here that each clause has significance because by means of this G.O. dated 21.4.2010, the Govt. of U.P. had itself laid down a policy of not transferring any official belonging to any cadre during the transfer year 2010-11, as mentioned in Clause 1 itself. In the subsequent sub clauses, however, certain exceptions had been provided under which transfers could have been done and this also includes above sub clause 7 under which impugned transfer order is claimed to has been made.

9. In view of the above, this Tribunal comes to the conclusion that in the absence of any signature/approval of the Hon'ble Chief Minister (on the transfer file), in view of the provision envisaged under Sub Clause 7 of Clause 1 of the relevant G.O. dated 21.4.2010 issued by the State of U.P. itself, the impugned transfer order is construed to have been passed without authority. In other words, it has not been passed by the competent authority and hence it is bad in the eyes of law.

10. This Tribunal is not adverting to other grounds raised in the O.A. against the impugned transfer order because at the time of hearing, the learned counsel for the applicant confined his arguments solely on this ground.

11. In view of the above, the O.A. is allowed and the impugned order dated 25.1.2011 (Annexure 1) is set aside. The respondents are directed to allow the applicant to work in the capacity in which he was working prior to the passing of the impugned transfer order. However, if so required in public interest, a transfer order can be passed afresh after obtaining the approval/ signature of the Hon'ble Chief Minister in view of the provisions envisaged in sub Clause 7 of Clause 1 of the relevant

Govt. Order dated 21.4.2010 issued by the Govt. of U.P. No order as to costs.

Alok Kumar Singh
(Justice Alok Kumar Singh) 28.9.11
Member (J)

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