

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

Original Application No. 259 of 2011

Reserved on 27.2.2012

Date of Decision 29 the February, 2012

Hon'ble Mr. Navneet Kumar, Member-J

Jai Prakash Yadav, aged about 36 years, S/p Late R.J. Yadav, R/o 10/301 Deepak Shara Gate, Jankipuram, Lucknow.

.....Applicant

By Advocate : Sri Raj Singh

Versus.

1. Union of India through Secretary Ministry of Defence, Civil Secretariat, New Delhi.
2. The Chief Engineer (MES Department), Headquarters Central Command, Lucknow.
3. The Garrison Engineer, Air Force Station, Bakshi-ka-Talab, Lucknow.

.....Respondents.

By Advocate : Sri Rajendra Singh .

ORDER

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, 1985 with the following main relief(s):-

"(i) This Hon'ble Tribunal may kindly be pleased to quash the impugned orders dated 27.4.2011, 25.5.2011 and 18.6.2011 (Contained in Annexure nos. A-1, A-2 and A-3 to this O.A).

(ii) to direct the respondent no.2 to reconsider the matter of the applicant as per the guidelines."

2. The brief facts of the case are that the applicant was initially appointed as Junior Engineer under the respondents and posted in the office of G.E. (AF),

Bamrauli and subsequently he was transferred to Allahabad w.e.f. 31.8.2001. The applicant complied with transfer order and further he was transferred from the office of C.E. (AF) Allahabad to G.E. (AF), Bamrauli w.e.f. 7.12.2002. Thereafter, the applicant was transferred from the office of GE (AF), Bamrauli to GE (I) Gopalpur as hard tenure posting. It is pleaded that after completing the aforesaid hard tenure posting, the applicant was given his choice station posting at Bakshi-Ka-Talab, Lucknow w.e.f. 16.6.2008 and since then without any complaint regarding his working and conduct from any corner whatsoever, the applicant was serving in the office of GE, (AF), Bakshi-Ka-Talab, Lucknow. The applicant submits that he has been transferred from the office of GE (AF), Bakshi-Ka-Talab, Lucknow to GE (P), Meerut vide order dated 27.4.2011, whereas prior to that date, he was asked to give his choice stations option and in compliance of the aforesaid order, the applicant has given three options viz. Lucknow, Faizabad and Gorakhpur and under wider choice station, he has given two options namely Raiwala & Manauri. It is further pleaded by the applicant that the respondents instead of considering his request for giving him choice station posting and wider choice station transferred him to Meerut, which is against para 6, 30 and 32 of the transfer guidelines. For better appreciation of the case, Rule 6, 30 and 32 of the Guidelines are reproduced below:

"6. The posting exercise as above invariably results into a disproportionate movement of personnel from a particular unit. To ensure equitable distribution of manpower and regular turn over of employees from sensitive to non-

sensitive after three years. Local Turn Over (LTO) posting are carried out within the same complex.

30. *In case tenure completed individual does not want to continue at the tenure station/complex, he will be repatriated to one of his choice stations/complex by moving out of longest stayee. For determining the longest stayee all the three choice station/complex will be clubbed together. The longest stayee moved a peace station/complex for making room for adjustment of a tenure completed individual will be repatriated after completion of his tenure as per availability at choice stations given by him.*
32. *An individual who is to move from one peace station/complex to another peace station/complex to make room for a tenure completed individual will be posted to one of his/her three choice stations/ complexes as far as possible. This facility will not be available to other type of postings."*

3. The applicant also stated that the respondents instead of waiting for a period of three years as required transferred the applicant prior to completion of that period. It is also submitted by the applicant that he made a representation before the authorities concerned for considering his case for change of transfer/posting place and to adjust him either at Lucknow or at Gorakhpur station, but the same was rejected by means of order dated 25.5.2011. The applicant also moved an application under Right to Information Act, 2005 seeking certain information with regard to availability of vacancies atleast at choice stations. In reply, the authorities have stated that out of his five choice stations, there is one vacancy which is available at Gorakhpur.

4. The respondents have contested the claim of the applicant by filing a detailed Counter Reply saying that the transfer is an incidence of service and the

respondents have not violated any guidelines and the impugned transfer order has been passed by the competent authority and as such it is not liable to be interfered with. The respondents have also submitted that since there is no vacancy available at choice stations as well wider choice stations as submitted by the applicant and as such the request of the applicant could not be acceded to. The respondents also submitted that the applicant has been posted to Meerut only due to exigencies of service and the applicant is required to follow the instructions of his senior officers.

5. On behalf of the applicant, Rejoinder Reply has also been filed wherein the applicant has pointed out that the averments made by the respondents that there is no vacancy at Gorakhpur is false and has submitted a tabulation sheet obtained under Right to Information Act stating therein that there is one vacancy available at Gorakhpur. The applicant in the Rejoinder Reply has also reiterated the averments made in the O.A. and refuted the averments made in the Counter Reply of the respondents by further stating that the respondents have acted in an arbitrary manner and have not considered the request of the applicant and posted him to Meerut.

6. I have heard the learned counsel for the parties and have also gone through the relevant material available on record.


7. It is an admitted fact that the transfer is an incidence of service and it does not warrant any interference by the Court/Tribunal until and unless

there appears to be apparent illegality, malafide intention on the part of the respondents and the impugned transfer order has been passed by an incompetent authority. It is also admitted fact that the applicant was initially appointed as Junior Engineer and after appointment, he has been transferred to Allahabad and subsequently Bamrauli and thereafter to Gopalpur-hard tenure posting. After completion of hard tenure posting of three years, the applicant was given his choice station posting at Bakshi-Ka-Talab, Lucknow and before completing a period of tenure of three years, options were called for from the applicants and the applicant has been transferred to Meerut vide order dated 27.4.2011 without considering his option and wider option request. The applicant's representation for considering his request for adjusting him/change of posting either at Lucknow or Gorakhpur was also not accepted by the authorities concerned and the same was rejected by means of order dated 25.5.2011. A bare perusal of the guidelines, it would be clear that the hard tenure posting i.e. sensitive posting to non-sensitive posting should be done after three years as provided in para 6 of the guidelines. In para 30 of the guidelines, it has been provided that in case tenure completed individual does not want to continue at the tenure station/complex, he will be repatriated to one of his choice stations/complex by moving out of longest stayee, who should have completed three years at such station/complex. Admittedly, the applicant has given his choice of stations and wider choice stations, but he has not been transferred at either of his option. The counsel for the respondents during the course of

hearing has produced a letter dated 25.2.2012 wherein they have categorically stated that there is one vacancy available at Gorakhpur under GE (AF). This statement of the respondents is contradictory to the statement given by them in their Counter Reply that there is no vacancy either at Gorakhpur or at Lucknow is wrong which shows the malafide intention on the part of the respondents. It is also an admitted fact that the applicant has not completed three years tenure posting at Bakshi-Ka-Talab, Lucknow and he has been put to transfer to Meerut without completion of tenure posting.

8. Undoubtedly, transfer is an incidence of service and the Court/Tribunal should be reluctant in interfering the transfer matter as long as there are clearly illegally. The transfer/posting of an employee is purely an administrative matter and scope of interference of the Court/Tribunal in such matters is very limited. The Hon'ble Supreme Court in the case of **Rajendra Singh Vs. State of U.P. reported in (2009) 15 SCC 178** has been pleased to hold as under:

"The Courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from malafide".

In the case of State of Haryana Vs. Kashmir Singh reported in 2010 (13) SCC 306, the Hon'ble Supreme Court has held that the Court should not interfere with pure administrative matter like transfer/posting except where it is absolutely necessary on the ground of fundamental or other legal rights. 

9. In another case reported in (2004) 11 SCC 402 State of U.P. & Ors. Vs. Gobardhan Lal, the Hon'ble Supreme Court has held as under:

“transfer order shown to be vitiated by malafides, or (ii) in violation of any statutory provisions; or (iii) having been passed by an authority not competent to pass such an order”.

The Hon'ble Supreme Court has further held that unless the order of transfer is shown to be an outcome of a malafide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made.

10. In the instant case, it is crystal clear from the averments made by the respondents vide their letter dated 25.2.2012 that there is one vacancy at Gorakhpur. The relevant extract of letter dated 25.2.2012 reads as under:

“Vac state of GE (AF), Gorakhpur and GE (P), Meerut at the time of posting order of the applicant was as under:

	Auth.	Held	Dues	Dues	CML Held
			In	out	
				In	
(i) GE (AF) Gorakhpur	-02	01	0	0	50%
(ii) GE (P) Meertu	-02	01	0	01	(-)100%”

Since the applicant has not completed three years tenure posting at Bakshi-Ka-Talab, Lucknow as such there appears to be malafide intention on the part of the respondents. The Hon'ble Bombay High Court in the case of Sheshrao Nag Rao Umap Vs. State of Maharashtra & Others reported in 1984 (2) SLR 32 has held as under:

"It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best Judge to decide how to distribute and utilize the services of its employees. However, this Power must be exercised honestly, bonafide and reasonably. It should be exercise in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to malafide and colourable exercise of power. Frequent transfers without sufficient reasons to justify such transfers cannot but be held as malafide. A transfer is malafide when it is made not for professed purpose such as in normal course or in public or administrative interest or in the exigencies of service, but for other purpose that is to accommodate another person for undisclosed reason. It is the basic principle of rule of law and good administration that even the administrative actions should be just and fair. Frequent unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to the employee and drive him to desperation. It disrupts the education of the children and leads to numerous other inconvenience and problems and results in hardship and demoralization. Therefore, the policy of transfer should be reasonable and fair and should apply to everybody equally".

11. In the case of V.S. Sastry Vs. Government of Andhra Pradesh the Hon'ble High Court of Andhra Pradesh has held as under:

"29. It is true that the order of transfer impugned herein is not a punishment, nor is it a quasi judicial order. But it is not an innocuous order. Nor one made in the ordinary course of administration. It is an administrative order based on the subjective satisfaction of the Government that the petitioner ought to be transferred for Nizamabad for certain specific reasons. It is well settled that the subjective satisfaction is formed on irrelevant non-existing or extraneous grounds, it liable to be interdicted (See Barium Chemicals Vs. Company Law Board). I find that the order of transfer in this case is on such order. On the material before it, the Government could not reasonably have formed

the opinion that immediate transfer of the petitioner is necessary in the interest of administration. Being a capricious order, it cannot be allowed to stand. Further, as stated above, the grounds upon which the petitioner has been transferred, cast a serious reflection upon his administrative capacity and over all performances and yet there is no material on record to support those grounds."

12. After considering the submissions made by the learned counsel for the parties and the observations made by the Hon'ble Supreme Court and Hon'ble High Court, it is clear that the transfer order can be interfered with when there is some malafide intention behind it or it has been passed with some ulterior motive. As discussed above, in the instant case, there is vacancy at Gorakhpur, which has been initially denied by the respondents in their Counter Reply, but subsequently admitted in the letter dated 25.2.2012 which has been quoted hereinbefore and further the applicant has not completed three years tenure posting at Bakshi-Ka-Talab, Lucknow.

13. In view of what has been stated above, the O.A. succeeds. The impugned orders dated 27.4.2011, 25.5.2011 and 18.6.2011 (Contained in Annexure nos. A-1, A-2 and A-3 to this O.A) are hereby quashed. Parties are directed to bear their own costs.

Navneet Kumar
 (Navneet Kumar)
 Member-J

Girish/-