

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW

A-27

ORIGINAL APPLICATION No. 432 of 1992

HON. MR. S.N. PRASAD, JUDICIAL MEMBER.

The applicant has approached this Tribunal under section 19 of the Administrative Tribunals Act, 1985 for quashing the transfer order dated 16.10.86 contained in Annexure No. A-1 and the impugned order dated 3.3.92 contained in Annexure No. A-5; telegram dated 29.6.92 contained in Annexure No. A-7 and the relieving order dated 15.7.92 contained in Annexure No. A-11.

2. Briefly stated the facts of this case, interalia, are that that the applicant joined the services in Central Ground Water Board at Jodhpur during the year 1968 and was transferred to Madras during the year 1970 and during the year 1973 he was selected as Senior Technical Assistant, Class III and during the year 1978 he was promoted as Assistant Chemist class II, and in May 1983 he was transferred to Lucknow. It has further been stated that by the impugned order dated 16.10.86, the applicant was transferred from Central Ground Water Board, ^{Northern Region Lucknow to Central Ground Water Board,} West Central Region, Ahmedabad, vide order dated 28.6.88(Annexure A-2), the incumbents holding the post of Chemist in Central Ground Water Board(hereinafter referred to as Board), were designated as Scientist 'B', and the name of the applicant was at serial No. 5. The applicant was not in a position to move on the aforesaid transfer to Ahmedabad due to problem of self as well as his mother, and therefore, he made representation for cancelling the above transfer order but instead of cancelling, the above order ^{was kept} in abeyance, till further orders(vide Annexure A-3).

3. The applicant was promoted from the post of Scientist "B" to the post of Scientist "C" in the pay scale of Rs 3000-100-3500-125-4500 in the year 1992 (vide Annexure A-4). It has further been stated that the applicant was holding the post of Scientist "B" at

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the time, impugned transfer dated 16.10.86 transferring him from Lucknow to Ahmedabad ~~was passed~~ and later on the applicant has been promoted ~~on~~ on the post of Scientist "C" and as such the impugned order of transfer cannot be implemented. It has further been stated that all of a sudden the order was issued by the respondent No. 2 on 3.3.92 asking respondent No. 3 to relieve the applicant (vide Annexure A-5) and the applicant has been relieved of his duties in the afternoon of 15.7.92, though the applicant has not yet handed over the charge (vide Annexure A-11). It has further been stated that there is no transfer policy in the department and the impugned transfer order has been passed whimsically and arbitrarily, but many persons who have been posted ~~at Lucknow~~ ^{in 1974} ~~namely~~ ^{as} ~~Sarkar~~ since the year 1973 ~~are~~ ^{stated} Sri Balwan Singh, Dr. D.S. Misra and Mr. C.M. Singh etc. as mentioned in para 4.17 of the O.A) are still continuing there and have not been transferred anywhere. It has further been stated that the impugned transfer order has been passed with a view to accommodate Shri T.N. Sondhi; and it has further been ~~said~~ ^{stated} that since the transfer order is against the policy guidelines and is malafide, the same be quashed.

4. In the counter reply filed by the respondents it has interalia been contended that the applicant had joined the services in the capacity of Technical Assistant Group C, Non-gazetted post in U.N.D.P. project under the administrative control of E.T.O. Jodhpur (renamed as Central Ground Water Board) on 28.1.69 on the terms and conditions laid down in Office Memorandum No. 7-28/68-Admn. dated 14/16.1.1969 and office order No. 103 of 1969 dated 12.2.1969 (vide Annexures C-1 and C-2). As per sub para 4 of the conditions accepted by the applicant ^{and as}

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at the time of joining service in Central Ground Water Board, he is liable to serve in any part of India and subsequently, he was appointed as S.T.A. (Chemical) and posted at Central Ground Water Board, Northern Region, Lucknow. The applicant has ~~never~~ been promoted to the post of Scientist C, (Chemist) group-A under the ~~Flexible~~ Complementing Scheme with effect from 26.2.92 (vide Annexure CA-4) and the promotion of the applicant to the post of Scientist-C (Chemist) under the said scheme is in-situ and personal to him and would not result in specific vacancy in the lower grade. The applicant has represented the matter showing his domestic problems and family affairs and that was considered sympathetically and the above transfer order was ~~till further orders~~ kept in abeyance. It has further been contended that the stay of the applicant at Lucknow has been for about 18-19 years and as such the impugned transfer order is in accordance with policy guidelines and there is no malafide intention and in view of the above circumstances the application of the applicant is liable to be dismissed with costs.

5. I have heard the learned counsel for the parties and have thoroughly gone through the record of the case.

6. The learned counsel for the applicant while drawing my attention to the contents of the application and the papers annexed thereto and particularly to para 4.17 of the application has argued that many persons, namely Shri Balwan Singh and Dr. D.S. Misra and others who were posted in the year 1973-74 have still not been transferred, but the applicant has been transferred with malafide intention; and has further argued that the impugned transfer order cannot be implemented at present.

because of the fact that the applicant has been promoted as Scientist "C" in higher scale, and has further argued that the impugned transfer order has been passed with malafide intention with a view to accommodate one Shri T.N. Sondhi as would be obvious from the perusal of Annexure -13, and as such the application of the applicant ^{should} be allowed and the relief sought for be granted.

7. The learned counsel for the respondents while drawing my attention to the pleadings of the parties, has argued that since the post held by the applicant is a transferrable post all over India and since the applicant has been working at Lucknow for the last about 18 years, his transfer has been made in public interest and due to administrative reasons ; and has further argued that the representation made by the applicant was considered sympathetically keeping in view his problems and that is why the impugned transfer order dated 16.10.86 ^{was} ~~has been~~ kept in abeyance; and has further argued that the impugned transfer order is in accordance with the policy guidelines ^{as the minimum period of} the ~~tenure of~~ stay of an employee ^{officer} is for three years, as would be obvious from the perusal of Annexure 8^{to} and has further argued that as per directions issued in the letter of Ministry of Water Resources dated 25.2.92(Annexure 4) there is clear provision for promotion of officers in the post of Scientist "C" under the Flexible Complementing Scheme will be in-situ and personal to ~~him~~ and would not result in specific vacancy in lower grade on that account, and the post being currently held will be upgraded for the duration of ~~the applicant's~~ stay in the higher post i.e. Scientist "C" and post ~~will be~~

will be reverted to the original level once the above officers vacated the higher post, and as such the application of the applicant be dismissed.

8. This is important to point out that a perusal of Annexure 8 which is transfer policy applicable to Group A and B officers of the Central Ground Water Board shows, inter alia, that the minimum period of stay at a place shall normally not be less than 3 years.

9. This is also important to point out that a perusal of Annexure 3 to C.A. also shows that the post of the applicant is a transferable post. This is also noteworthy that a perusal of Annexure 4, as referred to above at page No. 2 shows that if the Scientist "C" is posted at the place where the post of Scientist "C" is not existing then in that case that post will be converted as Scientist "C." *for his duration there*

10. This is also important to point out that a perusal of Annexure 4-A which is a representation of the applicant, inter alia shows that the applicant himself had requested that if it is not possible due to administrative reasons, for the present to cancel the above impugned transfer order, the order may be kept in abeyance till recoupment of his father and completion of academic year.

11. This is also important to point out that this fact should also not be lost sight of that from the perusal of the application of the applicant and from the scrutiny of the entire material on record it is apparent that the stay of the applicant at Lucknow has been for about 10 years and the impugned order of transfer dated 16.10.86 was kept in abeyance for a long period of about 6 years.

12. From the foregoing discussions and after

scrutinising all the material on record and keeping in view all the facts and circumstances of the case, I have come to the conclusion that the application of the applicant is devoid of merit.

13. In the result, the application of the applicant being devoid of merit, is dismissed. No order as to costs.

LUCKNOW: Dated: 31.5.93

JUDICIAL MEMBER 31.5.93

Shakeel/