

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No. 794 of 2005
Original Application No. 806 of 2005
Original Application No. 900 of 2005

Indore this the 17th day of November, 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

1. Original Application No. 794 of 2005 :

N.C. Chopra, s/o. late S.N. Chopra,
Senior Auditor in the office of Local Audit
Office, Stores, COD, Jabalpur. Applicant

(By Advocate – Shri Rajneesh Gupta)

V e r s u s

1. Union of India, through Secretary,
Department of Defence, New Delhi.
2. Controller of Defence Accounts,
Ridge Road, Jabalpur.
3. Local Audit Officer, Stores,
COD, Jabalpur. Respondents

(By Advocate – Shri R.S. Siddiqui)

2. Original Application No. 806 of 2005 :

A.K. Gupta, S/o. late Shri B.S. Gupta,
Aged about 53 years, R/o. 131, Behind
Hardol Mandir, Ganjupura,
Jabalpur (MP). Applicant

(By Advocate – Shri M.K. Verma)

V e r s u s

1. Union of India, through the Secretary,
Ministry of Finance, New Delhi.



2. The Controller of Defence Accounts,
Ridge Road, Jabalpur (MP).
3. The Local Audit Office (Army),
Jabalpur (MP). Respondents

(By Advocate – Shri A.P. Khare)

3. Original Application No. 900 of 2005 :

Dal Chand Jain, S/o. late Shri Kundan
Lal Jain, aged 54 years, Roster No. 2766,
Working as Senior Auditor in Local Audit
Office (Army), Sagar (MP), R/o. Bahubali
Colony, Sagar (MP). Applicant

(By Advocate – Shri S.K. Pathak)

V e r s u s

1. Union of India, through Secretary,
Ministry of Defence, North Block,
New Delhi.
2. Controller General of Defence Accounts,
West Block-V, R.K. Puram, New Delhi.
3. Controller of Defence Accounts,
Ridge Road, Jabalpur.
4. Local Audit Officer, LAO (Army),
Sagar (MP).
5. Smt. Sushila Sahu, Roster No. 1778,
Working as Senior Auditor in Pay
Accounts Office (ORs),
(MP). Respondents

(By Advocate – Shri R.S. Siddiqui)



O R D E R (Common)

By Madan Mohan, Judicial Member -

As the issue involved in all the aforementioned cases is common and the facts and grounds raised are identical, for the sake of convenience, these Original Applications are being disposed of by this Common order.

2. By filing these Original Applications the applicants have claimed the following main reliefs :

OA-794-2005 -

"(i) to issue a writ in the nature of certiorari quashing the impugned order dated 3.8.2005 (Annexure A-1) by which the respondents have rejected the representation made by the applicant,

(ii) to issue a writ in the nature of certiorari quashing the impugned order of transfer dated 13.7.2005 (Annexure A-2) in the interest of justice,

(iii) to direct the respondents to act in accordance with law and if there is necessity, they should transfer the persons who are liable to be transferred.

OA-806-2005 -

8.1 to quash the transfer order dated 27.7.2005 (Annexure A-3) in the interest of justice,

8.2 to quash the order dated 25.8.2005 (Annexure A-10) in the interest of justice,

8.3 to hold that the action on part of respondents is discriminatory and bad in the eyes of law.

OA-900-2005 -

(i) quash the impugned transfer order (Annexure A-6) issued by the respondent No. 3,

(ii) quash the order (Annexure A-14) thereby rejecting the appeal (Annexure A-9 & A-13) mechanically,

(iii) award the cost of instant litigation."



3. For the sake of brevity we are taking OA No. 806 of 2005 as the leading case and the brief facts of the case are that the Controller of Defence Accounts have got published the All India Roster of Senior Auditors wherein the name of the applicant and other employees senior to him have also been mentioned. Previously in the usual course no transfers were made out of station and the employees retired from the same station i.e. the place where they were initially appointed but in February, 2005 the respondents under the garb of station seniority have proposed to transfer some of the Senior Auditors including the applicant who were serving in the same station since last more than 30 years, excepting those who have completed 55 years of age in that calendar year. The applicant submitted representation alongwith the medical certificates and indoor patient report of his wife mentioning therein genuine difficulties. But the respondents have overlooked the very criteria of transfer i.e. station seniority and without considering the reasons putforth in the representation of the applicant issued the transfer order transferring the applicant. The respondents have arbitrarily retained certain seniors who are coming within the periphery of the criteria fixed for transfer and the respondents have moved malafidely by choosing the applicant at random. The representation of the applicant was not considered by the respondents. The applicant filed OA No. 729/2005 whereby the respondents were directed to decide the representation of the applicant within one month and the representation of the applicant was rejected vide order dated 25.8.2005 (Annexure A-10). Hence, this Original Application is filed.

4. The facts of the other two cases i.e. OA No. 794 of 2005 and OA No. 900 of 2005 are almost similar to the facts of the OA No. 806 of 2005.

5. Heard the learned counsel for the parties and carefully perused the pleadings and records.



6. It is argued on behalf the applicants that vide letter dated 8.9.2004 (Annexure R-2 in OA No. 806-2005) issued from the office of CGDA, New Delhi it was specifically mentioned in paragraph 2 that "the station seniors separately for each station alongwith their three choice stations excluding those individuals who will be completing 55 years of age as on 30.6.2005 serving at the stations under your organization as indicated in Annexure A to this letter be furnished to his office by 31.10.2004 positively." The applicants have filed OAs wherein the Tribunal directed the respondents to consider and decide the representations of the applicants within one month. In pursuance of the directions given by the Tribunal the respondents have passed the aforesaid impugned orders and have mentioned in that "while considering such transfers, the administration has taken into consideration many factors in the interest of the staff, such as those who have completed 55 years or completing 55 years of age as on 31.12.2005, serious medical cases of staff members including lady employees." This order is specifically passed against the aforesaid order issued by the CGDA, New Delhi dated 8.9.2004. The learned counsel for the applicants has also drawn our attention towards Annexure A-4 in OA No. 806-2005 which is an all India roster wherein the name of the applicant in OA No. 806-2005 is mentioned at serial No. 10. It shows that all the 9 employees who are senior in the station in comparison to the applicant in OA No. 806-2005 have been accommodated in the present place of posting whereas the applicant in OA NO. 806-2005 has been transferred. The respondents have not considered the genuine claim of the applicants and they have passed the impugned orders in violation of the order passed by the CGDA on 8.9.2004. Hence, these Original Applications deserves to be allowed.

7. In reply the learned counsel for the respondents argued that all the applicants have been transferred within the State of Madhya Pradesh. None of them have been transferred out of the State of Madhya Pradesh.



The applicants are liable to be transferred anywhere in the Country as they have All India Transfer liability. He also argued that to transfer the applicants within the state of Madhya Pradesh, the Controller of Defence Accounts, Jabalpur is duly empowered and authorised. The letter dated 8.9.2004 issued by the CGDA is not applicable in the case of transfers within the state. He has drawn our attention towards the letter dated 19.10.2005 filed by the respondents in OA No. 806-2005 and further argued that the applicants are being transferred to nearby station within the state of Madhya Pradesh and their domestic problems have been considered by the respondents while deciding the representations of the of the applicants, in compliance of the orders of the Tribunal. The action of the respondents is perfectly legal and justified. Hence, these Original Applications are liable to be dismissed.

8. After hearing the learned counsel for the parties and on careful perusal of the pleadings and records, we find that earlier the applicants had filed OAs, whereby the respondents were directed to consider and decide the pending representations of the applicants. We have perused Annexure R-2 filed in OA No. 806-2005 dated 8.9.2004 issued by the CGDA, New Delhi and also the letter dated 19.10.2005 filed by the respondents during the course of arguments, issued from the same office of CGDA, New Delhi. In this letter dated 19.10.2005 in paragraph 2 it is clearly mentioned that "[T]he points raised vide your office letter cited above have been examined in consultation with the legal adviser in this headquarters office. In this connection, a reference is invited to provisions of para 369 of Office Manual Part-I which authorizes PCDA/CDA offices to formulate their detailed transfer policies to suit their own particular circumstances, within the broad principles outlined in the Chapter on Transfer Policy. Accordingly, the PCDA/CDA offices are authorized to form their own transfer policy for transfer within their jurisdiction including determining the cut off date for exemption cases." Admittedly the applicants are ordered to be transferred within the state of



Madhya Pradesh. None of them are transferred out of the state of Madhya Pradesh. To transfer within the state of Madhya Pradesh the Controller of Defence Accounts, Jabalpur is competent. The applicants could not show us any malafide or contravention of any rules and have also not pointed out that the impugned orders are passed by the authority who is not having the jurisdiction. The Hon'ble Supreme Court in the catena of cases has held that the transfer of an employee is an incident of service. The Courts and Tribunals should not normally interfere in the matter of transfers unless it is passed with malafide intention or contravention of any rules or is passed by an incompetent authority.

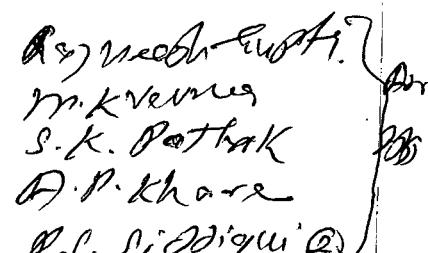
9. Considering all the facts and circumstances of the case we are of the considered view that the applicants have failed to prove their cases and these Original Applications are liable to be dismissed as having no merits. Accordingly, the same are dismissed. No costs.

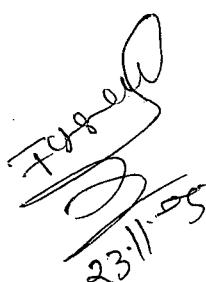

(Madan Mohan)
 Judicial Member


(M.P. Singh)
 Vice Chairman

"SA"

पृष्ठांकन सं. ओ/व्या.....जबलपुर, दि.....
 प्रतिलिपि अच्ये दिनः—
 (1) राधिय, उच्च व्यापार व्यवस्था एवं एकोनोमिक व्यवस्था, जबलपुर
 (2) आवेदन धी/क्री. जनकी/कु.....के व्यापार
 (3) धन्यवादी श्री/श्रीराम/कु.....के व्यापार
 (4) व्यापार, उद्योग, जबलपुर व्यापारी
 सूचना एवं आवश्यक कार्यवाही द्वारा


 R.S. Mehta (Signature)
 M.K. Verma
 S.K. Pathak
 D.P. Khare
 R.S. Siddiqui (Signature)


 23/11/05