

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH - JABALPUR

Original Application No. 350 of 2004

Jabalpur, this the 15th day of June, 2004

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

1. Bijon Kumar Bhattacharya
S/o Late S.K. Bhattacharya
Date of birth- 1.4.1949,
Asstt. Audit Officer (AO)
O/o AG's resident Audit Office
MP State Elect. Board, Jabalpur
R/o 707, Durga Colony,
Sanjivni Nagar, Garha,
Jabalpur.
2. Nem Singh Thakur
S/o Shri S.S. Thakur
Date of birth 21.11.1949,
Sr. Auditor,
O/o AG'S resident
Audit Office MP State
Elect. Board, Jabalpur
R/o H.No. 189, Lordganj,
Kachiana, Jabalpur
3. Manish Charles
S/o Shri G. Charles
Date of birth 24.8.1971
Sr. Auditor
O/o AG's resident
Audit Office MP State
Elect. Board, Jabalpur
R/o 731, Ghamapur, Jabalpur.

APPLICANTS

(By Advocate - Shri S. Paul)

VERSUS

1. Union of India
through its Secretary
Ministry of Personnel, Public
Grievances and pension (Deptt.
of Personnel & Training)
New Delhi.
2. The Comptroller & Auditor General
of India Bahadur Shah Zafar Marg,
New Delhi.
3. The Principal Accountant General
(Audit)-I Madhya Pradesh
Gwalior (MP)
4. The Deputy Accountant General
(Admn.) O/o the Principal Accountant
General (Audit)-I, Madhya Pradesh
Gwalior (MP)

RESPONDENTS

(By Advocate - Shri S.A. Dharmadhikari)

9


ORDER

By Madan Mohan, Member (Judicial)

By filing this original application, the applicants have sought the following reliefs:-

- i) Set aside the seniority list dated 8.3.2004 Annexure A-1.
- ii) Command the respondents to extend the judgement passed by the Division Bench of Allahabad High Court in Civil Misc. W.P. No. 654/2004.
- iii) Consequent because of quashment of order of transfer, the applicant be provided all consequential benefits as if the impugned transfer order dated 8.3.2004 (Annexure A-1) is never passed.

2. The brief facts of the case are that the applicants are working on the post of Assistant Audit Officer (AAO) and Sr. Auditor respectively. The Cadre Controlling Authority of the applicants is Principal Accountant General or Accountant General. The applicants are only under an obligation to serve the department within the jurisdiction of the Cadre Controlling Authority. As per the service rules applicable to the applicants, they are under no obligation to serve the department outside the territorial jurisdiction of their Cadre Controlling Authority. The service do not contemplate any condition of transfer of employees outside the territorial jurisdiction of Cadre Controlling Authority. The Cadre Controlling Authority being the constitutional authority, he is under a constitutional obligation to see that his department works as per law. By the impugned order the applicants and other similarly placed employees have been transferred for 18 months. The matter regarding transfer policy is already discussed by the Accountant General (Audit - I), Gwalior that employees Association in the meeting held on 27.2.2004 and the minutes of the meeting was communicated on 4.3.2004 regarding the grievances of the employees pertaining to their transfer to Chhatisgarh. The employees have not given their consent and without consent



of the employees the services of the employees has been transferred to other State is illegal and violation of the principles of natural justice. As per the provisions of the M.P. Reorganisation Act, 2000 without prior approval of the Head of State the transfer of the incumbents cannot be ordered and further the transfer can be ordered only within a year from the formation of the State of Chhattisgarh but nothing has been followed nor the provisions of the said Act has been taken into consideration while passing the transfer order thus the order is apparently illegal and bad in law and deserves to be set aside. The impugned orders of transfer have been passed/issued on 3.3.2004 after the notification of the 'Code of Conduct' applicable w.e.f.

29.2.2004. The similar controversy arose because of similar nature of transfer of 18 months for the employees working in the respondents department in Uttar Pradesh. The employees of Uttar Pradesh were transferred for 18 months to the new State of Utranchal. They filed original application before the Allahabad Bench of C.A.T. Assailing their transfer for 18 months to Utranchal but they could not succeed in those original applications and the Tribunal upheld the action of the employer in transferring them to Utranchal. Feeling aggrieved with the decision of the Tribunal of the Allahabad Bench, they filed petitions before the High Court of Allahabad (Civil) Misc. W.P. No. 654/2004. The Allahabad High court after noticing the department heard and decided the matter by a common judgement dated 26.3.2004. The question involved in the present case stand concluded by the Division Bench judgement aforesaid. The present transfer orders are also bad in law for the same reason as the Division Bench of Allahabad High Court set aside the transfer orders.


3. Heard the learned counsel for both the parties.

4. It is argued on behalf of the applicant that Hon'ble High Court of Allahabad has been pleased to set aside the




transfer order passed by the Allahabad Bench of the Tribunal vide its judgement dated 26.3.2004. It is further argued that the present O.A. is filed on the similar grounds which were taken before the Allahabad Bench of the Central Administrative Tribunal. However the said original application filed before the Allahabad Bench of the Tribunal was dismissed but the same was set aside by the Allahabad High Court. Since there was also bifurcation of two states i.e. Uttar Pradesh and Uttranchal, similar is the case in Madhya Pradesh and Chhattisgarh. Hence, the applicants cannot be legally transferred from one state to another i.e. from Madhya Pradesh to Chhattisgarh, in view of the judgement rendered by the Hon'ble High Court of Allahabad on 26.3.2004. The applicants can only be transferred within the Madhya Pradesh State only and it was their service conditions that they shall not be transferred to any other State as the applicants belong to Madhya Pradesh Cadre.

5. In reply, the learned counsel for the respondents argued that the facts of the Writ Petition filed before the Hon'ble High Court of Allahabad were different from the facts of the case in hand as it is observed in the judgement of the Hon'ble High Court of Allahabad that "it is not in dispute between the parties that the cadre controlling authority of the office of Accountant General (A&E) I & II Uttar Pradesh at Allahabad is different than the Cadre Controlling authority of the employees working in the office of Accountant General Uttranchal (Dehradun) and the Hon'ble High Court of Allahabad cannot held that they are not liable to be transferred by these authorities to the office of Accountant General (Auditors and Accounts) Uttar Pradesh (Dehradun). Powers of the Comptroller and Auditor General cannot be extended to confer a power to transfer an




employee contrary to aforesaid service condition to any place within the country. The power upon the Comptroller and Auditor General to clause 4.2.1 and 10.4.1 cannot be read in a manner to suggest that the Comptroller and Auditor General of India has unlimited power to transfer an employee borne in jurisdiction of one Cadre Controlling Authority to that of another Cadre Controlling Authority. Hon'ble High Court of Allahabad has observed this fact again and again in its above judgement. Learned counsel for the respondents further argued that the Cadre Controlling Authorities of the employees of Accountant General (A&E) I & II Uttar Pradesh, Allahabad & Accountant General, Uttranchal are different, whereas in the instant case respondent no. 3 is the only Cadre Controlling Authority for all the three offices located at Gwalior, Bhopal and Raipur. Therefore, in fact-situation of this case the said judgement of the Hon'ble High Court of Allahabad is not applicant to the present case. It is further argued that recently in the case of OA No. 282/2004 (C.P. Sharma vs. Union of India & ors), this Hon'ble Tribunal has dismissed the C.A. in similar fact-situation(Annexure R-5). Learned counsel drew our attention towards Annexure R-1 dated 6.2.03 in which it is clearly mentioned about the distribution of staff strength between reorganised Audit offices of Madhya Pradesh and Chhattisgarh. The said letter is issued by the office of the Comptroller and Auditor General of India addressed to the Principal Accountant General (Audit)I, Madhya Pradesh Gwalior saying that at present there is no proposal to bifurcate the cadre. The joint cadre will continue to be controlled by the Pr. A.G. (Audit) I, Madhya Pradesh, Gwalior. Therefore, in the State of Madhya Pradesh and Chhattisgarh, the Cadre Controlling Authority is the only one while in the case before the Hon'ble High Court of Allahabad relied upon by the applicant there were two Cadre Controlling Authorities i.e. one of Uttar Pradesh at Allahabad and the



second for Uttranchal at Dehradun. It is further argued that it is not the right of a Government servant to remain at a particular place of his choice, and he is liable to be transferred anywhere within the parameters of rules. Since without implementation of these orders, work would come to a stand still in Accountant General Chhattisgarh's office and the public in Chhattisgarh would be made to suffer to that extent for no fault of their own.

5. After hearing the learned counsel for both the sides and careful perusal of the record, we find that it is an admitted case of both the parties that Cadre Controlling Authority for the Uttar Pradesh/^{was} at Allahabad and for Uttranchal was at Dehradun. Hence there is no dispute that there were two different Cadre Controlling Authorities for the above two states i.e. Uttar Pradesh and ~~Uttranchal~~ while according to Annexure R-12 dated 6.2.2003 which is issued from the office of the Comptroller and Auditor General of India to the Principal Accountant General (Audit) I, Madhya Pradesh Gwalior regarding distribution of staff strength between re-organised Audit offices of Madhya Pradesh and Chhattisgarh, it is made clear that at present there is no proposal to bifurcate the cadre. The joint cadre will continue to be controlled by the Pr. A.G. (Audit) I, Madhya Pradesh, Gwalior. Hence, it is apparent that for these two states i.e. Madhya Pradesh and Chhattisgarh, there is only one Cadre Controlling Authority i.e. at Gwalior. Therefore, arguments advanced on behalf of the respondents to the effect that the judgement rendered by the Hon'ble High Court of Allahabad and relied upon by the applicant does not apply to the present case, seems to be proper and tenable, and the respondents are well within their right to transfer the applicants considering the proper and smooth functioning of the office of Accountant General in the interest of public of Chhattisgarh. Moreover, the said transfer is being made only for 18 months that too in the public interest.



6. In the facts and circumstances of the case and in the light of the discussion made in the preceding paragraphs, we are of the view that the judgement passed by the Hon'ble High Court of Allahabad is not applicable to the present case. Hence the present Original Application fails and is accordingly dismissed. No costs.

(Madan Mohan)
Member (Judicial)

(M.P. Singh)
Vice Chairman

/na/

पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....

पतिनीयि अयो निर

(1) सचिव, उच्च न्यायालय जबलपुर, जबलपुर

(2) आवेदक श्री/श्रीमती/शु.....के काउंसल S. Paul

(3) प्रत्यक्षी श्री/श्रीमती/शु.....के काउंसल SA Dharmadikar

(4) वंशपाल, को.प्र.अ., जबलपुर न्यायाधीश

सूचना एवं आवश्यक कार्यवाही हेतु

[Signature]
ज.उप सचिव 9.6.04

[Handwritten]
17.6.04