

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT GWALIOR
ORIGINAL APPLICATIONS No.433/2004,
434/2004 & 435/2004

Jabalpur, this the 4th day of November, 2004.

Hon'ble Mr.M.P.Singh , Vice Chairman
Hon'ble Mr.A.S.Sanghvi, Member (J) .

OA.433/2004

1. Preeti Sharma
W/o. Shri Brijendra Sharma
Age-28 years
Occupation-Govt. service,
R/o.Kawdikar Ka Bada, Roxy,
Lashkar, Gwalior(M.P.).
2. Suja Suresh,
W/o. Shri Suresh P.
Age-33 years
Occupation-Govt. service
R/o.Type II, 116, Narcotics Colony. : Applicants

OA.434/2004

1. Swapan Saha,
S/o.Shri T.C.Saha,
Age-30 years
Occupation -Govt. service
R/o.103, Pari Residency,
City Centre Site No.2,
Gwalior (M.P.)

2. Rajendra Singh,
S/o. Shri Nandram
Age-34 years
Occupation-Govt. service
R/o. Type II 356, Shastri Nagar,
Thatipur, Gwalior (M.P.).
3. Anil Dubey,
S/o. Shri Madhu Sudhan Dubey,
Age 35 years
Occupation-Govt. service,
R/o. Type-II, 524, Shastri Nagar,
Thatipur, Gwalior (M.P.).
4. Manoj Kumar Parihar
S/o. Shri B.S. Parihar,
Age-29 years,
Occupation-Govt. service,
R/o. Dev-villa, New Tulsi Vihar,
Sewa Nagar, Gwalior (M.P.)
5. Suchit Kumar
S/o. Shri D.K. Chaturvedi,
Age 39 years,
Occupation- Govt. service,
R/o. Type-III, 37,
Shastri Nagar Thatipur,
Gwalior (M.P.)
6. Ajay Surve,
S/o. Late Shri Y.J. Sure,
Age-35 years
Occupation-Govt. service,
R/o. Satbhaiki Goth, Behind
Madhavgang Police Station,
Gwalior (M.P.)

7. Prem Sharn,
S/o.Shri B.Lal,
Age-34 years,
Occupation-Govt. service,
R/o.III, Shakuntalapuri,
Thatipur, Gwalior (MP).
8. Rizwan Ahamed,
S/o.Shri K.E.Ahamed
Age-33 years,
Occupation-Govt. service,
R/o.Shirin Complex Bhopal (M.P.)

:Applicants

OA.435/2004

1. S.A.S.(Audit) Welfare Association,
Through: Its President,
D.S.Kushwah
S/o.Late Shri R.S.Kushwah
Age-46 years, Occupation -
Service-Section
Officer, O/o.The Principal Accountant
General(Audit),
I & II, Madhya Pradesh, Gwalior,
Resident of -Shivaji Nagar,
Ambkho Kampoo,
Gwalior (M.P.).
2. S.A.S.(Audit) Welfare Association,
Through:-its General Secretary,
J.B.Mishra,
S/o.Late Shri D.S.Mishra, Age-54 Years
Occupation-Service-Section Officer
O/o.The Principal Accountant
General(Audit), I & II,

Madhya Pradesh, Gwalior,
Resident of 694, Gokul Vihar,
City Centre Site No.2, Gwalior (M.P.).

3. Audit Welfare Association,
Through: its President
Bhagwan Singh Parmar,
S/o.Late Shri Jal Singh Parmar,
Age 58 years,
Occupation-Service - Sr.Auditor.
O/o.The Principal Accountant General
(Audit) I & II, Madhya Pradesh, Gwalior,
Resident of B-60, Subhash Nagar,
Hazira, Gwalior (M.P.).
4. Audit Welfare Association,
Through: its General Secretary,
Shriniwas Sharma,
S/o. Late Shri Lalaram Sharma,
Age-57 years,
Occupation -Service -Sr.Auditor,
O/o. The Principal Accountant General
(Audit) I & II, Madhya Pradesh, Gwalior,
Resident of 17 Shri Vihar Colony,
Goshipura, Gwalior (M.P.).
5. R.N.S.Pawar,
S/o. Late Shri Ram Dayal Singh,
Age -56 years,
Occupation-Govt. service
R/o. 30, Samangivila Colony, Lashkar,
Gwalior (M.P.)
6. Samarth Pathak,
S/o.Shri A.K.Pathak,
Age-34 years,

Occupation-Govt. service,
R/o. 30, Samangivila Colony,
Lashkar, Gwalior.

: Applicants

Advocate: Mr. Deepak Panjwani through Mr. Anil Mishra)

Versus

1. Union of India,
Through:
Secretary, Ministry of Personnel,
Public Grievances and Pension
(Department 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 (M.P.)
4. The Dy. Accountant General (Admn.)
O/o. The Principal Accountant General
(Audit)-I, Madhya Pradesh, Gwalior (M.P.) : Respondents

Advocate: Mr. M. Rao

ORDER

OA.433/2004, OA.434/2004 & OA.435/2004

The applicants of all these three petitions are the employees working under the Principal Accountant General (Audit)-I Madhya Pradesh, Gwalior and they are aggrieved by

the impugned order of their transfer dated 3/8.3.2004 issued by the respondent No.4 i.e. the Deputy Accountant General (Administration) in the office of the Principal Accountant General (Audit-I), Madhya Pradesh, Gwalior, transferring their services from the office of the Accountant General (Audit)-I and II), M.P.Gawalior to the Accountant General (Audit and Accounts) Raipur for a period of 18 months. Since all the three OAs raise common question of fact and law, they are heard together and are being disposed of by this common order.

2. The brief facts relevant for the purpose of deciding these OAs are as under:-

3. The State of Chhattisgarh was newly created by Madhya Pradesh State Reorganisation Act, 2000 and under the provisions of Article 151 (2) of the Constitution. The C& AG is required to submit its audit reports in relation to the accounts to the State Governor of the State who shall cause them to be laid before the legislature of the State. Similarly under Section 10 & 11 of the CAG (DPC) Act 1971, the CAG is required to compile accounts of the State and submit its report to the Governor of the State. In view of the creation of the New State of Chhattisgarh, the constitution and statutory

obligations pertaining to the audits and the Accounts of the State are required to be fulfilled by the CAG. Since the office of the Accountant General (Audit and Accounts) Chhattisgarh was created for the first time in the year 2000, it was necessary that the newly created office was properly staffed and accordingly a transfer policy was formulated inter alia providing for transfer for a period of 18 months for the employees working in the office of the Accountant General, M.P. at Gwalior. The transfer policy also provides that the transfer would be made of willing optes and any short fall would be filled by transfer of one senior and one junior in each cadre to have a judicious mix of the experience in the new office. In order to mitigate the hardship of the officials, who would be retiring in near future and outer age limit of 57 years was fixed. The applicants have come to be transferred to Chhattisgarh even though they had not given any options for such transfer. Their grievance is that the impugned order of the transfer is in violation of the transfer policy and again the provision of Madhya Pradesh Reorganisation Act, 2000 which laid down that transfer of an employee can be ordered only within a year of the formation of the State ^{of} to Chhattisgarh. It is also contended that the transfer orders are issued after the election notification was issued and the same have been passed without the approval of the Election Commission of

India. It is also contended by the applicants that those employees who had given their options for transfer to Chhattisgarh were already transferred in the month of March 2003 and any forcible placement of staff and officers who had not opted for Chhattisgarh amounts to punishment and in violation of the fundamental rights of those employees. If the willing persons were not sufficient, suitable arrangement by way of deputation from other State or even from State of M.P. could have been made. The applicants have also relied on the decision of the Division Bench of Allahabad High Court where in a similar case of transfer from UP to Uttaranchal of the employees of the office of the Accountant General, the Allahabad High Court had quashed and set aside the transfer orders. The applicants herein also contending that the impugned transfer orders are illegal, ultra vires of the provisions of the constitution and also violating the transfer policy formulated by the Deptt. have sought directions of quashing and setting aside the same. .

4. The respondents in their written reply while denying the transfer orders have contended inter alia that the Principal Accountant General (Audit)-I stationed at Gwalior is the cadre controlling authority of the office of the Principal Accountant General (Audit)-I, Gwalior, Accountant General (Audit)-II M.P.,

Bhopal/Gwalior & Accountant General (Chhattisgarh), Raipur. According to the respondents the transfer orders are issued by the Principal Accountant General as a cadre controlling authority and since he is the common cadre controlling authority for M.P. as well as Chhattisgarh he has authority competence and jurisdiction to issue the impugned transfer order and the orders cannot be said to be illegal on this ground. They have contended that most of the applicants have already been relieved and have joined their new posting at Raipur. They have also maintained that the transfer policy framed is in the public interest and public policy also and the transfer orders issued have been strictly in pursuance of the same policy without discrimination and cannot be interfered with. Relying on Fundamental Rule 15 the respondents have also contended that transfer is an incidence of public service and no consent of the employee is generally required for a transfer made in public interest. It is also contended that Section 68 of the M.P. Reorganisation Act, 2000 has no application in the cases of Govt. servants borne on the strength of the Central Govt. and posted in the territory of Madhya Pradesh. It applies only in the case of employees with the affairs of the existing state of Madhya Pradesh and not to the employees of the Central Govt. posted in the State of

Madhya Pradesh. They have reiterated that since the cadre controlling authority for both the states is the same, the applicants cannot be heard to challenge their transfer order. Refuting the allegation that the transfers are made after the coming into effect of the Code of Conduct, Election Commission of India, the respondents have contended that the office of the C& AG under whom the applicants work is not an executive office and the provisions of Model Code of Conduct do not apply in their cases. It is also contended that the judgment of Allahabad High Court is not applicable in the fact situation of this case as the cadres controlling authority, so far the instant case is concerned, is common and not separate. They have stated that the decision of the Allahabad High Court is already challenged before the Hon'ble Supreme Court. They have prayed that the OA be dismissed with costs.

5. We have heard the learned counsel of both the parties at length and duly considered the rival contentions.

6. The learned counsel for the applicants has placed strong reliance on the decision of the Allahabad High Court wherein also same question of transfer of Audit Account staff from State of UP to State of Uttranchal was involved. According to the learned counsel for the applicants, this

decision of the Allahabad High Court has direct application to the facts of the instant case and as such, since the facts of all cases are similar and identical, the respondents should be restrained from implementing the orders of transfer of the applicants herein. The learned counsel for the respondents on the other hand has not agreed with the submission of the learned counsel for the applicants and contended that the facts are quite different. He has also drawn our attention to the fact that this order of the Allahabad High Court is challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court has stayed the order of the Allahabad High Court but by way of interim relief, directed the Govt. to treat the applicants therein as on deputation.

7. We have gone through the decision of the Allahabad High Court in the case of General Secretary and another vs. Union of India & Others and other 8 writ petitions. All these 9 writ petitions were directed against the common judgment of the CAT Allahabad Bench and they were disposed of by the Allahabad High Court by a common judgment quashing and setting aside the impugned order of transfer of the applicants therein from Uttar Pradesh to Uttranchal. In that case also the audit staff was transferred from UP to Uttranchal on account of exigency of service in Uttranchal and creation of new office

of the Accountant General (Audit and Accounts) Uttranchal at Dehradun w.e.f. 9.5.2002. They were also transferred for a period of 18 months in pursuant to the transfer policy formulated by the respondents. The employees and the associations had challenged their order of transfer on the ground that they cannot be transferred outside the State of Uttar Pradesh as their service conditions were regulated by the Indian Audit and Accountants Deptt (Senior Account) Recruitment Rules, 1988 and Audit and Accounts Deptt. Audit Officer (Commercial) 1989, the Indian Audit and Accounts Department (Senior Auditor) Recruitment Rules, 1985. The Central Administrative Tribunal Allahabad Bench while considering the rival contentions recorded a categorical finding that the rules do not provide for transfer outside the territorial jurisdiction of the Cadre Controlling authority i.e. Principal Accountant General or the Accountant General as the case may be. However, the Tribunal had held that the appointment by transfer on deputation with the approval of the Comptroller and Auditor General is permissible in law and on recording such a finding, the Tribunal had held that the transfer orders were not illegal, requiring interference by the Tribunal, all the more ^{when} they had been transferred for a limited period of 18 months and rejected the applications. While disposing of the bunch of the OAs before it, the CAT, Allahabad made the following observations:-

" The applicants here in being borne under the cadre controlling authority of either, the Principal Accountant General (Audit)-I U.P., Allahabad or the Accountant General (A & E)-I, U.P., Allahabad are albeit not liable to be transferred by these authorities to the office of AG(A&A) Uttaranchal, Dehradun, but C & AG being the head of Department has the necessary competence to transfer any office to any post or office within the IA & AD. The office of the AG , Uttaranchal at Dehradun being in the Indian Audit and Accounts Department, no exception can be taken to the impugned orders of transfer, effected with the approval of the Head quarter i.e. C & AG , it may be observed that the Principal Accountant General (Audit)-I Uttar Pradesh, Allahabad was initially the cadre controlling authority with respect to the staff in the office of the Accountant General (A & A) Uttaranchal at Dehradun as well but subsequently by office order NO.(Adm) 15/59 dated 6.8.2002 the office of Principal Accountant General (A & E)-I U.P. and Uttaranchal came to be redesignated as of Principal Accountant General (A & E) -I, U.P., Allahabad consequent upon the creation and functioning of the office of Accountant General (A & A) Uttaranchal and Dehradun. The redesignation has in fact been earlier endorsed by the Headquarter's office vide No.0269-G-1/133-2000-II dated 22.7.2002 and it became operative with immediate effect as per Appendix 6 to OA no.1313/03.

The transfer of staff from Allahabad/Lucknow on deputation is thus permissible in law and since the applicants have been transferred for limited period of 18 months they may be deemed to have been shifted on deputation irrespective of whether the applicant had opted for the same or not for the exercise of power by the C & AG is not dependent on option."

8. The High Court however, took the view that there being no service condition of transfer of an employee borne under one cadre controlling authority to the jurisdiction of the another cadre controlling authority in the appointment letter of the petitioners or any other statutory conditions applicable

to the petitioners the impugned order dated 29.12.2003 and 31.12.2003 were patently illegal and were bad in the eyes of law and were accordingly quashed. The High Court also rejected the stand taken by the respondents that this can be treated as deputation.

9. However, in the instant case, the facts are some what different. Here the cadre controlling authority has remained the same and this can be seen from the letter dated 25.3.2003 of Manish Kumar Assistant C & AG (N), New Delhi. Addressing this letter to the Principal (Audit)-I, M.P.Gwalior. Manish Kumar has inter alia stated as under:-

"With the distribution of persons in position between Madhya Pradesh and Chhattisgarh offices, the filling up of allocated posts shall come from the optees and the shortfall by transferees as per the approved transfer policy. For shortfall, if any, therefore, posts may be filled on deputation basis as per the relevant Recruitment Rules.

Even after bifurcation of existing office into Madhya Pradesh and Chhattisgarh offices, the cadre of audit staff are still joint for the two offices.

Since the distribution of audit staff and work between Madhya Pradesh and Chhattisgarh offices stand finalized and communicated, the same may be carried out as per approved transfer policy."

Earlier vide letter dated 6.2.2003 (Annexure R-8) Manish Kumar the Assistant Comptroller & Auditor General (N) has clarified the position further. He has stated as under:-

" I am directed to refer to your DO No.Admn XI/staff Pro(chh) /7/85 dated 18.11.2002 addressed to Principal Director (staff) on

the above subject and to convey his approval to distribution of persons-in -position in respect of all cadres between reorganised Audit Offices of Madhya Pradesh and Chhattisgarh as per enclosed statements. At present there is no proposal to bifurcate the cadre. The joint cadre will continue to be controlled by the Principal AG (Audit)-I Madhya Pradesh, Gwalior.

You are requested to ensure modification of records relating to staff strength of Audit Office accordingly."

10. Both these letters clearly indicate that the cadre was not bifurcated and the joint cadre continued to be controlled by the Principal Accountant General (Audit)-I M.P.Gwalior. Since the cadre continued to be controlled by one authority i.e. Principal AG, the applicants cannot make a grievance that they are being transferred from one cadre to another cadre. The decision of the Allahabad High Court based on separate cadre controlling authorities therefore, cannot be applied to the facts of the instant case. This is not the case of transfer of an employee borne under one cadre controlling authority to the jurisdiction of another cadre controlling authority as the cadre controlling authority remains the same. It cannot be denied that Principal Accountant General Gwalior has the jurisdiction and competence to transfer the employees under him to Chhattisgarh, as he remains the principal AG for Chhattisgarh also. In view of this position, the decision of the Allahabad High Court cannot be made applicable to the facts

of the
instant case and cannot be followed.

11. So far the impugned transfers are concerned, para 4.2.1, 4.9.1 and 10.4.1 of the Comptroller and Auditor General's Manual of Standing Orders (Vol.I) provide as under:-

" 4.2. Postings and Transfer

4.2.1. Accounts/Audit Officers are liable for service anywhere in India in any of the offices or posts under the control of the respective cadre controlling authority in whose cadre they are borne. They are also liable, like all other Central Govt. servants, to be transferred from one office to another subject the provisions of FR 15 CAG may, if necessary, transfer any officer to any post or office within the IA & AD.

Accounts/Audit officers may also be transferred to any post under the Government or on foreign service to a public sector undertaking/autonomous body/semi Government organisation owned or controlled as may be determined in each case and subject to rules and order issued by Govt. of India/CAG in this respect from time to time."

4.9.1. The relevant provisions of postings and transfers, permanent absorption, forwarding of applications, deputation/foreign service mentioned in this Chapter in respect of Accounts/Audit officers will apply mutatis mutandis to Assistant Accounts/Audit Officers.

10.4.1. Non gazetted Govt. servants can be sent on deputation/foreign service only with the approval of Comptroller and Audit or General of India Except in case of deputation to State Govt. or State or State Govt. body under the respective State where the Accountant General/Principal Director of Audit can depute such staff borne on the cadre under his control."

12. These standing orders read along with provisions of FR 15 clearly go to indicate that the Accountant/Audit Officers

are liable for service any where in India provided they are transferred under the control of the same cadre controlling authority. The applicants have not been able to show that they are transferred from one cadre controlling authority to jurisdiction of another cadre controlling authority. On the contrary the letters of the Assistant Comptroller and Auditor General dated 6.2.2003 and 25.3.2003, referred to above, clearly go to indicate that the cadre is not bifurcated and the cadre controlling authority has remained the same for both the States i.e. for M.P. as well as Chhattisgarh. Under the circumstances, the applicants cannot challenge their transfers on the ground that they have been transferred from one cadre to another and that the transfer is against the statutory rules. No other rule is shown to have been violated by the respondents while issuing the impugned transfer orders. Under the circumstances, it is not possible to conclude that the impugned transfer orders violate any of the statutory rules. They do not even violate the guidelines or standing orders and as such, the same cannot be interfered with by this Tribunal on this ground.

13. The impugned transfer orders are not challenged on the ground of the same having been issued with malafide intention. It is however contended that they are against the

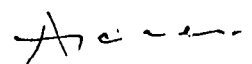
transfer policy formulated by the respondents. Unwilling women staff and the persons appointed against the sports quota though they were required to be exempted from the purview of transfer have been issued the transfer orders. The judgment of the Allahabad High Court does indicate that the transfer policy formulated in consultation with the staff associations of both the Audit and Accountant employees of Accountant General's office at Allahabad inter alia provided as under:-

- (i) In the approved transfer policy for audit and accounts staff, physically handicapped employees, those suffering from serious diseases and employees attaining the age of 57 years (i.e. left with three years of service) have already been excluded from the purview of transfer subject to administrative convenience.
- (ii) Unwilling women staff may also be exempted from transfer in the Audit wing subject to equal number of male staff, in addition to the male staff coming under the purview of transfer policy, being transferred to Uttaranchal to make up the deficit of staff required there.
- (iii) In the case of working spouse, the transfer policy already stipulates that in the event of either of the spouse being transferred, the other may either follow him/her or get exempted.
- (iv) Unwilling employees who have been appointed against sports quota may not be transferred subject to administrative convenience and equal number of other staff being transferred to Uttaranchal.

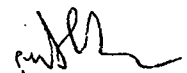
14. The transfer policy formulated for Chhattisgarh however does not provide for exemption to the unwilling women staff or for exemption to the employees recruited in the sports quota or for physically handicapped employees and those who had attained the age of 57 years. Undoubtedly, the transfer policy is not under challenge before us and the transfer policy framed by the employer is not justifiable in the court of law as it does not have any statutory force. However, when the Central Govt. as a model employer takes a policy decision in regard to certain employees working in one State it is naturally expected that the same policy decision will be made applicable to employees of the same cadre working in another State. Though the impugned transfer orders cannot be struck down on the ground of they being violating the transfer policy or that they are being discriminatory inasmuch as they are not in accordance with the transfer policy formulated by the employees of UP cadre it is expected that the respondents will implement their own transfer policy formulated for one State and extend the same benefits as extended to the similarly situated employees serving in UP. It is no doubt true that in the decisions in the case of *Shilpi Bose vs. State of Bihar* reported in AIR 1991 SC 532, as well as in the case of *Bank of India vs. Jagjit Singh Mehta* reported in AIR 1992 SC 519 and in the case of *Union of India & Ors. vs. S.L. Abbas Moreso*

reported in AIR 1993 SC 2444, it has been laid down by the Supreme Court in unequivocal terms that the Tribunal or the High Court should not interfere with the transfer orders unless they are issued contrary to the service conditions or they are issued with malafide intention. In the instant case as observed above, both the conditions are absent and as such, the impugned transfer orders cannot be interfered with. However, it is expected that the respondents shall reconsider these transfer orders in the light of the transfer policy formulated for the audit/accounts staff of UP and take appropriate decision in the interest of the administration. This exercise shall be undertaken within two months from the date of receipt of a copy of this order and decision be communicated to the applicants immediately thereafter. With this direction, all the three OAs stand disposed of as rejected with no order as to costs.

15. Copy of this order be placed in other O.As.



(A.S. Sanghvi)
Member (J)



(M.P. Singh)
Vice Chairman

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