

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 5th day of January, 2010

ORIGINAL APPLICATION No.41/2009

CORAM :

HON'BLE MR.B.L.KHATRI, ADMINISITRATIVE MEMBER

Rakesh Gupta,
M.E.(Sr.),
Geological Survey of India, WR,
Jaipur,
R/o AB-529, Kings Road, Nirman Nagar,
Jaipur.

... Applicant

(By Advocate : Shri Anand Sharma)

Versus

1. The Director General,
Geological Survey of India,
27, Jawahar Lal Nehru Road,
Kolkata.
2. Dy.Director General,
GSI, WR,
Jaipur.

... Respondents

(By Advocate : Shri Hemant Mathur)

ORDER (ORAL)

PER HON'BLE MR.B.L.KHATRI

The applicant has filed this OA against the impugned order dated 05.01.2009 (Ann.A/1), whereby the applicant has been transferred from WR Jaipur to CR Nagpur w.e.f.



01.02.2009. Learned counsel for the applicant had pleaded that this order has been passed without taking into account the policy guidelines for transfer/posting of Scientists and technical officers as per Annexure A/2. He had relied upon Para nos. 2.23 & 2.24 of the transfer policy, which reads as under:-

"2.23 Officers placed in the operation Units/ Circles/ Divns./ Project would be allowed to continue for 5 to 6 years in normal stations and 3 to 4 years or term posting in tune with Government directive in difficult and hazardous terrain like Ladakh or similar place in the Himalayan area, forested areas of Pihar Crissa. Madhya Pradesh or North Eastern Region. Categorization of areas as difficult or hazardous would be as per specific Government directive or assignment or working condition or terrain as defined by DO, GSI.

2.24 The officers who have served around 10 years outside their home state or place of choice would be considered for posting in their home state or to their choice of posting, depending on exigencies of services or job requirement. To accommodate such cases, officers who have had posting in their home/ place of choice, for around 10 years or more would be considered for posting outside. The number of year of stay in such station would decide the priority. In case, the number of requests for transfer to a particular place in more than the number of posts available, the priority would be decided on the basis of longer stay away and closeness of superannuation."

2. It was pleaded that it is quite relevant to mention that the respondent department had issued one policy for laying down guidelines with regard to transfer and posting of Scientific and Technical Officers in GSI, which is uniformly applicable in the entire country and the respondent department is under an obligation to follow such policy in its letter & spirit while transferring and posting the officers.

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3. Perusal of the transfer policy would reveal that different provisions have been contemplated in the aforesaid policy for regulating the transfer and posting of the Technical Officers. Such as Clause 2.23 of the policy clearly lays down that the officers placed in Operation Units/ Circles/ Divisions/ Projects would be allowed to continue for 5 to 6 years in normal stations.

4. It was submitted that the applicant had joined in Jaipur Region only in April, 2005 and thus, he has spent only 3 years and 9 months in Jaipur Region, which is admittedly less than the permissible term of 5 to 6 years as per Clause 2.23 of the policy and without there being any cogent reason or without any administrative exigency whatsoever, the applicant has been transferred from one Division to another in violation of the aforesaid policy within a short span.

5. Clause 2.24 of the aforesaid policy (Annex:A/2) is also relevant in the instant case as it provides that the Officers who have served around 10 years outside their home State or place of choice would be considered for posting in their home State or to their choice of posting. The home State of the applicant is Delhi and during his entire service of 15 years, he has served the department outside his home State, therefore, it was incumbent upon the authorities in view of Clause 2.24 of the policy that in case the transfer of the applicant was at all necessary for certain exigencies, then in that case the applicant should have been posted in his home State i.e. Delhi or in case

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posting at Delhi was not possible then, in that case, option should have been called for with regard to his choice of posting. But neither the applicant has been posted in his home State nor the department has asked the applicant to submit any option with regard to his choice of posting.

6. Learned counsel for the applicant had pleaded that wife of the applicant, Mrs. Mamta Gupta, is holding a permanent post of Teacher in Subodh Public School, Jaipur, and his daughter, Kirti Gupta, has been prosecuting her study in Class-VII at Jaipur. In case the impugned transfer order is allowed to be carried out, it is likely to cause serious prejudice to the career of wife of the applicant and to the study of his daughter, as the impugned transfer order has been issued in mid-academic session.

7. Learned counsel for the respondents had relied upon the submissions made through reply filed by the respondents and vehemently contended that the impugned transfer order has been issued keeping in view the operational and functional requirements.

8. I have heard learned counsel for the parties and perused the record. I find that the applicant had made a representation dated 15.1.2009 (Ann.A/3), which has not yet been decided by respondent No.2 i.e. the Director General, GSI. In this connection, it is considered necessary to refer to the case of

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Union of India and others v. S.L.Abbas [AIR 1993 SC 2444],

wherein the Apex Court, in para-7, observed as under :

"7. . . . Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration."

9. Learned counsel for the applicant had also relied upon the judgement rendered by Lucknow Bench of this Tribunal on 24.8.2006 in OA 489/2005 [A.K.Munjal v. Union of India & Ors.] and pleaded that under similar circumstances the transfer order was cancelled by the Lucknow Bench. In this connection, it is considered necessary to reproduce para-16 of the said order, which reads as under :

"16. Point No.3:- Point No.1 is decided in favour of the applicant and Point No.2 is decided against the respondents.

It is the observation of the Apex Court in many of the cases that the court should not interfere with a transfer order, which is made in public interest and for administrative reasons. But ~~in~~ the instant case, the respondents have failed to satisfy the requirements of any public interest or administrative reasons and further the applicant has satisfied the bias attitude of the respondents in transferring him from Lucknow to Jaipur, in violation of guidelines of transfer policy.

In the result, the application is allowed and the impugned transfer order Ex-A-1 is set aside, effecting the transfer of the applicant from Lucknow to Jaipur alongwith all consequential benefits. No costs."



10. After having considered the rival submissions, respondent No.2 is directed to decide representation of the applicant (Ann.A/3) keeping in view the personal difficulties of the applicant as well as the transfer guidelines, within a period of one month from the date of receipt of a copy of this order. Interim stay already granted by this Tribunal vide order dated 29.1.2009 shall continue to operate even after a lapse of 15 days from the date of decision on applicant's representation by respondent No.2. It is, however, made clear that in case representation of the applicant is decided against him, he will be at liberty to approach this Tribunal again within a fortnight from the date of decision on his representation. It is also made clear that in case request of the applicant is not acceded to, the respondents may record reasons on the relevant file regarding requirements of public interest or administrative reasons, as held by the Lucknow Bench of this Tribunal in para-16 of the order passed in the case of A.K.Munjal v. Union of India & Ors. (supra).

11. The OA stands disposed of with the observations made hereinabove. No order as to costs.


(B.L.KHATRI)
MEMBER (A)

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