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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A.NO.467/2003

Wednesday, this the 17th day of September, 2003

Hon'ble Shri Shanker Raju, Member (J)

1. Smt. Neelam Dhand
LDC
Upper Yamuna Division
Central Water Commission
Kalindi Bhawan
B-5 Tara Crescent Road
Qutab Institutional Area
New Delhi-16

2. Shri Suresh Chander
LDC
Nepal & Bhutan (Coordination) Dte.
Central Water Commission
Kalindi Bhawan
B-5 Tara Crescent Road
Qutab Institutional Area
New Delhi-16

..Applicants

(By Advocate: Shri R.Gopala Krishna)

Versus

1. Chairman
Central Water Commission
IIIrd Floor, Sewa Bhawan
R.K.Puram, New Delhi

2. Under Secretary
Central Water Commission
E-IIT, Sewa Bhawan
R.K.Puram, New Delhi

..Respondents

(By Advocate: Shri D.S.Mahendru)

O R D E R (ORAL)

Applicants impugn the common order of transfer whereby they have been transferred to different places on promotion.

2. Applicants, who are working as LDCs in Central Water Commission, were made permanent UDCs on 1.4.1988.

3. In 1997, 10 persons senior to the applicants were promoted as UDCs and on their refusal to accept the

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promotion and on forgoing the same, they have been retained in Delhi.

4. By an order dated 31.10.2002, the applicants along with others were promoted. Against this, a representation has been made to forgo the promotion and for retention of the applicants in Delhi. As nothing has been heard and rather promotion orders issued transferring them, gives rise to the present application.

5. Though contentious arguments have taken place but the learned counsel of the applicants referring to the earlier two orders passed in respect of 10 seniors who had been on earlier two occasions on forgoing promotion, were retained in Delhi, contended taking resort to the transfer policy for Groups 'C' & 'D' that though on promotion an individual, who cannot be adjusted at the same station, is liable to be transferred, but on such a transfer those, who had the longest stay, are to be considered first. In this resort, relying upon the seniority list, it is contended that the 10 seniors, who had been retained till 27.7.2003 on forgoing promotion, discrimination has been made by the respondents which cannot be countenanced in the light of the Articles 14 & 16 of the Constitution.

6. On the other hand, respondents vehemently opposed the contentions and stated that now the applicants, who had been upgraded in the scale of UDC on implementation of Assured Career Progression Scheme, are

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attempting to stall their transfers, which is due on promotion as per the policy.

7. Learned counsel of the respondents has also produced the relevant record and on instructions states that the 10 persons whom discrimination is alleged on forgoing promotion upto 27.7.2003, are being considered for promotion by a DPC and their promotion orders would be issued after vigilance clearance. However, it is stated that they would not be allowed to forgo the promotion and would be transferred.

8. Having regard to the above, learned counsel of the applicants states that as admittedly senior persons had been retained and are yet to be transferred, transfer orders may be set aside and the respondents be directed to transfer the promoted UDCs in order of their seniority.

9. I have carefully considered the rival contentions of the parties and perused the material on record. In view of the aforesaid statement made on instructions by the learned counsel of the respondents, now the seniors of the applicants are on promotion and are being transferred without according them a final opportunity to forgo the promotion, so setting aside of the transfer order and directing the respondents to transfer the applicants after their seniors are transferred, would be an empty formality.

10. In a transfer, a judicial review is permissible only when the transfer is malafide or in violation of

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statutory rules. A guide-line on transfer is merely a guiding factor. As no malafide has been established by the applicants, their transfers on promotion, which is envisaged in the policy and the fact that seniors are also being transferred, cannot be interfered with. The aforesaid conclusion is supported by the decision of the Apex court in N.K. Singh v. Union of India & others, 1994 (5) SLR 153. As there is no right of posting to a particular place and the wheels of Administration should not be stalled, this Tribunal cannot sit as an appellate authority over the decision taken by the respondents.

11. In the result, rejecting the claims of the applicants for setting aside the transfer order, having regard to the statement made by the respondents' learned counsel on instructions, OA stands disposed of. No costs.

S. Raju
(Shanker Raju)
Member (J)

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