

**Govind Ram Vs. Land Record Officer, Pauri Garhwal and Others**

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**Court :** Allahabad

**Decided On :** Jul-15-1999

**Reported in :** 1999(4)AWC2843; (1999)2UPLBEC1600

**Judge :** D.K. Seth, J.

**Acts :** Lekhpal Service Rules, 1958 - Rules 4, 6, 7, 17 and 21

**Appeal No. :** C.M.W.P. No. 15309 of 1998

**Appellant :** Govind Ram

**Respondent :** Land Record Officer, Pauri Garhwal and Others

**Advocate for Def. :** K.R. Singh, Adv. and; S.C.

**Advocate for Pet/Ap. :** Prakash Padia and ;R.G. Padia, Advs.

**Judgement :**

**D.K. Seth, J.**

1. Having been appointed as Lekhpal at Dehradun In 1981. the petitioner came to Pauri Garhwal in 1985 through mutual transfer with one Hari Mohan Singh. On 22nd January. 1997 the petitioner was informed by Tehsildar, Kotdwar that pursuant to an order dated 3rd January, 1997 passed by the Commissioner, the petitioner was transferred to Dehradun on administrative ground and one Anil

Kumar Negi may be given the charge. The petitioner made a representation. The order of transfer was stayed by an order dated 8th July, 1997. Thereafter, the petitioner made a further representation for allowing him to continue at Pauri Garhwal. On 2nd September, 1997, the Commissioner had endorsed that the order of transfer of Govind Ram to Dehradun be cancelled as is apparent from Annexure-7. On 11th September, 1997 the Commissioner appears to have withdrawn the stay of transfer of the petitioner passed on 8th July, 1997. It is apparent that while on 2nd September, 1997, the order of transfer of Govind Ram to Dehradun was directed to be cancelled by the Commissioner. The same Commissioner appears to have recalled the order of stay of transfer dated 8th July, 1997. This order has been communicated to the petitioner by a letter dated 26th September, 1997 by the Collector. It is very difficult to understand as to how the Commissioner can blow hot and cold at the same breath. In as much as while on 2nd September, 1997 he is directing cancellation of the order of transfer of Govind Ram to Dehradun and again on 11th September, 1997, he is transferring him to Dehradun by recalling the order of stay.

2. Dr. P. Padia, learned counsel for the petitioner contends that according to the provision contained in Lekhpal Rules, seniority of Lekhpal being districtwise, if transferred outside his seniority and promotional prospect would be affected. In terms of Rules 6, 7 and 21, the Commissioner cannot assume jurisdiction to exercise the said power. He further contends that there is no provision for transferring a Lekhpal from one district to other.

3. Mr. K. R. Singh, learned standing counsel on the other hand contends that the petitioner was originally appointed at Dehradun. Therefore, he was being repatriated to Dehradun. The petitioner cannot claim any right to stay in Pauri Garhwal. According to him, since he was transferred to Dehradun from Pauri Garhwal by virtue of an order passed by the Commissioner, therefore, the Commissioner has power to transfer a Lekhpal from one district to another. According to him there is no infirmity in the order of transfer of the petitioner from Pauri Garhwal to Dehradun.

4. I have heard both the counsel at length.

5. It is not disputed that the petitioner came to Pauri Garhwal in 1985 on mutual transfer. It is also an admitted position that Hari Mohan Singh With whom the mutual transfer was arranged is still at Dehradun and is not being brought back to Pauri Garhwal. The order of transfer was also stayed by the Commissioner himself on 8th July. 1997 on the representation of the petitioner. The Commissioner himself had endorsed on 2nd September. 1997, that the order of transfer of the petitioner to Dehradun be cancelled. Thereafter, he had passed the order dated 11th September. 1997 recalling the order of stay dated 8th July, 1997 since been communicated by the Collector through his letter dated 26th September, 1997. Within the span of nine days, how could the Commissioner change his view and pass a different order from that of 2nd September, 1997, is very difficult to understand.

6. Rule 4 of the Lekhpal Service Rules, 1958, prescribes that the strength of service shall be as such as may be determined by the Governor from time to time and the cadre of Lekhpal shall be district wise and district wise allocation of strength will be made by the State Government. Rule 6--Procedure for Recruitment--provides that the Collector shall maintain a list of candidates having passed Patwari or Lekhpal School examination in the form prescribed. Appointment shall be made under Rule 7 by the Assistant Collector from the senior most candidate alternatively from each of the two lists maintained under Rule 6. Thus, it appears that the Collector is the appointing authority. The seniority of such Lekhpal is to be maintained through a gradation list, according to Rule 17. While transfer is contemplated in Rule 21. According to this rule, it is the Collector at whose discretion a Lekhpal may be transferred from one talqa to another within the district while the Assistant Collector may do so within his sub-division. Rule 21 does not provide that a Lekhpal may be transferred from one district to another. In the Lekhpals Service Rules, 1958, there is no provision provided for transfer of one Lekhpal from one district to other.

7. The contention of Mr. K. R. Singh is that the petitioner was transferred by the Commissioner from one district to another does not hold good. In as much as it was a mutual transfer with the consent of the two Lekhpals who had since been transferred. It is not the reversion of the mutual transfer since the said Hari Mohan

Singh is not being repatriated to Pauri Garhwal. On the other hand, one Anil Kumar has been sought to be placed replacing the petitioner. Since there is no authority conferred on the Commissioner as provided in Rule 21, he cannot assume jurisdiction to transfer a Lekhpal from one district to another even if it be on administrative ground. In the counter-affidavit, the administrative ground has also not been specified or disclosed. Then again, the order dated 2nd September, 1997 and the order dated 11th September, 1997 are in conflict with each other. Since the Rules does not permit transfer by the Commissioner and that too from one district to other though the impugned order contained in Annexure-8 dated 26th September, 1997 sought to be communicated by the Collector cannot be sustained. Still then, the same does not acquire the character of an order said to be passed by the Collector in exercise of Rule 21. Since the stay order itself points out that since the Commissioner had recalled the order of stay of transfer order passed by the Commissioner himself. the petitioner was being sought to be released from Pauri Garhwal. Thus, the said order is not an order within the meaning of Rule 21 of the said Rules.

8. That apart, in the absence of any Jurisdiction as noted above, the order of transfer of the petitioner passed by the Commissioner is wholly without jurisdiction and cannot be sustained.

9. In the result, the writ petition succeeds and is allowed. Therefore. the order dated 3rd January. 1997 referred to in the communication dated 22nd January. 1997 made by the Tehsildar, Kotdwar contained in Annexure-1 is hereby quashed. Consequently, all orders subsequent thereto become non-est and as such are also quashed. Let a writ of certiorari do accordingly issue.

10. However, it is observed that by reason of the fact that the order of transfer by the Commissioner dated 3rd January. 1997 having been declared without jurisdiction and since been quashed, the petitioner is entitled to his salary for the period during which the salary has not been paid to him, provided he has worked during the said period.

11. However, there will be no order as costs.

