

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.504/2018

Dated this Tuesday the 16th day of January, 2020

CORAM: R. VIJAYKUMAR, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Subhash Eknath Dhargave
aged about 49 years & at present
working as a Income Tax Officer,
Ward 1(4), Aurangabad,
Aurangabad, and residing at Flat
No.203, Bldg No.2, millennium Park
Hari Om Nagar, Mulund East,
Mumbai - 400 081. . . . *Applicant*
(By Advocate Shri A.A. Manwani)

VERSUS

1. Union of India through
Secretary, Ministry of
Finance, North Block,
New Delhi - 110 001.
2. The Chairman,
Central Board of Direct Taxes,
Department of Revenue
Ministry of Finance,
North Block,
New Delhi - 110 001.
3. Principal Chief Commissioner
of Income Tax, Pune,
12, Aaykar Bhawan, Sadhu
Vaswani Road, Pune - 411 001
Mumbai.
4. Chief Commissioner of Income-Tax,
Thane, 6th Floor, Ashar I T Park,
Rd No.16-Z, Wagle Estate,
Thane. . . . *Respondents*
(By Advocate Ms. Vaisali Choudhari)

ORDER

Per: Ravinder Kaur, Member (J)

This application has been filed by the applicant on 26.06.2018 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"8(a) This Hon'ble Tribunal will be pleased to quash and set aside impugned order dated 18.05.2018 passed by the respondent No.3 confirming applicant's transfer by Impugned Transfer Order dated 16.04.2018 in so far as it concerns the applicant by which the applicant has been transferred from Thane to Aurangabad.

(b) This Hon'ble Tribunal may be further pleased to issue directions to the respondents to follow the Transfer Policy Guidelines in letter and spirit and direct the applicant to be transferred to any station in Thane or in the nearby cities of Kalyan or Panvel, if necessary by transferring any Officer with longest stay at Thane/Kalyan/Panvel to Aurangabad, if there are no vacancies at any of these places as contended by the respondents with a view to accommodate the applicant.

(c) Any other or further order may be passed in the interests of justice.

(d) Cost of this application may be provided."

2. The applicant was promoted as Income Tax Officer in the year 2007 and was posted at Thane from 2007 to 2010. Thereafter he was transferred to Ratnagiri for a period of 3 years from 2010 to 2013, though as per the Transfer Policy Guidelines prevalent at the relevant time the term required for the said posting was of 2 years. Thereafter, the applicant was transferred

to Thane in the year 2013. Vide order dated 16.04.2018 (Annex A-2), the applicant was transferred from Thane to Aurangabad. He approached this Tribunal vide OA No.353/2018 against the said transfer order. The OA was disposed of vide order dated 08.05.2018 (Annex A-3) whereby the direction was given to the respondents to pass a reasoned and speaking order on the pending representation dated 03.05.2018 of the applicant within a period of two weeks. This representation was dismissed by the respondents vide order dated 18.05.2018 (Annex A-1), which has been challenged by the applicant vide Present OA.

2.1 It is the contention of the applicant that his wife is serving as Income Tax Officer and is presently posted at Thane as a Tax Recovery Officer. His son is studying in final year of Electronics Engineering in Wadala, Mumbai. His daughter has completed 8th standard and would be joining 9th standard from academic year 2018-2019. Further his both the children will be appearing for crucial examination in the final year of engineering and standard 10th respectively in the coming financial year 2019-

2020. It is further stated that his wife is suffering from cervical spondylisis, low blood pressure and vertigos causing extreme discomfort due to which she is unable to carry out the day to day household work while discharging her duties. As a result, the applicant has to give considerable time towards the family affairs and taking care of the children's education which requires his physical presence with the family. He further stated that he himself is suffering from diabetes and high blood pressure due to which he is under constant medical supervision and medication in Mumbai. He claims to have placed reliance on documents in this regard in the earlier OA No.353/2018.

2.2 It is further stated by the applicant that as per Transfer Policy, the Income Tax Officers are expected to be posted in class 'A' city, Pune for a maximum continuous period of 8 years. At class 'B' cities i.e. Nashik, Thane, Kolhapur and Aurangabad, they are expected to be posted for a continuous period of five years and at Kalyan for three years continuously. For all other cities classified as class 'C' station maximum continuous tenure is

of two years. The applicant has placed reliance on para 6.4 of the transfer and posting guidelines for Income Tax Officers in Pune region which is part of Annex A-4 which reads as follows:-

"6.4 In case of working couples, as far as possible the following procedure shall be followed:

(I) if the spouse of any Official is working outside the Department, posting at the same station where the spouse is working will be given and if no vacancy is available at that station, posting will be given to nearby station(s) depending on the availability of vacancy.

(ii) In case where the spouse is also working in the Department, both the officials shall be posted at the same station and if no vacancy is available at that station, posting will be given to nearby station(s) depending on availability of the vacancy."

2.3 The applicant has further relied upon para 6.5 of the aforesaid policy which speaks of grant of grace period of one year to the officials whose children are studying in class 10th or 12th in the ensuing financial year, however, depending upon the availability of vacancies. Para 6.5 reads as under:-

"6.5 Officials whose children are going in class 10th or 12th in the ensuing Financial Year can be given a grace period of 1 year as far as possible so that the child completes 10th or 12th standard depending upon availability of vacancy. This grace period will be available for a maximum of one year only. This ground is applicable only for the retention at the present station of posting and not for transfer to other station."

2.4 The applicant has stated that the respondents failed to consider that the wife of

the applicant is working in the Income Tax department and posted at Thane, therefore, the applicant was also required to be posted at the same station, as per the transfer policy and DoPT OM dated 30.09.2009(Annex A-4 colly). He further states that if it is not possible to post him at Thane, he could be posted at a nearby station like Kalyan or Panvel as per the options given by him vide letter dated 29.01.2018(Annex A-4 colly) which was presumably as per transfer policy.

2.5 The applicant has further claimed that the respondents have issued revised transfer order dated 26.04.2018(Annex A-4 colly) whereby transfer of some of the officials have been cancelled and they have been retained in their present postings for various reasons mentioned therein. It is stated that thereafter he made further representation dated 03.05.2018(Annex A-4 colly).

2.6 The applicant has alleged discrimination stating that many of the officials who are working for more than 10 years either at Thane or Panvel are not transferred out of the cities. In para 4.11 of the OA the applicant has quoted

instances whereby couple officials are transferred in the same cities and has relied upon order dated 04.05.2018 (Annex A-4 colly).

2.7 The applicant has claimed that Income Tax Officer, Mr. Sanjay R. Bakre was wrongly retained in Thane on account of his child pursuing 10th standard as the criteria of pursuing 10th or 12th standard must be from the ensuing financial year as per the transfer policy and not ensuing academic year.

2.8 The applicant further states that the respondents have passed impugned order dated 10.05.2018 in perverse manner which is not in conformity with the conditions laid down in transfer and posting guidelines. Further, the respondents have failed to appreciate para 6.5 of the guidelines observing in para 4(iii) of the impugned order dated 18.05.2018 that the wife of the applicant can look after the children over looking the fact that his daughter's education and 10th standard would commence in the ensuing financial year w.e.f.. 01.04.2019. The applicant has also prepared table of the officials showing their tenure at a particular place of postings vide para 4.18 of

the OA claiming that many of them are posted there for more than 10 years without any justified reasons and as such the applicant has been discriminated.

2.9 The impugned order dated 18.05.2018 is stated to be against the transfer policy and DoPT OM, illogical and discriminatory.

3. The respondents have filed detailed affidavit in reply whereby it is stated that the representation of the applicant was considered in compliance of the directions of this Tribunal and was disposed of vide reasoned and speaking order dated 18.05.2018 (Annex A-1) considering the totality of the facts and in the interest of large public organisation. All the submissions of the applicant vis-a-viz the transfer guidelines in the case of Income Tax Officers applicable in Pune Region were considered and after giving a careful thought came to the conclusion that the applicant has been transferred in accordance with the transfer and posting guidelines referred above. There is no violation of the transfer policy or any other conditions of service.

3.1 Respondents further state that in view of

the admitted position of law settled by the Hon'ble Apex Court, no employee has any right to claim to work at a particular place. The concerned authority has every right to post an employee at a place where his services are required in the administrative exigencies and in the public interest. All the allegations against the respondents as contained in the OA have been denied. It is further stated that all the points raised by the applicant in his representation as well as in the present OA have been dealt with extensively by the respondents while disposing of his representation vide order dated 18.05.2013.

3.2 The applicant has not filed any rejoinder to the aforesaid reply of the respondents.

4. We have heard Shri A.A. Manwani, learned counsel, learned counsel for the applicant and Ms. Vaishali Choudhari, learned counsel for the respondents at length and have carefully considered the facts, circumstances, law points and rival contentions in the case. We have carefully examined the pleadings and annexures filed by the parties.

5. We have carefully perused the clause

4(iii) of DoPT OM dated 30.09.2009. As per this clause where the spouses belong to the Central Service, the Cadre Controlling Authority may post the spouses to the same station. As per clause 6.4 (ii) in a case where the spouse is working in the same department, both the officials shall be posted at the same station. However, in case no vacancy is available at that station, posting will be given to nearby station(s) subject to the availability of the vacancy.

6. As per clause 6.5 in the case of officials whose children are going in class 10th or 12th in the ensuing financial year, they can be given a grace period of one year as far as possible to facilitate their children to complete 10th or 12th standard but that too subject to availability of vacancy. The grace period referred above will be available for a maximum of one year only and is applicable only for retention at the present station of posting and not for transfer to any other station. The applicant has relied upon the judgment of Hon'ble Apex Court in the case of Bank of India Vs. Jagjit Singh Mehta, reported in 1992 (1) SCC 306 wherein

the following observations were made in para 5:-

"There can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In the case of All-India Services, the hardship resulting from the two being posted at different stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of the other's posting. While choosing the career and a particular service, the couple have to bear in mind this factor and be prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case the couple have to make their choice at the threshold between career prospects and family life. After giving preference to the career prospects by accepting such a promotion or any appointment in an All-India Service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, they cannot as of right claim to be relieved of the ordinary incidents of All-India Service and avoid transfer to a different place on the ground that the spouses thereby would be posted at different places. In addition, in the present case, the respondent voluntarily gave an undertaking that he was prepared to be posted at any place in India and on that basis got promotion from the clerical cadre to the Officers' grade and thereafter he seeks to be relieved of that necessary incident of All-India Service on the ground that his wife has to remain at Chandigarh. No doubt the guidelines require the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees."

7. The perusal of the above referred judgment also finds mention that as far as practicable the husband and wife who are both employed should be posted at the same station. However, it does not find mention that in any

circumstance they have to be posted at the same place.

8. DoPT OM dated 03.04.1986 also says that the service to which the spouse with longer service belongs, there may not be adequate number of posts available and in such a situation posting to the nearest station by either of the department may become necessary. In the light of the above referred discussion and rule position as well as applicable transfer and posting guidelines in respect of Income Tax Officers, Pune Region, we have considered the grievance of the applicant.

9. Clause 3.1 and 3.2 of transfer and posting guidelines read as under:-

“3.1 All Group 'B' Officers (subject to para 3.2 below) shall be liable for station transfer during AGT if they have completed their continuous tenure in the manner given below:

Class 'A' : Pune 8 years of continuous stay

Konapuri,
Aurangabad

(ii) Kalyan 3 years of continuous stay

Class 'C':(i) All stations (except 2 years of continuous stay
Single/Two ITO

Single/1 Stations

(ii) Single/Two ITO Maximum 2 years

3.2 Tenure of more than 9 months as on 31st March of the

respective financial year will be considered as one year."

10. It is not disputed by the applicant that as per para 3.1 of this guidelines, the Income Tax Officers after completion of tenure of 5 years shall be liable for station transfer during AGT. The applicant had completed his tenure of 5 years at Thane, a 'B' class station and thus he was required to be transferred mandatorily. However, subject to exception in terms of clause 6.4 and 6.5 of the transfer and posting guidelines. It is observed that the applicant being posted in Pune Region in terms of letter dated 10.01.2018 circulated by the office of the Principal Chief Commissioner of Income Tax, Pune was required to submit 5 options/choice of stations for his future posting. However, in the transfer proforma dated 29.01.2008, the applicant had given only two options of stations i.e. Panvel and Kalyan. As per respondents, there was no vacancy available at either of these stations to accommodate the applicant. This fact has not been disputed by the applicant as he chose not to file any rejoinder to the reply affidavit of the respondents. At the same time, he has not

disclosed in the OA as to why instead of 5 options, he chose to give only two options. This itself appears to be malafide on his part. The applicant cannot be permitted to modify the directions of the respondents at his whims and fancies which are common and binding to all such officers.

11. The applicant has taken the plea that he should be retained at Thane as his daughter was studying in 9th standard for the academic year 2018-2019. As per clause 6.5 of the transfer and posting guidelines, the officials whose children are going in 10th or 12th standard in the ensuing financial year can be given a grace period of one year as far as possible so that the child completes 10th or 12th standard. However, this accommodation, as already discussed above is also subject to availability of vacancy at the same station. The benefit of this clause is available only for retention at the present station of posting and not for transfer to other station. The applicant has given two optional stations i.e. Panvel and Kalyan that if there is no vacancy at Thane, he should be accommodated at either of these two stations but again since

there is no vacancy available at these stations also the applicant could not be accommodated there by uprooting those who were already posted there.

12. It is the contention of the respondents in their reply that the applicant purposely did not give the option for 5 places as required since he was aware that there were no vacancy in the said two options. It is argued by learned counsel for the respondents that since the vacancy was available at Aurangabad station, consequently he was transferred to the said place. The applicant has not explained as to why he submitted only 2 options instead of 5 options as per the requirement and thus it does not lie in his mouth to say that these options were ignored by the respondents when they have categorically stated that there was no vacancy available at both these places. Giving 2 options instead of 5 is a deliberate act on the part of the applicant knowing very well that there was no vacancy available either of the two stations. The DoPT OM dated 30.09.2009 clearly prescribes that if the posts are available, only then the official can be appointed to the same station or

to the nearby stations for which the options were required to be given by him. Learned counsel for the respondents has further argued that the transfer of the applicant to Aurangabad was for the reason there was no vacancy at his present posting as well as at the two options he had given and keeping in mind the administrative requirement and in larger public interest, he was transferred to Aurangabad. We are conscious of the fact that the posting of both the spouse at one place is not a mandatory or statutory requirement though the preference has to be given to post them at the same place subject to the availability of the vacancies.

13. It is the contention of the applicant that since his daughter has completed her standard 8th study and would be joining standard 9th for academic year 2018-2019, therefore he was required to be given the benefit of 6.5 of the transfer and posting guidelines. However, it is observed that this clause applies only to those cases where the children are going in 10th or 12th class in the ensuing financial year and a grace period of one year is given so that the child completes 10th or 12th standard, though the

benefit of this clause can also be given subject to the availability of vacancy. In the present case, in the ensuing financial year the daughter of the applicant was studying only in 9th standard and she would have gone to 10th standard in academic year 2019-2020. Therefore, the applicant could not have been entitled to the benefit of this clause since the condition precedent is not fulfilled.

14. The perusal of the impugned order Annexure A-1 reveals that it is a well reasoned order discussing all the points raised by the applicant in his representations as well as the previous OA Nos.353/2018. Though the applicant has alleged discrimination, however, he failed to justify this allegation by quoting any specific evidence to this effect. It is the contention of the applicant that there are certain officers who are retained at Thane for a period of more than 5 years. However, in the impugned order the case of these officers has been dealt with specifically at page 8 sub para (vii) and it has been explained that none of the officers were posted there for a period of more than 5 years. This itself shows that the

applicant was not given any discriminatory treatment.

15. In view of the above discussion, the OA is lacking merits. Hence dismissed. No order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)

ma/gm.

JD
24/01/10