

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/21/336/2020

HYDERABAD, this the 22nd day of July, 2020

**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**



P. Satish Kumar,
S/o. Sri P. Subba Rao,
Aged about 53 years,
Occ: Asst. Commissioner of Income Tax,
Circle 5(1), Range-5, Hyderabad,
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... Applicant

(By Advocate: Dr. K. Lakshmi Narasimha)

Vs.

1. Union of India,
Ministry of Finance,
Department of Revenue,
Central Board of Direct Taxes,
North Block,
New Delhi rep. by its under
Secretary to Government of India.
2. The Principal Chief Commissioner of Income Tax,
State of Telangana and State of Andhra Pradesh,
Hyderabad.
3. The Principal Chief Commissioner of Income Tax,
State of Odisha, Odisha.

... Respondents

(By Advocate: Mrs. K. Rajitha, Sr. CGSC)

O R D E R (ORAL)**Hon'ble Mr. B.V. Sudhakar, Admn. Member**

2. The OA is filed in regard to the transfer of the applicant from Hyderabad to Orissa in the cadre of Asst Commissioner of Income Tax.

3. Brief facts of the case are that the applicant is working in the respondents organisation as Asst. Commissioner of Income Tax on officiating basis at Hyderabad. He was transferred to Orissa vide office order No.98 of 2020 dated 12.6.2020. Applicant represented for retention and when it was not conceded to, applicant approached the Tribunal by filing OA 274/2020, which was disposed of directing the respondents to examine the case of the applicant as per rules and law. Complying with the orders of the Tribunal, the respondents re-examined and rejected the request for retention. Aggrieved, OA has been filed.

4. The contentions of the applicant are that he is a Group B Officer and on officiating basis, he is working in Group A cadre as Asst. Commissioner of Income Tax. The transfer guidelines based on which the transfer was effected was in respect of regular Group A officers and they do not apply to his case since Group B officers are to be transferred within the region they are working. Further, similarly placed employees were retained whereas he was not. Besides, his wife is suffering from terminal cancer and that his children are school going. Moreover, due to the prevailing Covid situation, it would be difficult to move his family for health reasons. Hence, the applicant pleads that he has to be retained at Hyderabad as per rules.

5. Respondents have filed the minutes of the placement committee wherein the request of the applicant for retention was examined and rejected. We have gone through the minutes wherein the respondents have taken the stand that the transfer was in administrative interest: as per transfer guidelines Group B officers on promotion to Group A are liable to be transferred to any region in the country, officer's request for retention was considered during (Annual General Transfer) AGT 2019 and he was granted extension of one year up to 2020. In AGT 2020, his case was reviewed and thereupon, applicant was transferred to Orissa region as per clauses 3.4 & 7.1 of the transfer guidelines. Respondents have cited the judgments of Hon'ble Apex Court in support of their decision to transfer the applicant.

6. Heard both the counsel and perused the pleadings on record.

7(I) It is not in dispute that the applicant is working in Group B cadre on a regular basis. Applicant was promoted as Asst. Commissioner of Income tax on 23.8.2018 on an officiating basis in Group A cadre vide office order 137/2018. In AGT 2019, the applicant was retained at Hyderabad up to AGT 2020 for reasons of ill-health of the wife of the applicant. In AGT 2020, the applicant was transferred to Orissa region from Hyderabad region on the grounds that there are no separate transfer guidelines for officers working in officiating capacity in Group A cadre and that the transfer is in administrative interest. The respondents quoted clause 3.4 of the transfer guidelines 2010 which reads as under:

Group B officer on promotion to the Grade of ACIT shall be transferred out of the region except in those cases where the officer has less than 3 years' of service left at the time of promotion.

As can be seen, the guideline applies to those who have been promoted as ACIT in Group A cadre on a regular basis, whereas the applicant was promoted to the

said post only on adhoc basis vide office order 137/2018 dated 23.8.2018 and he continues to be holding the Group B post on a substantive basis. Therefore, the guideline does not apply to the case of the applicant.



II. The respondents were also given an opportunity vide this Tribunal order dated 10.7.2020 to present a document, if they have one, which affirms that the 2010 transfer guidelines do apply to those promoted as ACIT on adhoc basis. They did not produce any executive instruction to this effect but instead merely claimed that they are applicable even to adhoc promotees. Besides, the applicant has contended that Group B officers are liable to be transferred within a region which was not refuted by the respondents. Moreover, as per office order 98/2020 dated 12.6.2020 under the head review cases, officers listed at 10,12 and 14 who are similarly placed like the applicant have been retained up to AGT 2021 whereas the applicant was denied the same benefit and hence, such a decision is discriminative in nature and cannot be upheld under law. The respondents have not answered this contention too. Respondents did quote a few judgments of the Hon'ble Supreme Court to support their contentions that the court should not interfere in transfers issued in public / administrative interest. However, in the same judgments cited by the respondents, it was also held that the transfer has to be effected as per rules/guidelines and they should not be effected with a malafide intention. The judgments cited by the respondents are all prior to 2006 whereas in a later judgment in the year 2009, Hon'ble Supreme Court in ***Somesh Tiwari v. Union of India, (2009) 2 SCC 592 : (2009) 1 SCC (L&S) 411*** at page 597 has held as under:

“16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter

alia mala fide on the part of the authority is proved. Mala fide is of two kinds—one malice in fact and the second malice in law.”

In the instant case, the transfer suffers from malice in fact. Group B officers are to be transferred within a region which was not denied by the respondents. The applicant is holding the Group B post in a substantive capacity and therefore, he cannot be transferred out of the region. ACIT is a Group A post and officers holding the said post on a regular basis can only be transferred out of the region as per the transfer guideline clause 3.4 quoted by the respondents. Therefore, it is comprehensively established that the transfer in question is malafide because of it being malice in fact and hence infringes the observation of the Hon'ble Supreme court cited above.

III. Respondents further invoked clause 7.1 of the 2010 transfer guidelines which is extracted hereunder:

Clause 7.1 Notwithstanding anything contained in these Guidelines, the Placement Committee may, if it considers necessary to do so in public interest and in furtherance of organisational objectives, transfer, retain or post any officer to any station/region or specific post.

Only by stating that it is "in public interest" or on the ground of "administrative exigency", then it would frustrate the very purpose of the objective of the transfer. It is necessary to record at least some reasons as to how "a special case" is made out to transfer the applicant whereas other similarly placed, pointed out above, were retained upto AGT 2021. No doubt that we do not expect an authority to write an elaborate judgment to make out "a special case". However, at the same time, in order to enable the Court to exercise the powers of judicial review, at least it is necessary for an authority to write in brief as to how "a special case" is made out in regard to the applicant vis-a-vis others similarly placed, so that the powers of judicial review, which has been held to be a basic structure of

the Constitution, can be properly exercised by the judicial forums. The instructions filed by the respondents is devoid of such reasoning. In that view of the matter, the response of the respondents is found woefully lacking.

IV. One another pertinent aspect which has to be dealt is that a Government servant cannot claim automatic alteration of status unless that result is specifically envisaged by statutory rules. The applicant can become a regular Group 'A' officer to which grade the ACIT post belongs to, only after he is regularly promoted to the said post by forming a DPC and the statutory rules thereto are followed. Therefore, when the applicant can have no claim to be a regular Group A officer, the associated provisions related to Group A transfer can never be applied to the applicant. We take support of the Hon'ble Supreme Court in ***Chandgi Ram v. University of Rajasthan, (2001) 10 SCC 556*** as under to support our observation.

"9. It is not open to any government employee to claim automatic alteration of status unless that result is specifically envisaged by some provision in the statutory rules. Unless, therefore, there is a provision in the statutory rules for alteration of status in a particular situation, it is not open to any government employee to claim a status different than that which was conferred upon him at the initial or any subsequent stage of service."

Furthermore, Hon'ble Supreme Court has observed in cornucopia of cases that if an employee is promoted on adhoc basis to a higher post, then he cannot stick to that post and no vested rights would be created. The applicant has not gained any vested right in the Group A cadre. By implication transfer guidelines applicable to regular Group A officers will not apply to the applicant.

V. Being on the subject, it is not out of place to refer to Article 38, which reflects as under:

'State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.'

Therefore, for a public servant to strive towards excellence, it is of utmost importance that fair and equitable opportunities are made available by the State. One of the means to achieve the goal is to provide equitable opportunities by the State is to make available healthy and stress-free working environment for a public servant. Stress-free environment is only possible when the employer, while making transfers takes into account not only the administrative exigencies/public interest, but also the genuine personal problems of the public servant liable to be transferred. A balance has to be struck by the employer, which is though difficult but not impossible to achieve. Every government in its capacity as an employer has to demonstrate the balance transparently to its employees. If this balance between the administrative exigency and personal inconvenience is kept in mind before every event of transfer, the cause of heart-burning amongst public servants under transfer would reduce to the minimum, thereby creating a healthy and congenial atmosphere between the employer and employees, which in turn contributes greatly to the overall development of the respondents organisation. Public servants, whose children are pursuing their career in the higher secondary stage of education, are generally not to be disturbed barring an emergent situation where a transfer cannot be avoided or deferred. In the instant case, the wife of the applicant is suffering from terminal cancer and his children are school going with his son to appear in the board examination. Besides, in the prevailing Covid situation, it would be obviously risky to the life of the applicant's wife, a cancer patient, if she were to be moved to a new place. Reasons for retaining similarly placed employees are missing. These aspects have not been touched upon by the respondents to make their decision of transferring the applicant a balanced one. In view of the foregoing, the decision of the respondents in transferring the applicant to Orissa is not in tune with the spirit of Article 38 of the Constitution.

VI. One another pertinent observation of the Hon'ble Supreme Court in ***E. P. Royappa vs. State Of Tamil Nadu & Anr*** on 23 November, 1973, **1974 AIR 555, 1974 SCR (2) 348**, which squarely covers the case of the applicant is as

under:



“The observation that transfer is also an implied condition of service is just an observation in passing. It certainly cannot be relied upon in support of the contention that an order of transfer ipso facto varies to the disadvantage of a Government service, any of his conditions of service making the impugned order appealable under Rule 19(1)(a) of the Rules.”

The service condition stipulated in respect of Group B officers in regard to transfer, to which grade the applicant belongs to, is that he can be transferred within the region. Transferring him out of the region to his disadvantage is, thus, not in consonance with the above verdict.

VII. Therefore, from the above, it is crystal clear that the transfer of the applicant has been against rules, discriminative, malafide and against the legal principles laid down by the Hon'ble Supreme Court in the judgments cited supra. Hence, the OA succeeds. Consequently, the impugned order dated 3.7.2020 is quashed. The applicant shall be allowed to continue in the present post as per rulings governing post tenures and adhoc postings prevalent in the respondents organisation and on the basis of the substantive grade of the applicant. No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(ASHISH KALIA)
MEMBER (JUDL.)

Pv/evr