

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No.67/2018

Reserved on :27.10.2020
Pronounced on :29.10.2020

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)**

Abhishek Kumar Meena Son of Shri Gopal Lal Meena, aged about 31 years, Resident of Karamchari Colony, Gangapur City, District Sawai Madhopur, Rajasthan. Presently posted as Inspector of Income Tax, Office of Principal Chief Commissioner of Income Tax, Delhi, C.R.Building, I.P.Estate, New Delhi-110002.

...Applicant.

(By Advocate: Shri C.B.Sharma)

Versus

1. The Union of India through Secretary, Ministry of Finance, Revenue Department, North Block, Cabinet Secretariat, Raisina Hill, New Delhi-110001.
2. Principal Chief Commissioner of Income Tax, Central Revenue Building, Jan Path, Jaipur.
3. Principal Chief Commissioner of Income Tax, New Delhi, C.R. Building, I.P. Estate, New Delhi-11002.

...Respondents.

(By Advocate: Shri Gaurav Jain)

ORDER

Per: Dinesh Sharma, Member (A):

In the present OA, the applicant has prayed for quashing the order dated 27.09.2017 of Respondent No.2, by which his request for Inter Charge Transfer from Delhi Region to Rajasthan Region has been denied on ground of

(2)

there being no vacancies available in the cadre of Inspector in promotion quota. He has also prayed for appropriate order or direction to the Respondent No.2 to consider the application of the applicant for Inter Charge Transfer to Rajasthan Region in unreserved slot for the post of Inspector Income Tax.

2. The applicant's claim is that he was appointed as Tax Assistant by order dated 07.12.2012. He was promoted (against an unreserved vacancy) vide order dated 07.04.2016 to the post of Inspector of Income Tax, in the office of Principal Commissioner of Income Tax, Delhi. He has requested for Inter Charge Transfer from New Delhi to Jaipur on ground that his spouse is working as Junior Accountant with the State of Rajasthan. His request for transfer has been wrongly rejected by order dated 27.09.2016 (Annexure A/1) on ground of non-availability of vacant post of Inspector in ST Category in promotion quota. The applicant has cited orders dated 03.12.2009 and 18.02.2014 (Annexure A/8) to support his claim for consideration of Inter Charge Transfer on spouse-ground.

3. The respondents have filed a reply contesting the claim of the applicant to get an Inter-Charge Transfer on spouse-ground. It is stated that there are no posts lying vacant in

(3)

ST category to which the applicant belongs, rather 18 persons were working in excess in ST category. The respondents have quoted a number of cases (**Indira Sawhney & Others. vs. Union of India & Others**, AIR 1993 SC 447, **M. Nagaraj & Others vs. Union of India & Others**, (2006) SCC 212, **Jarnail Singh vs. Lachhmi Narain Gupta**, Special Leave Petition(Civil) No.30621 of 2011, judgments of the CAT Principal Bench in **Ram Pher Yadav vs. Union of India & Others** (OA No.3476/2013), **Atul Krishna Goswami & Others vs. Union of India & Others** (OA No. 4230/2015)and **Raj Kumar & Others vs. Union of India & Another** (OA No.1596/2017) with respect to reservation in promotions. It is stated that there is no rule to take any official on Inter-Charge Transfer against category other than that to which he belongs. It is also stated that the submission of the applicant that he has been promoted in unreserved slot in the cadre of Inspector is *ab-initio-void* in view of the judgments of the Hon'ble Supreme Court and other Courts and Tribunals, and the applicant "in all likelihood, will be reverted or adjusted against reserved category of posts. If the plea of the applicant for Inter-Charge Transfer against unreserved post in Rajasthan Region is accepted, this will be a contempt of court action in view of the aforesaid judgments".

(4)

4. The applicant has filed a rejoinder claiming that he was promoted in Delhi Region against a General Category seat (and not against a reserved category seat). Denying him Inter-Charge Transfer on ground that the vacant seats belong to unreserved category, and stating that he cannot be considered against these vacancies since he belongs to ST category, amounts to applying arbitrary, illegal and double standards. The rejoinder denies application of the judgments (quoted in the reply) on the circumstances of the present case. It also denies the averment that there would be a contempt of court, if the applicant's request is accepted.

5. An additional affidavit has been filed by respondents. It is stated that following a number of litigations relating to promotions and consideration of past services on Inter Charge Transfers, the matter is now being analysed by a committee constituted by the CBDT, New Delhi. The CBDT has decided to put all request for Inter cadre transfers on hold except those falling under certain exceptions. This affidavit also quotes the following from the decision of the Hon'ble Supreme Court in the case of **S.K. Naushad Rahman & Others vs. Union of India & Others** (SLP (Civil) Diary No.23430/2019):

(5)

"In view of the pendency of the proceedings before this Court, where the issue of inter Commissionerate Transfers is being addressed, we request the Tribunals or the High Courts, as the case may be, where the proceedings are pending, to adjourn the proceedings so as to await the decision of this Court.

List this Special Petitions on 16.3.2020. Service be completed in other Special Leave Petitions, in the mean time."

6. A counter affidavit has been filed in reply to the additional affidavit in which the applicant has stated that the case quoted in the affidavit is not applicable on the facts of the present case. The cases cited are in the context of treatment of past service for purpose of promotion which is not the issue in the present case. The request of the applicant is for transfer on spouse ground which is an exception. The respondents can extend the same benefits related to inter cadre transfers, as are decided by the Hon'ble Apex Court and it should not be a reason for denying his Inter-Charge Transfer. The applicant has reiterated that there are a number of posts lying vacant in Jaipur Region and therefore his request for transfer on spouse ground should be considered.

7. We have gone through the pleadings and heard the arguments of the learned counsels of both the parties through video conference. There is no dispute about the fact

(6)

that the applicant has applied for transfer on spouse ground. It is also not disputed that there are a number of vacancies available at Jaipur, though the respondent says that these are not in the category to which the applicant belongs. The respondents claim that there are excess ST employees and therefore, even if there are vacancies, the applicant, who belongs to ST category, cannot be considered against these vacancies, for Inter Charge Transfer. They have argued that there is no rule which permits Inter-Charge Transfer against a category other than to which the applicant belongs. We don't see any merit in this argument since there is no rule prohibiting it either. Accepting this argument would amount to extending the principle of reservations from recruitment/promotion to certain posts to even determination of posts against which any person can request for transfer. In the absence of any rule providing for such reservation, we cannot agree with the contention of the respondents in this regard. The respondents have supplemented their argument with details of cases on the issue of reservation in promotion. They have linked that issue with the issue of Inter Charge Transfer since such transfers have implications on seniority and consequently on promotion. The applicant has argued for consideration of his case for Inter Charge Transfer on spouse ground irrespective of the outcome of the cases which mainly relate to

(7)

consideration to be given for past services in matters of promotion.

8. There is no denying the fact that transfer cannot be claimed as a matter of right. In public service matters, while it should be the endeavour of the authorities to keep the employee morale and job- satisfaction high, it cannot be the only objective and they have to weigh the interest of the organization, while trying to balance it with the employee's satisfaction. There have been a number of judicial pronouncements discouraging interference by Courts/Tribunals in matters of transfers and posting unless these are driven by mala-fides or have been made in utter disregard of rules and guidelines set for such transfers and postings, leading to a suspicion of arbitrariness or influence of extraneous considerations.

9. In this case before us, the request for transfer has been denied on ground of there being no vacancies in the category (of reservation) to which the applicant belongs. As already mentioned in para 7 above, we cannot accept this argument since it is nowhere specifically provided that vacancies, in the context of accommodating requests for transfer from one charge to another, have to be determined reservation-category wise. The rejection of the applicant's

transfer request on this ground by the impugned order is therefore clearly wrong, and therefore that order deserves to be quashed.

10. This, however, does not, *ipso facto*, translate into accepting the request of the applicant for the Inter-Charge Transfer. The respondents have stated that the matter is directly connected with a number of cases decided/pending before High Courts/Tribunal/Supreme Court. Though the applicant denies any link between the issues involved in those cases and his request for Inter-Charge Transfer, the fact remains that the CBDT has constituted a committee to look into all issues relating to Inter-Charge Transfers and have restricted consideration of such requests till the committee gives its final recommendations. The order of the Hon'ble Supreme Court (quoted in para-5 above) also makes the link (of Inter-Charge Transfers with matters pending before the Apex Court) apparent. The issue before us is not regarding considerations of seniority or weightage to be given for past services. The applicant got a promotion, admittedly against a General Category post, while serving under a different charge, but, as indicated in the reply filed by the respondents, even this fact of promotion may be subject to change. The transfer of an employee to a different charge, has obvious implications on inter-se seniority. While

(9)

satisfying one employee, it may cause dis-satisfaction and heartburning amongst a large number of other employees. Any large organization would therefore have to balance these considerations. Under these circumstances, we are constrained from giving any specific direction to the respondents to consider the request of applicant except, if it falls within the exceptional situations described by the committee constituted for preparing guidelines of such Inter-Charge Transfers, to consider it on merits.

11. In the light of the discussions above, we find that the applicant has no absolute right to have an Inter-Charge Transfer. Since his request for Inter-Charge Transfer was rejected for *prima facie* wrong reasons, we hereby quash that order. We note that there is a general embargo on Inter-Charge Transfers due to various inter-connected matters pending before courts. The matter of Inter-Charge Transfers is under consideration before a Departmental Committee. Hence, we dispose of this OA with a direction to the respondents to consider the request of the applicant as and when the embargo on such Inter-Cadre Transfers is lifted. In case his request falls into those exceptional situations where such request can be considered even during the ban on such transfers, it should be considered within 3 months from the date of receipt of this order. Needless to

(10)

say, the decisions of the Hon'ble Apex Court (and of the Hon'ble High Courts/Tribunals) on the implications of such Inter-Charge Transfers will apply to the applicant, in case his request for transfer is allowed. No costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

/kdr/