

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 423/86
T.A. No.

1986

DATE OF DECISION 27.2.1987.

Shri K.S. Minhas

Petitioner

Shri G.D. Gupta

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Shri K.C. Mittal

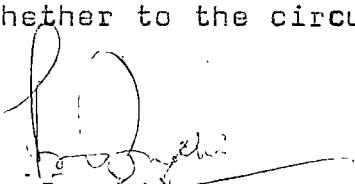
Advocate for the Respondent(s)

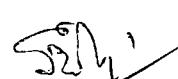
CORAM :

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

The Hon'ble Mr. H.P. Bagchi, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether to be circulated to other Benches ? No


(H.P. Bagchi)
Judicial Member


(S.P. Mukerji)
Administrative Member

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI

Regn. No. O.A. 423/86

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Shri K.S. Minhas

.... Petitioner

VERSUS

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.... Respondents

For Petitioner

.... Shri G.D. Gupta,
Advocate.

For Respondents

.... Shri K.C. Mittal,
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CORAM: Hon'ble Shri S.P. Mukerji, Administrative Member.
Hon'ble Shri H.P. Bagchi, Judicial Member.

JUDGEMENT

Shri K.S. Minhas, an Income Tax Officer Grade 'A', on 10th June, 1986 moved this application under Section 19 of the Administrative Tribunals Act praying that the impugned order of transfer, dated 15th May, 1986, may be quashed and the petitioner should be declared to be governed by the old transfer policy, dated 24.1.1985 and that the new transfer policy being discriminatory, should be struck down. The brief facts of the case can be recounted as follows. The petitioner was directly recruited as an Inspector, Income Tax on 19.3.1965 and was promoted as Income Tax Officer (ITO) Group 'B' on 3.5.1973. He was promoted as ITO Group 'A' on 1.3.1986. On 15th May, 1986, by the impugned order (Annexure 'A' to the petition) 137 Income Tax Officers were transferred from their respective places of posting, amongst whom the petitioner at Sl. No.53, was transferred from the post of ITO Group 'A', Delhi to the post of ITO Group 'A', Patiala. According to the petitioner, having been promoted as ITO Group 'A' (Class I) with

effect from 1st March, 1986 and taken over charge on that day, he was to be governed by the circular of the Ministry of Finance on transfer policy, dated 24th January, 1985 (Annexure 'C' to the petition) as the transfer policy in the department is effective from 1st April of that year to 30th March of the following year. This circular itself shows that the transfers are to be effected from April, 1985. In accordance with this circular of January, 1985 to be effective from 1st April, 1985, promoted Income Tax Officers Group 'A' with five years of service/stay in a particular charge were liable to be transferred. The period of stay was to be calculated as on 1st April, 1985. Since the petitioner was promoted as ITO (A) on 1.3.1986, he did not come within the mischief of this circular for transfer. However, the respondents issued transfer guidelines on 19th February, 1986 which were circulated to all Commissioners of Income Tax with the ^{covering} circular of March 3, 1986 (Annexure 'D'). According to the covering circular of 3rd March, 1986, information was called for regarding stay of Group 'A' and Group 'B' officers, to reach the Headquarters office by 20th March, 1986. In accordance with the revised transfer policy, "All Group 'A' officers (including Assistant Commissioners), will be liable for transfer at the commencement of the next financial year if they have completed 8 years of continuous stay in any cadre controlling Commissioner's charge." It also stated that "Stay at a station should not exceed 8 years in respect of the metropolitan cities of Bombay, Calcutta and Delhi." It further stated that "On promotion officers will normally be transferred

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irrespective of their period of stay except where they have come to that charge less than two years earlier." It also stated that "An officer is liable to be transferred to any part of the country at any time at short notice on administrative ground." These transfer guidelines were further amended by the Ministry of Finance (Department of Revenue)'s circular No.A-35015/1/86-Ad.VI, dated 6th June, 1986 stating that Income Tax Officers promoted from Group 'B' to Group 'A', the previous stay will not be counted, i.e., they will be transferred outside the charge if they have completed 8 years of service as Group 'A'. However, on promotion to Group 'A', they will be transferred outside the charge. This will be applicable in respect of officers promoted to Group 'A' in 1986 onwards. The main contention of the applicant is that since he was promoted from Group 'B' to Group 'A' on 1.3.1986, and the transfer guidelines of 19th February, 1986 circulated on 7.3.86 and further reviewed by the circular of 6th June, 1986, will not be applicable to him as they will govern cases of promoted ITOs where promotion took place on or after 1.4.1986. The applicant against his transfer order of 21.5.1986 and since he did not receive any reply, he was constrained to move the Tribunal. The respondents have averred that the transfer guidelines of 19.2.1986, the petitioner who had stayed in Delhi continuously for 13 years, was liable to be transferred and that the transfer guidelines being not statutory in nature, actual transfers are ordered after taking into account individual's capability, administrative

convenience, public interest, etc. The petitioner has no legal right to stay in Delhi nor is the transfer a stigma on his character. They have also vehemently denied that the transfer policy is discriminatory in nature.

2. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The learned counsel has convincingly argued that the transfer guidelines issued on 19th February, 1986 and circulated by the 3rd March, 1986 were to be effective from 1st April, 1986. This is borne out by the fact that the Commissioners of Income Tax in the covering circular of 3rd March, 1986, ^{were} asked for certain proforma of information regarding Groups 'A' and 'B' officers to be sent to the Headquarters by 20th March, 1986 as follows:-

"4. The Board has devised a proforma to get the information regarding stay of Group 'A' & 'B' officers is forwarded herewith for information and compliance. The compliance report in prescribed proforma IN DUPLICATE may please be sent so as to reach this office by 20th March, 1986 at the latest."

This means that the transfer guidelines of 19th February, 1986 enclosed with the Circular of 3rd March, 1986 could not be implemented before April, 1986. This is further supported by the fact that para. 1 of the transfer guidelines states as follows:-

"1. All Group 'A' Officers (including Assistant Commissioners) will be liable for transfer at the commencement of the next financial year....."

Since the financial year starts from 1st of April, the above will show that the transfer liability also starts from 1st of April. Even the circular of 24th January, 85

(Annexure 'C') started as follows:-

" The Board desire to make annual general transfers of Assistant Commissioners of Income-Tax and Income-tax Officers (Group-A) by the second week of April, 1985. The following categories of officers would be liable for transfers:...."

Further, the transfer guidelines of 19th February, 1986 were reviewed by the order of the Ministry of Finance of 6th June, 1986, para. 2 of which reads as follows:-

" The guidelines have since been reviewed and it has been decided by the Board that in respect of Income-Tax Officers promoted from Group-B to Group-A, the previous stay will not be counted. This may be brought to the notice of all the officials concerned. In other words, they will be transferred outside the charge if they have completed eight years service as Group-A, ITO. However, on promotion to Group-A they will be transferred outside the charge. This will be applicable in respect of officers promoted to Group-A in 1986 onwards."

This also shows that the transfer guidelines lay down the policy of transfers on financial year basis, i.e., from ^{the} 1st of April of one year to 31st March of the following year.

3. Since the impugned order of transfer of the petitioner was issued on 15th May, 1986, it will have to be governed by the transfer guidelines valid for the financial year commencing from 1st April, 1986 and ending on 31st March, 1987. These guidelines are enunciated undoubtedly in the circular of 19th February, 1986 read with the further circular of 6th June, 1986.

The circular of 19th ^{February} June, 1986 by which the petitioner's case is governed, reads as follows:-

"3. On promotion officers will normally be transferred irrespective of their period of stay except where they have come to that charge less than 2 years earlier."

The above will show that under the guidelines of 1986-87, if an ITO is promoted from Group-B to Group-A, he would normally be transferred irrespective of his period of stay except when he had taken over the charge less than two years earlier. The crucial point to be decided is whether the above clause will apply even if the event of promotion ~~takes~~ ^{took} place before 1st April, 1986. We are inclined to feel that since the transfer guidelines are undoubtedly effective from 1.4.1986, the words "on promotion" would definitely apply to the cases of promotion which takes place on or after 1.4.86. If promotions prior to 1.4.1986 are also ^{to be} covered by these guidelines, these guidelines will clash with the guidelines of the preceding financial year, which ~~is~~ cannot be ~~not~~ the intention. The above presumption is reinforced by the fact that the review circular of these guidelines issued on 6th June, 1986 as quoted earlier, states that the guidelines of 19.2.1986 have been reviewed and that the condition that on promotion from Group-B to Group-A ITOs will be transferred outside the charge, "will be applicable in respect of officers promoted to Group-A in 1986 onwards." The circular of 6th June, 1986 is unfortunately ambivalent in restricting the liability of transfer to promoted officers who are ~~promoted~~ ⁱⁿ "in 1986 onwards". While the learned counsel for the respondents interpret these words to say that the liability of transfer, irrespective of stay, is imposed on all ITOs who ~~were~~ ^{are} promoted on or after 1.1.1986, the learned counsel for the petitioner states that this liability is incurred by those officers who were promoted from Group-B to Group-A on or after 1.4.1986.

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4. As we have explained earlier in detail, transfer policies are effective from the 1st of April, i.e., the beginning of the financial year. This is so in respect of the transfer guidelines for the financial year 1986-87 issued by the circular of 19.2.1986. The order of 6th June, 1986 referred to above, is a review of these transfer guidelines and, therefore, this circular of 6th June, 1986 could be applicable to promotions made on or after 1st April, 1986 and cannot be anterior to that date because the main transfer policy which has been reviewed by the 6th June, 1986 circular, is not anterior to 1.4.1986.

5. We are, therefore, clearly of the opinion that the liability of transfer on promotion irrespective of the period of stay as laid down in para. 3 of the transfer guidelines for 1986 and reiterated in the circular of 6th June, 1986, is applicable to those ITOs who are or will be promoted from Group-B to Group-A on or after 1.4.1986. Since the petitioner was admittedly promoted from Group-B to Group-A on 1.3.1986, his liability to transfer on the ground of such promotion cannot be deduced from para. 3 of the transfer guidelines of 19th February, 1986.

5. We may make it clear that we are not saying that the transfer guidelines of 19.2.1986 in toto will not be applicable to the applicant. What we are saying is that para. 3 of these guidelines will not apply to the petitioner as he was promoted before 1.4.1986. Accordingly, the other paras in so far as they are applicable to the applicant, will be valid and enforceable qua the applicant. Though para. 1 of

these guidelines states that all Group-A officers will be liable for transfer if they have completed 8 years of continuous stay in any cadre controlling Commissioner's charge, this has been reviewed in the circular of 6th June, 1986 as quoted earlier to the effect that in respect of ITOs promoted from Group-B to Group-A, the previous stay will not be counted. Since the applicant was promoted from Group-B to Group-A with effect from 1.3.1986, even the 8 years' limit will not act against him.

upshot

6. The ~~upshot~~ of the above discussions is that having been promoted before 1.4.1986, the applicant is not liable to be transferred from one Commissioner's charge to other Commissioner's charge and that by the circular of 6th June, 1986, his stay in Delhi before promotion as Group-A ITO on 1.3.1986, ~~his previous stay in Delhi~~ will not be reckoned for the purpose of 8-year rule. Thus, paras 1,2,3 and 9 of the transfer policy also will not be applicable to him. Since the applicant has not opted for a transfer nor has he less than 2-3 years of service left before retirement, nor is his wife working in the same station, paras 4,5,6 and 8 of the transfer guidelines also will not be applicable to the applicant.

7. The only para left in the transfer guidelines is para. 7 which reads as follows:-

"7. An officer is liable to be transferred to any part of the country at any time at short notice on administrative grounds."

8. Para. 7 of the transfer guidelines gives unrestricted power to transfer an officer at any time at short notice on administrative grounds. This indicates that no officer can claim a right to be retained at a particular place of posting merely because of the operation of the other provisions of the transfer guidelines. Further, these guidelines are not statutory in nature and no vested right can be derived from them. Unless, therefore, the applicant is able to establish gross discrimination or malafide, or vindictiveness, his transfer cannot be declared to be void. Though the applicant has ~~immaculate~~ made ^{unwarranted} & ~~blind~~ allegation of malafides and prejudice, by the authorities against the promoted officers by stating that all the higher posts in the hierarchy are manned by directly recruited Class I officers, we are not able to recognise such generalised allegations against a whole category of officers. The transfer guidelines are approved by the Government as such and no responsible and democratic government can convincingly be stated to be partial towards a particular category of officers in a particular service or cadre.

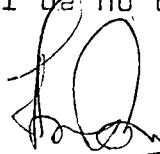
9. In so far as discrimination is concerned, a similar plea was taken in O.A. No. 426/86 (Narendra Singh Vs. Union of India) decided by the Tribunal on 17.6.86. In that case, an Assistant Commissioner of Income Tax challenged his transfer from Delhi to Sholapur by the impugned order, dated 27th May, 1986 based on the same transfer guidelines of 19th February, 1986. The Principal Bench presided over by the Chairman, Mr. Justice K. Madhava Reddy, observed as follows:-

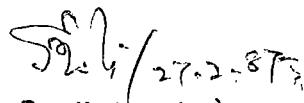
" Orders of transfer cannot be said to be discriminatory merely because some other

officer who had completed the same period is also not simultaneously transferred. The petitioners have no vested right to be retained at any particular place. When orders of transfer are made on administrative grounds, unless such orders are shown to be malafide or that they are punitive, they are not liable to be quashed. There are no such allegations. They are only challenged as being contrary to the guidelines which contention we have already dealt with and rejected. The petitioners cannot therefore have any justifiable grievance against this order of transfer. The petitions are accordingly dismissed in liminie."

The petitioners in that case moved the special leave petition before the Supreme Court who dismissed the same directing that the petitioners, if so advised, may make a representation to the Government and the representation may be considered on merits.

10. In view of the conspectus of facts and circumstances, we do not find any ground to intervene in the matter and reject the application. The respondents, however, are directed to decide his appeal, dated 21.5.1986 addressed to the Chairman, Central Board of Direct Taxes, if it is not ^{already} ~~so~~ decided, on merits keeping in view the observations made in this judgement. There will be no order as to costs.


(H.P. Bagchi)
Judicial Member


(S.P. Mukerji)
Administrative Member