

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 1947/2004

This the 25th day of October, 2004

HON'BLE SH. S.K.MALHOTRA, MEMBER (A)

Sunita Shail Narain, IRS,
W/o Wing Commander V.J.Narain.
Aged about 48 years,
House No.391, Sector 29,
Noida,
Uttar Pradesh.

(By Advocate: Sh. Balaji Srinivasan)

Versus

1. The Revenue Secretary,
Government of India,
Ministry of Finance,
Department of Revenue,
Central Board of Direct Taxes,
North Block,
New Delhi.
2. The Chairman,
Central Board of Direct Taxes,
Government of India,
Ministry of Finance,
North Block,
New Delhi.
3. The Chief Commissioner of Income Tax,
Delhi-1,
CR Building,
IP Estate, New Delhi.

(By Advocate: Sh. V.P.Uppal)

ORDER

The applicant has filed the OA for quashing the order dated 20.8.2001 for her transfer from Delhi to Chennai (Annexure P-1) and another order dated 25.5.2004 (Annexure P-2) directing her to join her new place of posting within 10 days.

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2. The facts of the case, in brief, are that the applicant joined service in Department of Income Tax in 1982 and has served at various places, such as Meerut, Lucknow, Delhi, Hyderabad and Kanpur. The husband of the applicant who is in Air Force was posted at Chandigarh and has recently been posted at Nagpur. The applicant was posted in Delhi in August, 2000. She was promoted as Commissioner of Income Tax on 13.7.2001 and was transferred to Chennai vide order dated 20.8.2001 (Annexure P-1) as Member (Appropriate Authority). According to her, this transfer has been made, as she had earlier complained of harassment against the Chief Commissioner of Income Tax, Kanpur who was transferred after an enquiry. She has alleged that when a friend of that officer became Chairman CBDT, he got her transferred to Chennai within a few days of his taking over as Chairman. The applicant after her transfer applied for study leave which was granted for 6 months and later applied for further extension. She joined duty at Delhi on 4.3.2003. She requested for her posting but despite several reminders, no action was taken. Her two sons aged 17 and 14 are studying in Noida and as such, she is required to be in Delhi/Noida to look after them. However, ignoring all these facts, the respondents vide order dated 25.5.2004 (Annexure P-2) have directed her to comply with the order of transfer dated 20.8.2001 to Chennai, which order according to her stands rescinded and cancelled. Hence this OA.

3. The main ground taken by her against the transfer order is that it is against the norms and guidelines for transfer, according to which her stay in Delhi should not exceed 8 years and 14 years in a particular region. On promotion, the officer can normally be transferred, irrespective of the period of stay, except where he has come to that region less than 2 years earlier. It has been stated by her that on promotion, she had completed only 10 months at Delhi. According to the guidelines, many officers who have overstayed in Delhi should have been transferred. Besides, after grant of study leave, the order dated 20.8.2001 transferring her to Chennai could be deemed to have been rescinded and cancelled. She cannot, therefore, be called upon to report at Chennai in compliance of 2001 order.

4. The respondents have filed a counter affidavit in which they have stated that although the applicant was granted study leave, her order of transfer dated 20.8.2001 was not superseded or cancelled. Even after the expiry of the study leave she has been staying in Delhi on one pretext or the other. Her earlier complaint of harassment against an officer made in 1997 has no relevance with her transfer to Chennai in 2001. She was promoted as Commissioner of Income Tax on 13.7.2001 and was transferred to Chennai on 20.8.2001. The transfer guidelines are advisory in nature which were kept in view, in addition to the administrative requirements, before transferring her to Chennai. There is no malafide or bias as alleged by her. After her transfer, she was relieved of her duties on 29.8.2001. Later, she applied for earned leave for 60 days which was granted and was directed to report for duty at Chennai after the expiry of her leave. But instead of joining, she requested for extension of earned leave and thereafter medical leave which was not granted. Her continuance at Delhi was, therefore, unauthorized. Later, she applied for study leave for 6 months to undertake a course on "SWIFT computer literacy & SWIFT Expert" from NIIT, Noida. During this period, her transfer order was neither superseded nor cancelled. Her study leave was from 4.3.2002 to 30.9.2002 but she reported back on duty on 3.3.2003. Thus, the period from 4.9.2002 to 2.3.2003 was unauthorized absence from duty for which she is liable for disciplinary action.

5. The respondents have further stated that in a department like Income Tax, transfer is in-built as a part of service conditions. The guidelines for transfer are only of recommendatory nature and are subject to the exigencies of administrative expediency. The guidelines of posting of husband and wife at the same station is invariably taken into consideration but it is not always possible to accommodate such requests. In this connection, they have cited the decision of the Hon'ble Supreme Court 1992 (1) SCC 306 in the case of **Bank of India vs. Jagjit Singh Mehta** and 1993 (4) SCC 357 **Union of India vs. S.L.Abbas**.

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6. I have heard both the learned counsel at length and have also gone through the pleadings.

7. During the course of arguments, the learned counsel for the applicant mainly raised two points. One was that the transfer is malafide, as the same was ordered because the applicant had lodged a complaint earlier against one of her senior officer. This point was rebutted by the learned counsel for the respondents stating that this allegation was totally unfounded and baseless, as that incident had happened in 1997/98 whereas the officer was transferred to Chennai only in 2001 and that too after her promotion as Commissioner of Income-tax. Her complaint has no relevance with her transfer. Secondly, she has not made the officer against whom the charge of malafide has been levelled as a party in the OA and as such, this charge is not sustainable at all.

8. The second point raised on behalf of the applicant was that she has been transferred to Chennai as Member (Appropriate Authority). It was stated that the Parliament in the year 2002 has repealed the Chapter on Appropriate Authority in the Income-Tax Act, 2002 and as such her posting is in violation of the Act. The learned counsel for the respondents clarified that although the Chapter on Appropriate Authority has been repealed but the posts have not been abolished as there is a lot of residuary work pertaining to the period prior to 2002. There are two posts at Chennai, out of which one is earmarked for the applicant.

9. From the facts and circumstances of the case, it is evident that the officer who has been holding a senior position of Commissioner of Income-Tax has been evading her transfer to Chennai on one pretext or the other. First, she had been taking earned leave, medical leave etc. and then she took study leave. During the course of arguments, the learned counsel for the applicant frankly conceded that she had taken the study leave mainly for looking after the children. It is also borne out by facts that she has remained absent unauthorisedly for quite some time, as her extension of study leave for further period beyond 6 months, was not sanctioned by the competent authority. Besides, the presumption made by her that as a

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consequence of grant of study leave to her, the earlier transfer order gets automatically cancelled or superseded is totally unfounded and baseless.

9. The transfer is an incidence of service. The Officer with All India transfer liability cannot avoid transfer to any part of the Country on the ground of personal difficulties. In a number of cases, it has been held that the courts should not interfere with transfer orders which are made in public interest and for administrative reasons, unless the transfer order is found to be in violation of statutory rules or has been vitiated by malafides. A Government servant holding a transferable post has no vested right to remain posted at a particular place and transfer orders do not violate any of his legal rights. If the courts start interfering with day to day transfer orders, there will be complete chaos in the administration which would not be conducive to public interest. In this connection, a reference could be made to the judgment of the Hon'ble Supreme Court in the case of **Mrs. Shilpi Bose Vs. State of Bihar 1992 (6) SLR 713 (SC)**.

10. As regards the guidelines of posting husband and wife together at the same station, the Hon'ble Supreme Court in the case of **Bank of India Vs. Jagjit Singh Mehta 1992 SCC (L&S) 268** has held that 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. In such a case, the couples have to make their choice at the threshold between their career prospects and family life. The applicant in the instant case is a senior officer, who cannot avoid posting at different stations in her career. It is unfortunate that she has been avoiding implementation of her transfer order since August, 2001 on one pretext or the other. To achieve her objective, she has been taking all sorts of leave, including Study leave, which even according to her learned counsel was taken mainly to remain in Delhi/Noida. She has also, in the process, remained unauthorisedly absent for about 6 months, as pointed out by the respondents. I entirely agree with the statement made by the respondents in their written reply that such an act on the part of the applicant is liable for disciplinary action under conduct rules applicable to Indian

Revenue Service Officers. In case, Officers at senior level are allowed to indulge in such practices, it will send wrong signals to the Officers at the lower levels, resulting in indiscipline in the organization. This must be avoided at all costs.

11. In view of the foregoing, the OA turns out to be devoid of any merit and same deserves to be dismissed. It is accordingly dismissed. Consequently, the interim stay order granted by the Tribunal vide order dated 12.8.2004 gets vacated automatically. No costs.


(S.K. Malhotra)
Member (A)

New Delhi
25.10.2004

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