

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 180/00157/2021

Wednesday, this the 6th day of October, 2021.

CORAM:

**HON'BLE Mr. P. MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr. K.V. EAPEN, ADMINISTRATIVE MEMBER**

Nisha Sivadas, 47 years,
W/o. C. Sivadasakumar,
Office Superintendent, Income Tax Appellate Tribunal,
Kendriya Bhavan, Kakkanad, Kochi – 682 037.
Residing at : “Geethanjali”, Royal Gardens,
MLA Road, Udayamperoor (P.O),
Thrippunithura, Pin – 682 307. - Applicant

[By Advocate : Mr. T.C. Govindaswamy]

Versus

1. The Income Tax Appellate Tribunal,
Central Government Offices Building,
4th Floor, Maharashtra Karve Marg, Mumbai – 400 020.
represented by its Registrar.
2. The Assistant Registrar,
Income Tax Appellate Tribunal,
Kendriya Bhavan, Kakkanad, Kochi – 682 037. - Respondents

[By Advocate : Mr. N. Anilkumar, SCGSC]

The application having been heard on 27.07.2021 through video conferencing, the Tribunal on 06.10.2021 delivered the following:

ORDER

Per: Mr. P. Madhavan, Judicial Member

The applicant filed this O.A seeking the following reliefs:-

- “i. Call for the records leading to the issuance of Annexure A-1 and quash the same to the extent it relates to the applicant.*
- ii. call for the records leading to the issuance of Annexure A-7 and quash the same.*
- iii. direct the respondents to allow the applicant to continue at Cochin Bench as if Annexure A-1 had not been issued at all.”*

2. The applicant is working as Office Superintendent in Level 6 of the Pay Matrix of (PB-2 plus Grade Pay of Rs. 4200/-). The respondents in this case had issued a transfer order at Annexure A-1 transferring the applicant from Cochin Bench to Mumbai Bench of Income Tax Appellate Tribunal. According

to the applicant, her husband is working as Assistant Manager at the Cochin Division of FACT and applicant's aged father and mother are living in Willingdon Island, Kochi and they are looked after by her. Father-in-law of the applicant is aged 85 years and residing along with the applicant. Applicant's two children (boys) are still unemployed and studying.

3. According to the applicant, in ITAT, employees are rarely transferred and even on promotion, they are retained mostly at the same station. According to her, one Smt Hema Rajan, who is junior to her was transferred to Panaji on promotion and she was retained at Cochin Bench declaring Cochin as her Head Quarters. It was, in this context, the applicant was transferred to Mumbai Bench without any advance information and it will affect her family and children at this juncture. There is no public interest warranting the applicant's transfer out of Cochin. As per Government of India policy decision, both the husband and wife have to be given posting at the same station in order to empower women and to allow them to lead normal family life. According to her, she will be relieved from the present office immediately and also sought for an interim stay of Annexure-A-1. She had given representation to avoid transfer to Mumbai by 22.03.2021 and it was rejected. The main ground taken by the applicant is that her representation for cancelling the transfer was rejected without any application of mind and it is arbitrary. Para 5 of Annexure A-5 instructions issued by the DoPT, it is clearly mentioned, if posts are available in the station of posting of the spouse. In such cases, they should try to post both the persons together. The above guidelines issued by the Government of India are to be implemented and they are not mere guidelines. The reason mentioned by the respondents that the Cochin Bench have one surplus post of Office Superintendent is not correct. According to her, she is

the senior most person occupying the post of Office Superintendent at Cochin. Smt Hema Rajan, the other person referred to by the respondents was promoted and posted to Panaji, but her Head Quarter is still at Cochin and she is working at Cochin. If at all, there is any excess Office Superintendent, her junior could have been transferred. There is no recommendation of Civil Service Board before transfer of the applicant.

4. The respondents appeared and filed a detailed reply statement admitting the transfer order issued at Annexure A-1. According to them, the applicant is working at Cochin Bench from 04.03.1996 till date and she has not gone out of Cochin in all through her career. According to them, the impugned order issued was purely on administrative exigencies and on public interest. Even though the applicant was selected for the Region of Kerala, she is liable to work anywhere in India as ITAT is a pan India Organisation. She is liable to be transferred to anywhere in India where ITATs are situated. There is no vested right to remain posted at one place in favor of the applicant to continue in the same post at same place. The official memorandum cited by her for posting the husband and wife in the same station is not a mandatory provision and it is only a guidelines issued for compliance if it is possible to do so. The transfer of the applicant is mainly on the ground of administrative exigencies and on public interest. The applicant has conveniently suppressed the fact that she has served at Cochin without any transfer for the last 25 years. According to the respondents, Smt Hema Rajan is elder to the applicant and she will be retiring in the year 2025. On the other hand, the applicant has a long service till 2034. Smt Hema Rajan is a widow and is appointed on compassionate ground and because of that she was permitted to work at Cochin as Head Quarters. According to them, ITAT Mumbai has a sanctioned strength of 13

Office Superintendents and 4 vacancies are still existing and the lack of Office Superintendents are affecting the function of the work of the Mumbai Bench. On the other hand, Cochin Bench has only one sanctioned post and one Office Superintendent is in excess and it is on public interest the applicant was transferred. Further, the respondents had always taken a lenient view in transfer and posting during the pandemic period and they had permitted the officials to work from respective stations considering them as on tour. So the respondents always had taken a humanitarian approach towards their employees. The family circumstances of the applicant are in no way comparable to those of Smt Hema Rajan. She is a widow, who was appointed on compassionate grounds. The applicant has two adult male children and her husband is also an earning member and she has longer service to render before her superannuation. The children of the applicant are above 18 years and they can take care of themselves. There is no merit in the allegation of arbitrariness and discrimination alleged by the applicant.

5. The applicant has filed rejoinder to the reply and would content that Smt Hema Rajan, who is junior to the applicant was initially posted as LDC at Kolkata on compassionate grounds and she was granted posting at Cochin declaring that the post at Kolkata would be operated from Cochin as Head Quarters. Thereafter, on promotion as UDC, she was transferred to Panaji but her Head Quarters was retained at Cochin. So, right from the beginning and for the last 25 years, the said Smt Hema Rajan was working at Cochin and it is not the applicant alone working. The applicant submits that since Smt Hema Rajan is junior to her, she ought to have been transferred. It was also contented that as per DoPT Circular, Civil Service Board has to be constituted for transferring the employees.

6. When the O.A was filed an application for stay of impugned order at Annexure A-1 was sought. This Tribunal granted a status quo in respect of the applicant till a reply is filed. Thereafter, the respondents had filed a reply statement and also filed an MA for vacating the status quo order passed by this Tribunal. Since reply already filed and pleadings have completed, the OA was considered on merits.

7. The main contention put forward by the counsel for the applicant, Shri T.C. Govindaswamy is that the applicant was transferred without considering the difficulties and the fact that her husband is working at Cochin and it is not proper to transfer the wife in violation of the instructions issued by the DoPT in posting of the husband and wife in the same station. It was also contended that Smt Hema Rajan, who is junior to her is retained at Cochin even though she was promoted and posted at Panaji. There is no public interest involved and according to him, Annexure A-1 transfer order was arbitrary and discriminatory in nature. It is against the instructions issued by the DoPT with regard to the posting of husband and wife at the same station.

8. On the other hand, counsel for the respondents Shri N. Anilkumar, SCGSC would contend that transfer is an incident of public service and the applicant knows that ITAT is a pan India organisation and is liable to be transferred at anywhere in India, when she was appointed. He also states that a decision of Hon'ble Principal Bench in **Praveen Kumar v. Union of India** relying on the decision in **State of UP and another v. Siyaram and Another (Civil Appeal No. 5005/2004)**, wherein it was held that:

“no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of her choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public

administration. Unless an order of transfer is shown to be an outcome of malafide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned.”

He cited another ruling of the Hon'ble Supreme Court in **Union of India and Others v. S.L. Abbas [AIR (1993) SC 2444]** that *guidelines issued by the Government with regard to transfer of the employee does not create an enforceable right unless the transfer is malafide*. He also relies on the decision of the Hon'ble Supreme Court in **State of UP and Others v. Gobardhan Lal AIR 2004 (SC) 2165** that *the transfer order could not be interfered even, if it was violative of the guidelines*. He also relies on the decision of **Union of India v. H.N. Kirtania**, wherein apex Court has held that *transfer of public servant made on administrative grounds or in public interest should not be interfered unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on the ground of malafide*”. Counsel for the respondents also referred to an observation of the Hon'ble apex Court in **State of Madhya Pradesh and Others v. Sriu S.S. Kourav and Ors.**, wherein it was stated that:

“The Courts and Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the Courts or Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places”.

9. We have heard Shri T.C. Govindaswamy, learned counsel appearing for the applicant and Shri N. Anilkumar, SCGSC for the respondents and also carefully gone through the pleadings and documents produced in this case.

10. The applicant in this case is working at Cochin from the very inception of her service i.e., from 1996 onwards and she has completed 25 years in Cochin. The main ground raised by the applicant is that her husband is working at Cochin and her transfer order is against the O.M issued by the DoPT regarding transfer and posting of the husband and wife, which is produced as Annexure A-4 and A-5. But, according to the respondents, the transfer and posting were made only on the basis of administrative exigencies and on public interest. According to them, Mumbai Bench was not having sufficient Office Superintendents and there exists 4 vacancies at Mumbai. On the other hand, in Cochin Bench, they have only one approved post and there are two Office Superintendents working. It is only under this circumstance that the applicant was transferred to Mumbai Bench on administrative exigency. There is no malafide in the transfer of the applicant in this case. Another contention put forward by the applicant's counsel that Smt Hema Rajan was to be transferred as against the applicant since she is junior to the applicant. It is true that Smt Hema Rajan is junior to the applicant but it has come out in the reply that Smt Hema Rajan is elder than the applicant and she was appointed on compassionate grounds. She is having only three more years in service and it is only because of that she was not transferred. Transfer is an incidence of service and it is made clear by the Hon'ble apex Court that there is no vested right in the employees to be posted at a particular place. The O.M issued as Annexure A-4 and A-5 are only guidelines. Regarding posting of husband and wife, the Cochin Bench has no vacancy at present and she was granted the transfer to Mumbai, wherein there is administrative exigency. The Hon'ble Supreme Court has categorically stated in a catina of judgments that transfer being an incidence of service, it should not be interfered by the Courts unless

there is a clear arbitrariness initiated by malafides. Court can interfere only when the transfer is malafide or in violation of principles of natural justice. The decision of the Hon'ble High Court of Kerala in **Moosakoya v. State of Kerala 1997 KHC 31** referred by the counsel for the applicant is not directly applicable to the present case because it was a case where a petitioner was deputed without granting deputation allowance.

11. On a perusal of Annexure A-1, it can be seen that it applies to about 6 Officers from various Benches and they have joined at respective Benches except the applicant. We cannot find any malafide or illegality in the transfer issued as Annexure A-1. The applicant in this case has not succeeded in showing that her transfer is arbitrary and discriminatory in nature and issued with ulterior motive. In view of the above circumstance, we hold that there is no ground to interfere with the transfer order issued at Annexure A-1. Accordingly, we find no merit in the O.A and it is dismissed. Interim order dated 05.04.2021 will stand vacated. Consequently, MA No. 180/342/2021 and M.A No. 180/427/2021 are also closed. No order as to costs.

(Dated, 6th October, 2021.)

(K.V. EAPEN)
ADMINISTRATIVE MEMBER

(P. MADHAVAN)
JUDICIAL MEMBER

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Applicant's Annexures

Annexure A-1	-	True copy of the order bearing No. F-300-Ad/AT/2021 dated 19.03.2021 issued from the office of the 1 st respondent.
Annexure A-2	-	True copy of the order bearing No. F. 84-Ad/AT/2017 dated 10.08.2017 issued from the office of the 1 st respondent.
Annexure A-3	-	A true copy of the seniority list of the Office Superintendents of ITAT as on 01.01.2019 published by the respondents.
Annexure A-4	-	A true copy of the Office Memorandum bearing No. 28034/2/97-Estt(A) dated 12.06.97 issued by the Department of Personnel and Training.
Annexure A-5	-	A true copy of OM No. 28034/9/2009-Estt(A) dated 30.09.2009 are issued by the Department of Personnel and Training.
Annexure A-6	-	True copy of the representation submitted by the applicant dated 22.03.2021 addressed to the President, Income Tax Appellate Tribunal, Mumbai.
Annexure A-7	-	True copy of the communication bearing No. Nil, dated 27.04.2021, issued from the office of 1 st respondent.
Annexure A-8	-	True Office Memorandum bearing No. 11013/10/2013-Estt. A, dated 09.01.2014, issued by the DoP&T.

Annexures of Respondents

Annexure R-1	-	A true copy of the memorandum dated 15.02.1996
Annexure R-2	-	A true copy of the letter dated 04.03.1996
Annexure R-3	-	A true copy of the order dated 14.03.1996
Annexure R-4	-	A true copy of the order dated 01.04.2021.
Annexure R-5	-	A true copy of the order dated 28.04.2021.
Annexure R-6	-	A true copy of the order dated 27.04.2021
Annexure R-7	-	A true copy of the transfer policy.
Annexure - 1	-	True copy of the interim order passed by this Tribunal on 05.04.2021.
Annexure - 2	-	True copy of the judgment in 1997 KHC 31
Annexure - 3	-	True copy of the judgment in 1993 (4) SCC 357

Annexure - 4	-	True copy of the judgment in 2014 (4) KHC 621
Annexure - 5	-	True copy of the judgment in 2001 KHC 1195
Annexure - 6	-	True copy of the judgment in State of UP and another v. Siyaram and others.
Annexure - 7	-	True copy of the judgment in 2009 (9) SCC 304
