

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

**OA/021/00766/2020 & OA/021/00644/2019 with
MA/021/00913/2019**

Date of CAV: 31.03.2021

Date of Pronouncement:23.04.2021



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

OA No.644/2019 with MA 913/2019

Ravi Kumar S/o Jeeth Singh,
Aged about 51 years, Occ. Deputy Director (OL),
Gr. 'B', Presently working in the Office of the
Principal Chief Commissioner of Income Tax,
Hyderabad, R/o Hyderabad.

...Applicant

(By Advocate : Mr. Siva)

Vs.

- 1.Union of India rep. by the Secretary to Government,
Ministry of Finance, Department of Revenue,
North Block, New Delhi.
2. The Central Board of Direct Taxes,
Rep. by its Chairman, Ministry of Finance,
Department of Revenue, North Block, New Delhi.
- 3.The Director of Income Tax (Exam & Official Language),
Ministry of Finance, Department of Revenue, 5th Floor,
Mayur Bhavan, Connaught Circus, New Delhi-110 001.
4. The Additional Director, Directorate of Income Tax
(Exam & Official Language),
Ministry of Finance, Department of Revenue, 5th Floor,
Mayur Bhavan, Connaught Circus, New Delhi-110 001.
- 5.The Principal Chief Commissioner of Income Tax,
I.T.Towers, Masab Tank, Hyderabad-500004.
6. Smt.Mamta Rani Sahoo, W/o and age not known to the Applicant,
Presently working in the Office of the Principal Chief Commissioner
of Income Tax, Hyderabad.

....Respondents

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

OA No.766/2020

Smt. Mamtarani Sahoo : aged 53 years : W/o Sri Bikram Keshari Sahu :
Occ : Deputy Director (Official Language), Gr.'A', O/o the Principal Chief
Commissioner of Income Tax, IT Towers, Hyderabad : R/o Staff Quarters,
Hyderabad Public School, Begumpet, Hyderabad 500 016, Cell
No.8985970175: email ID : mamata.sahoo14@gmail.com ...Applicant



(By Advocate : Dr. K. Lakshmi Narasimha)

And

1. Union of India, Directorate of Income Tax
(Exam & Official Language),
Ministry of Finance, Department of Revenue, 5th Floor,
Mayur Bhavan, Connaught Circus, New Delhi-110 001,
Rep by its Deputy Director (OL)(Hqrs & Admn).
2. The Central Board of Direct Taxes,
Ministry of Finance, Department of Revenue,
North Block, New Delhi rep by its Chairman.
- 3.The Principal Chief Commissioner of Income Tax,
I.T.Towers, Masab Tank, Hyderabad-500004.
- 4.The Principal Chief Commissioner of Income Tax,
Mumbai.

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

ORDER (COMMON)
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:



2. The OAs are filed in regard to the transfer of the applicant Sri Ravi Kumar (OA 644/2019) to Pune and Smt. M. Sahoo (OA 766/2020) to Mumbai. Both filed OAs to be retained at Hyderabad against a single post of DD (OL) (Dy. Director (Official Language)).

3. Brief facts are that the applicant Sri Ravi Kumar, in OA 644 of 2019 working at Hyderabad as AD (OL) (Official Language) in the respondents organisation, on promotion as DD (OL) was transferred to Pune on 7.6.2019. In the same order, Smt. M.Sahoo working at Pune was posted as DD (OL), Hyderabad. A separate transfer policy has been framed for the Official Language Officers on 6.2.2019. Aggrieved, Sri Ravi Kumar filed OA 534/2019, wherein it was directed to dispose of the representation of the applicant, which was complied by rejecting the request for retention at Hyderabad on 15.7.2019 by the respondents and therefore, the instant OA.

Coming to the case of the applicant, Smt. M. Sahoo in OA 766 of 2020, it is submitted that she has been transferred to Mumbai on 20.11.2020 against transfer guidelines/law. The applicant on completion of 2 years service at Pune was transferred to Hyderabad and Sri Ravi Kumar, applicant in OA 644/2019 was transferred to Pune. When Sri Ravi Kumar moved the Tribunal in OA 534/2019 against the transfer, it was ordered to dispose of his representation which was examined and rejected on 15.7.2019 and therefore, the OA 644/2019 was filed wherein it was ordered to continue him at Hyderabad on an interim basis. Smt M.Sahoo joined

Hyderabad on 24.6.2019. Without waiting for the disposal of the OA 644/2019, the applicant has been transferred to Mumbai and hence, the OA.



4. The contentions of the applicant Sri Ravi Kumar in OA 644/2019 are that as AD (OL) he has worked in Maharashtra for 5 years and thereafter, posted to Hyderabad in 2014. In Maharashtra too, he was unnecessarily moved from his earlier posting at Nagpur to Pune. Thereafter, on 29.12.2016, applicant was promoted as DD (OL) on *in situ* basis, along with 18 others. While others were posted at the place they were working or the place of their choice, the applicant was transferred to Pune vide order dt. 07.06.2019 only to accommodate the 6th respondent, by twisting the transfer policy, which is a colourable exercise of power. As per the transfer guideline for cities like Hyderabad & Pune, an officer can be retained for a period of 8 years and hence the applicant as well as the 6th respondent can be retained and therefore there was no need to show the posts at Hyderabad and Pune as vacant. In fact, a Group 'A' officer can be allowed to work in a station for a maximum period of 18 years and the applicant has spent around 11 years at Hyderabad. Unnecessary movement of the applicant within 2 ½ years of his promotion and that too against the transfer policy would be a wasteful expenditure in the form of TA/DA. The 6th respondent working at Pune though promoted as DD (OL) was given additional charge as AD (OL) Hyderabad only to favour her, since lower posts are not given additional charge to those working in a higher posts and if it has to be given, it is to a local officer like the applicant, rather than to someone from a different station, as in the present case the 6th respondent

has been holding additional charge of Hyderabad since 3 years 9 months. As per the arguments of the respondents, to transfer any officer, the one with the lower length of service in a given station were to be given preference, then the applicant has to be considered vis-à-vis 6th respondent who has spent more time by holding additional charge of AD (OL), Hyderabad.



With regard to the contentions of the applicant Smt. M. Sahoo in OA 766 of 2020, they mainly hover around the fact that the transfer of the applicant to Mumbai was without jurisdiction /power. The transfer order was issued without the recommendation of the placement committee and without waiting for the final disposal of OA 644/2019. The earlier transfer order has not been superseded and the pending case of Sri Ravi Kumar has not been referred to. No public purpose would be served by the transfer and that additional charge of Mumbai post could have been given to Ms Babita Survey as is the usual practice. Officers on promotion have to be transferred except in cases where the tenure in a given station is less than 2 years. Both the applicant and Sri Ravi Kumar have been transferred on completion of 2 years of service to Hyderabad and Pune respectively. The applicant joined Hyderabad on 24.6.2019 and since she has not completed 2 years at Hyderabad she is not liable to be transferred to Mumbai. The OA 534/2019 challenging the transfer to Pune filed by Sri Ravi Kumar was disposed without issuing notice to the applicant though she was arraigned as the 6th respondent. The transfer of the applicant to Mumbai was ordered to favour Sri Ravi Kumar. Official respondents in OA 644/2019 in their reply statement justified the transfer orders issued in respect of the

applicant/ Sri Ravi Kumar and therefore transferring the applicant to Mumbai is absurd and void in law. The Tribunal has neither suspended nor stayed the transfer order dated 7.6.2019 and hence holds good. There was no challenge to the transfer of the applicant to Hyderabad as DD (OL) which was granted on request. The transfer to Mumbai is malafide and the administrative interest has not been spelt out by the respondents. Articles 12, 14, 16 & 21 of the Constitution have been violated.



5. Respondents per contra in OA 644/2019 state that the applicant was transferred to Pune on 7.6.2019 by the competent authority as per transfer guidelines. On challenging the transfer order in OA 534/2019, Tribunal directed to dispose of the the representation, which was complied by examining and rejecting the representation on 15.7.2019. The applicant was transferred from Nagpur to Pune based on the complaint received from his wife on 19.1.2011. 18 officers were promoted as DD (OL) and allowed to continue in the same station on *in situ* basis to do the work related to OL till orders of posting were issued. The 6th respondent was given additional charge of AD (OL) Hyderabad, where 2 posts of AD (OL) exist, when she was working as AD (OL) Pune and not when she was working as DD (OL). In order to accommodate the applicant at Hyderabad, the 6th respondent was transferred to Pune though she had a child studying in 10th standard. However, as per the letter of the Principal CCIT, Pune, the 6th respondent was given additional charge of AD (OL) Hyderabad, which was vacant, in the interest of the 6th respondent. The transfer guidelines are operative prospectively. *Albiet*, there is a provision to retain an officer at a station for

a maximum period of 18 years, Officers, as per guidelines, are normally transferred out of station on promotion. The period spent by the applicant at Hyderabad is 11 years 2 months and whereas the 6th respondent has spent 9 years 10 months including the additional charge period. Therefore, it is the 6th respondent who has spent less time at Hyderabad.



Smt. M.Sahoo, who is R-6 in OA 644/2019, has filed her reply wherein she states that the applicant has made reckless personal allegations against her. Though she was given additional charge of Hyderabad, she has worked from Pune and that she was not favoured by the official respondents as alleged by the applicant. Interim stay was given to the applicant without notice to her. Additional charge of Vizag was given to the applicant as was Hyderabad given to her. Applicant has not stated as to which guideline has been violated. Clause (i) of the transfer guideline is in favour of her and it prevails over clause (iv) relied upon by the applicant. Official respondents stated that a criminal case has been filed against the applicant by his wife. Transfer is an incidence of service and therefore, her transfer to Hyderabad requires no intervention.

In the reply statement submitted by the respondents in OA 766/2020, it is stated that since Sri Ravi Kumar was allowed to continue at Hyderabad in accordance with the interim order dated 23.7.2019 of the Tribunal in OA 644/2019 and the applicant who has joined Hyderabad as per order dated 7.6.2019 on 24.6.2019 was transferred to Mumbai on 20.11.2020. There is one sanctioned post of DD (OL) at Hyderabad and hence two officers cannot be posted to Hyderabad and therefore the transfer of the applicant to Mumbai as per clause B (3) of the transfer guidelines. Besides, the work of

official language will suffer in the process if officers are not posted against sanctioned posts. The applicant on the recommendation of the Principal CCIT, Pune was given additional charge of AD (OL) Hyderabad on 30.9.2015. The transfer of the applicant was done based on the recommendations of the transfer committee and on approval of the competent authority. Transfer policy provides for representations to be submitted against the transfer effected.



Applicant in OA 644/2019 Sri Ravi Kumar, filed a rejoinder wherein it is averred that the applicant was transferred from Nagpur to Pune based on the complaint received from his wife, which means that the instrument of transfer has been used by the respondents as a measure of penalty. The posting of the applicant at Hyderabad on request was as per policy guideline and there is no favour bestowed on the applicant. The Principal CCIT letter makes it explicit that the 6th respondent was favoured by issuing a transfer order on paper but keeping her in Hyderabad to hold additional charge of AD (OL) Hyderabad. Applicant has been repeatedly transferred. The transfer guidelines have been selectively applied to the applicant. The 6th respondent's contention that no notice was served on her in OA 534/2019 is invalid since no adverse order was passed against her. The 6th respondent has made many allegations against the applicant in the OA 766/2020 but did not array the applicant as a party to the said OA. The 6th respondent asserted that she worked from Pune which is not substantiated by the submissions of the official respondents. The 6th respondent has stated that the official respondents in their reply statement have indicated that a criminal case is pending against the applicant which is

not true and thus, the 6th respondent is making reckless statements calling for imposing costs to maintain the purity of justice.

Respondents filed MA 913/2019 in OA 644/2019, for vacation of interim stay dated 23.7.2019 in favour of Sri Ravi Kumar citing that the interim order is causing administrative difficulties and they have cited the judgments of the Hon'ble Supreme Court, to press home the aspect that the Tribunal should not interfere in an issue of transfer unless it is malafide.



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

7. I. The dispute hinges on the transfer of the applicants Sri Ravi Kumar and Smt. M. Sahoo to Pune and Mumbai respectively. Sri Ravi Kumar on being promoted as DD (OL) and working for 2 ½ years at Hyderabad was transferred to Pune as DD (OL) on 7.6.2019. In the same order, Smt. M. Sahoo was posted to Hyderabad as DD (OL) and she joined the post on 24.6.2019. Sri Ravi Kumar earlier approached the Tribunal in OA 534/2019 to suspend his transfer to Pune and on the directions of the Tribunal the representation of the applicant for retention at Hyderabad was examined and rejected resulting in the instant OA 644 of 2019 having been filed challenging the rejection. The Tribunal vide interim order dated 23.7.2019 directed the respondents to continue Sri Ravi Kumar at Hyderabad till the next date of hearing and later, the order has been continued. Similarly, Smt. Sahoo after joining at Hyderabad on transfer as DD (OL) on 24.6.2019 vide transfer order dated 7.6.2019 was later transferred to Mumbai on 20.11.2020 since there was only one post of DD

(OL) at Hyderabad. Aggrieved, Smt. Sahoo has filed OA 766/2020 challenging her transfer to Mumbai. Tribunal directed not to relieve her as per interim order dated 27.11.2020. Respondents filed MA 913/2019 in OA 644/2019 for vacating the stay dated 23.7.2019 granted in favour of Sri Ravi Kumar.



II. The assertion of both the applicants is that they have to be accommodated as DD (OL) at Hyderabad. Sri Ravi Kumar claims that as per transfer guidelines, he is eligible to be retained at Hyderabad for 8 years and in the station for a maximum period of 18 years, which the respondents have been fair enough to admit that such provisions exist in the transfer guidelines. However, respondents point out that normally on promotion, officers are posted to another station and therefore, Sri Ravi Kumar was posted to Pune after 2 ½ years stay at Hyderabad. This submission does not persuade us since the contention of the applicant that many others who were promoted, were posted by the respondents in the same station where they were working prior to their promotion or to the place of choice, was not refuted. There is more than what the respondents have submitted which comes to the forefront when the transfer case of Smt. M.Sahoo is analysed. In respect of Smt. Sahoo the respondents admit that although she was transferred as AD (OL) Pune, she was given additional charge of AD (OL) Hyderabad on 30.9.2015 at the behest of the Principle CCIT, Pune. Generally additional charge is given to the local officers and not to those who are from a different station. The respondents admit that they have given additional charge of AD (OL) Hyderabad, to serve the interest of



Smt. M. Sahoo which is surprising because it involves infructuous expenditure in the form TA/DA for travelling up and down between Pune and Hyd. Smt. M.Sahoo claims that she was working from Pune though given additional charge of Hyderabad, which appears not to be rational given the recommendation of the Principal CCIT recommendation to allow her to hold additional charge of Hyderabad. Organizational interests have been given a go bye in ordering the additional charge. The additional charge although given when she was working as AD (OL) but it continued even after her promotion as DD (OL) which makes the decision much more perplexing. We appreciate the outlook of the respondents organisation to reach out to its employees when they need help, but they should do it by striking a fine balance between the Organisational interests and the individual interests. In the instant cas, such a balance has not been struck. It was possible for the respondents to allow a Sr. Hindi translator to be allowed to officiate as AD (OL) Hyderabad or if none was eligible at Hyderabad to officiate as AD (OL), the files can be moved directly to DD (OL) to avoid the superfluous expenditure. Additional charge of an equivalent post is given and not of a lower post. Administratively it is not done. Neither Smt. Sahoo nor Sri Ravi Kumar should be given additional charge of AD (OL) after being promoted as DD (OL). Respondents need to appreciate that it is public money which is involved and therefore all the more they need to be cautious while ordering such additional charges to employees from other stations. To cut it short, the entire exercise of additional charge of AD (OL) to help out Smt. M.Sahoo was done without weighing the repercussions of such a decision. The respondents have exposed themselves to the charge of favouring Smt. M.Sahoo. Such

decisions will encourage similar demands from others , as we see from the pleading of Smt. M. Sahoo claiming that the post at Mumbai could be given as additional charge to Smt. Babita Survey. Demands of similar nature would be unending and the entire transfer policy would go hay wire.



III. Smt. M. Sahoo contention is that after completing 2 years of service she was posted at Hyderabad as per the transfer policy by the competent authority and therefore there was no need to transfer her to Mumbai and more so when the OA 644/2019 of Sri Ravi Kumar was pending adjudication by the Tribunal. At Hyderabad she has not completed 2 years to be transferred out. Further, the order of transfer of 7.6.2019 was neither stayed nor suspended by the Tribunal and that her transfer to Hyderabad was not under challenge. Respondents answered the assertion by expounding that the applicant had to be transferred to Mumbai since there was only one post of DD (OL) at Hyderabad and that there are Tribunal orders not to relieve Sri Ravi Kumar which is understandable. The applicant's transfer to Mumbai was effected on the recommendation of the placement committee and with the approval of the competent authority. Therefore, the contention that the transfer committee has not recommended her transfer to Mumbai is incorrect as it was not refuted by way of a rejoinder or during the submissions. The clause B (3) of the transfer guidelines which reads as under, permits transfer to be effected even before completion of 2 years of service.

“Notwithstanding anything contained in these guidelines the placement committee may, if it consider necessary to do so in public interest and in furtherance of organizational objectives, transfer, retain or post any officer to any station/ Region or a specific post.”

Hence, transfer of Smt. Sahoo to Mumbai is within the ambit of the transfer guidelines. As submitted by Smt. M. Sahoo, transfer is an incidence of transfer and it applies to both the officers.



When the transfer of Sri Ravi Kumar to Pune was being contested in the Tribunal, the respondents need to have been alert to allow the dust to settle down before allowing Smt. Sahoo to join at Hyderabad as DD (OL), which if done would have given the elbow room to the respondents to take an appropriate decision in the matter. The OA 534/2019 was disposed on 18.6.2019 and Smt. M.Sahoo joined Hyderabad on 24.6.2019, *albiet* being aware of the fact that they were directed to dispose the representation of Sri Ravi Kumar and which they did on 15.7.2019. Before disposing the representation, was it proper on part of the official respondents to relieve Smt. Sahoo, is something which the respondents need to introspect in hindsight. Administrative alacrity to tackle ticklish transfers was thus not exhibited by the respondents.

IV. The contentions of Sri Ravi Kumar that he has not been allowed to complete 8/18 years at Hyderabad/station as provisions in the transfer guidelines, but the same guidelines at clause B (3) stated *supra*, empower the respondents to transfer the officer in public interest. Transfer is an incidence of service and it cannot be claimed that he has to be retained at Hyderabad, as a matter of right. The transfer of Sri Ravi Kumar from Nagpur to Pune was necessitated in view of the complaint from his wife. The transfer was effected in view of his own making and respondents

cannot be found fault with for acting in administrative interests. Applicant camouflaging it as punitive is unfair, to say the least. Individual interests are subservient to Organizational requirements. The transfer of Sri Ravi Kumar was after rendering 2 years at Hyderabad as DD (OL), which is permitted as per the transfer guidelines. To transfer an official to meet the organizational needs is the prerogative of the respondents. To accommodate a female officer with a child in 10th class, the respondents took a sympathetic view and posted Smt. M. Sahoo at Hyderabad as DD (OL), but it was blatantly not in violation of the transfer guidelines.



V. At the same time, we need to observe that the respondents have gone out of the way to accommodate the interests of Smt. M.Sahoo, by way of granting additional charge of AD (OL) of Hyderabad though she was posted to Pune as AD (OL) which is usually not done, since it is a burden on the public exchequer. Managerial economics comes into play while taking an administrative decision, which has an economic dimension. By joining the dots, it is clear that as a sequel to granting additional charge of AD (OL), she was posted as DD (OL) Hyderabad in view of her personal difficulties. Apparently, she was given the scope to be at Hyderabad using the tool of additional charge from 2015 onwards in a manner, which is questionable. Both the contestants claim that the transfer guidelines have been violated in transferring them and made allegations against each other which are generally to be avoided at their level. We note that the contentions of the applicants seeking Hyderabad, arose because the respondents did not measure up the transfer policy effectively to resolve the

issue. In fact, the multiple transfers effected by the respondents in regard to the dispute on hand, is a comedy of errors, which they could have avoided by focussing on Organizational comfort. Other contentions made by both the applicants have been carefully perused and we find them not to be effectively relevant to the dispute to comment upon.



VI. Respondents have cited the following orders of the Hon'ble Apex Court in regard to the role of the Tribunal in respect of transfers to support their contentions.

i) Ekta Shakti Foundation v. Govt. of NCT of Delhi, AIT 2006 SC 2609 –

“The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution.”

ii) Union of India v. S.L. Abbas, AIR 1993 SC 444 –

“6. An order of transfer is an incident of Government service. Fundamental Rule 11 says that “the whole time of a Government is at the disposal of the Government which pay him and he may be employed in any manner required by proper authority.”

iii) State of UP & Ors v. Siya Ram & Anr, AIR 2004 SC 4121 –

“No Government servant or employee of public undertaking has any legal right to be posted forever at any one particular place or places of his choice since transfer of 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.”

VII. In view of the above observations of the Hon'ble Apex Court, we remand the matter back to the respondents to effect the transfer of the applicants strictly in accordance with the transfer guidelines without fear or favour, in Organizational interests. It is directed that the competent authority shall personally hear both the applicants before their transfers are decided so that the grievance does not persist. Counselling plays a major role in settling grievances related to transfers. Time allowed to take a

decision as directed is 3 months from the date of receipt of this order. Till a decision is taken in the matter by the respondents, the interim orders passed by the Tribunal on 23.07.2019 in OA 644/2019 & 27.11.2020 in OA 766/2020 will hold good.



With the above direction, the OAs are disposed of with no order as to costs. MA stands disposed.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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