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Reserved

Court No.2

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

Original Application no. 299 of 1986

S.P.Sharma

.....

Applicant

Versus

Union of India and others.....

Respondents

Hon'ble D.S. Misra, Member (A)

Hon'ble G.S.Sharma, Member (J)

( Delievered by Hon'ble D.S.Misra

This is an application under section 19 of the Administrative Tribunals Act challenging the validity of the order dated 28-5-1986 transferring the applicant as Income Tax Officer Group-A from Lucknow Charge to Patiala Charge. It is alleged that the said order is illegal as being contrary to the rules/instructions governing transfer and is also malafide, arbitrary and discriminatory and violative of Articles 14 and 16 of the Constitution.

2- The applicant had been working as Income Tax Officer Group-B (Class II) in the Lucknow Charge since 31.3.1970 and he was given further promotion to the post of Income Tax Officer Group A/ Class-I in Lucknow Charge on 1st March, 1986. The applicant received a transfer order dt. 20th May, 1986 from Lucknow Charge to Patiala Charge.

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The applicant contends that the above order of transfer was violative of the instructions of the Central Board of Direct Taxes, contained in Circular letter dated 24th Jan. 1985, copy annexure-3 to the application. It is also contended that according to the said circular directly recruited Income Tax Officer (Group-A) with service/ stay of 6 years and promotee Income Tax Officer (Group-A) with service/ stay of 5 years in a particular charge were liable to be transferred. The applicant had not completed 5 years as Income Tax Officer Group-A on 28th May, 1986 and therefore, the order of transfer was violative of the guidelines of the Central Board of Direct Taxes. The applicant also filed copy of a Circular of the Central Board of Direct Taxes dated 19th February, 1986, copy annexure-4 to the application, providing new guidelines for the transfer of Income Tax Officers. According to this Circular dated 19.2.1986 an Income Tax Officer promoted from Group-B to Group-A post, was liable to be transferred immediately on his promotion; while directly recruited Income Tax Officer Group-A would continue to enjoy the benefit of stay upto 8 years under one charge. The applicant challenged the above mentioned guidelines as being discriminatory to the promotee Income Tax Officer. The applicant further contends that the guidelines contained in the Circular dated 19.2.1986 came into

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force w.e.f. 1.4.1986 and did not apply to the case of the applicant as he has been promoted from an earlier date i.e., 1.3.1986. The applicant filed a list of Income Tax Officers Group-A (annexure-6) who have been working in the same charge for periods longer than that of the petitioner, but they have been allowed to stay while the applicant has been transferred. The applicant is due to retire on 31.3.1987 and he is to look after his 90 years old <sup>er</sup> month <sup>be</sup> who can not be shifted to any other place. He is also involved in litigation with his brothers and his transfer at this stage would put him ~~in~~ <sup>be</sup> great inconvenience. He had filed representation on 19th June, 1986 (copy annexure-7) and reminder (copy annexure-8) to the Chairman Central Board of Direct Taxes but the order of transfer has not been cancelled.

3. Respondents filed a counter-affidavit stating that the applicant had served <sup>in</sup> various subordinate capacity <sup>ies</sup> and remained in Lucknow charge and it is for the first time on his promotion ~~to~~ Group-A that he was being transferred outside Lucknow Charge; that the transfer of the applicant was in accordance with the guidelines for Income Tax Officer Group-A and Assistant Commissioner of Income Tax issued by the Central Board of Direct Taxes on 19.2.1986; that the order of transfer has been passed after taking into consideration the individual capacity, administrative convenience and public interest for utilizing the available talent in   
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the bestpossible manner; that the transfer guideline are not statutory rules and are only in the nature of internal instructions designed to collect and collate the annual general transfers; that the applicant being a member of the Central Civil Service was liable for transfer anywhere in the country; that there was no malafide behind the order of transfer of the applicant; that there was no discrimination between directly recruited officers and the promotee officers and there was no departure from the guidelines; that therepresentation of the applicant against the order of transfer has been duly considered and all the circumstances have been taken into account before rejecting it; that the government is in the best position to judge how to distribute its man power and whether a particular transfer can be avoided or not, and it is not possible for the Tribunal to have before them all the materials which are relevant for this purpose and the Tribunal is not competent to sit in appeal over the exigencies of purpose and find out whether it requires transfer or not; that the transfer of the applicant is neither illegal, arbitrary , discriminatory, unconstitutional nor malafide and that the application is liable to be rejected.

4. The applicant filed rejoinder-affidavit in which it is stated that Clause-5 of the transfer guidelines dated 19.2.1986 specifically prohibits transfer of a person who has less than 2 years service left on stay basis or after promotion if it

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is practicable to retain him in the same charge. It is also contended that a right has been conferred on him under the above-mentioned guidelines and this right cannot be taken away. *Inter alia*, it is asserted that the guidelines were mandatory and the breach of these guidelines without sufficient basis is clearly actionable rendering the impugned order void. The other points mentioned in the rejoinder-affidavit are reiteration of facts stated in the petition.

5. We have heard learned counsel for the parties and have also perused the record. A perusal of the guidelines, contained in the letter dated 24.1.1985 of the Central Board of Direct Taxes (annexure-3) would show that the instructions contained in the guidelines were for the purposes of making annual general transfers of Asstt. Commissioners of Income Tax and Income Tax Officers Group-A by the 2nd of April, 1985. The instructions contained in the Guidelines dt. 19.2.1986, copy annexure-4 to the application, are in three parts and cover all categories of officers in the Income Tax Department. We have considered the contention of the applicant that the guidelines dated 19.2.1986 were not applicable to him and that his case was covered under the Guidelines dated 24.1.1985. In our opinion, the Central Board of Direct Taxes is the Supreme authority in the service matters of officers of the Income Tax Department and the instructions issued by them on 19th Feb. 1986

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would supersede instructions issued earlier to that date. The next point for consideration is whether the Central Board of Direct Taxes who have issued the guidelines can deviate from the Guidelines issued by them in respect of individual officers and whether such deviation should be considered as being arbitrary or illegal. Clause-5 of the Guidelines reads as follows:

" persons who have less than 2 years service left may not be transferred on stay basis or after promotion, if it is practicable to retain <sup>them</sup> in the same charge/station,"

The words underlined above give wide discretion to the competent authority in this regard. These words give sufficient discretion to the transferring authority and it would not be in the public interest to interfere with this discretion without sufficient justification. The applicant has failed to produce any evidence in support of his contention that the transfer was made maliciously and therefore, it is not necessary for us to go into the administrative considerations involved in the issue of transfer order. It is true that the officer had less than one year to retire when the order of transfer was passed, but we have no reason to believe that the transferring authority was ignorant about this fact. We are also confident that the representation of the applicant was considered from various angles and rejected after taking

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into consideration the public interest involved in the order of transfer. The applicant has stayed and worked under one charge for more than 16 years and he was promoted from Group B to Group-A on 1st March, 1986. He was, therefore, liable for transfer under the Guidelines dated 19.2.86. It was not necessary for the competent authority to transfer him while issuing the order of promotion and the contention of the applicant that having been promoted to Group-A in the same charge w.e.f 1.3.86 he could not be transferred to another charge within such a short time, does not carry any weight as decisions relating to promotion are taken separately from that of transfer even within the same organization. The contention of the applicant that his transfer was discriminatory inasmuch as similar other periods, have not been transferred, has also been considered by us. The respondents have stated specifically in para 22 of their counter-affidavit that the officers who had continuous stay in Lucknow charge for more than 16 years have been transferred to Patiala charge. In view of this, the charge of discrimination is also not established. We are of the opinion that it is not necessary to go into the administrative reasons necessitating the transfer of the applicant at the fag end of his

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service to a far away place as it might interfere with the larger public interest involved in the administration of the department.

For the reasons mentioned above, we reject the application without any order as to costs.

*A. M.* 14.1.87 *J. M.* 14.1.87

JSingh/ 14.1.1987