

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

* * *

Allahabad : Dated this 28th day of January, 1999

Original Application No. 3 of 1999

DISTRICT : ALLAHABAD

CORAM :

Hon'ble Mr. S.K. Agrawal, J.M.
Hon'ble Mr. G. Ramakrishna, A.M.

Mohit Pradhan
S/o Late Sri M.N. Pradhan,
Resident of 50, Tagore Town,
City & District Allahabad.

(Sri R. D. Khare, Advocate)

. Applicant

Versus

1. The Additional Commissioner of Income Tax
Allahabad Range, Allahabad.
2. Sri H. D. Dwivedi, Additional Commissioner of Income
Tax, Allahabad Range, Allahabad.
3. Dr. V.K. Gupta,
Chief Commissioner of Income Tax,
Lucknow.
4. The Commissioner of Income Tax, Allahabad.
5. Sri R.K. Srivastava, the then Commissioner
of Income Tax, Allahabad, presently posted
as Commissioner of Income Tax, Bombay.
6. The Union of India, through Secretary (Finance),
Ministry of Finance, New Delhi.

(Sri N.B. Singh, Advocate)

. Respondents

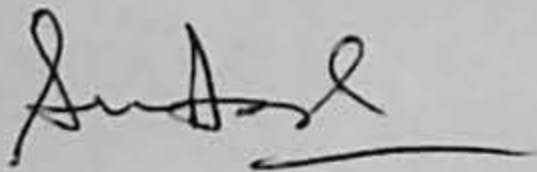
ORDER

By Hon'ble Mr S.K. Agrawal, J.M.

1. In this application filed under Section 19 of
the Administrative Tribunals Act, 1985, the applicant
makes a prayer to quash the order of transfer issued
by respondent no.1 dated 31-7-1998.
2. An interim prayer was also made to stay the
operation of the impugned order of transfer dated
31-7-1998 passed by respondent no.1 during the
pendency of this OA.



3. In brief the facts of the case as stated by the applicant are that the applicant was initially appointed as Income Tax Inspector and was promoted as Income Tax Officer. The work and conduct of the applicant has been quite satisfactory. The applicant while working as Income Tax Officer was given a show cause notice to Sri R.K. Singh, Tax Asst., who in retaliation abused the applicant in the Office Room making demand of withdrawal of show cause notice. The applicant intimated to the Additional Commissioner, Income Tax for the said incidence but no action was taken. Therefore, the applicant lodged a F.I.R. at P.S. but due to persuasion of the Union, the Commissioner of Income Tax issued an order on 2-4-1996 that I.T.O. Ward Ist shall also exercise the jurisdiction of ITO Ward VI with a view to penalise the applicant. The applicant filed the OA No. 412/1996 before this Tribunal and this Tribunal was pleased to grant an ad interim order in favour of the applicant. But no work of ITO Ward No. VI was assigned to the applicant. The applicant filed a contempt petition which is pending. Thereafter, the applicant was transferred on the post of Junior Assistant Registrar (ITAT) in total contravention of the established norms. The applicant was again transferred vide order dated 5-8-1997 to the post of Income Tax Officer (Audit), Varanasi and the applicant was relieved. The order was obtained by the Commissioner of Income Tax by misrepresenting the incorrect fact maliciously to the Chief Commissioner of Income Tax, Lucknow. It is stated that the applicant was paid arrears of salary and dearness allowance on account of implementation of Pay Commission recommendations, whereas other employees



were paid the same earlier than the applicant and this late payment has caused hardship to the applicant as his father died due to lack of proper medical treatment and paucity of funds. It is also stated that vide order dated 26-3-1996 of the Chief Commissioner of Income Tax, the applicant was given award for his exceptional performance alongwith other officers. The applicant was again transferred from the post of Income Tax Officer (Audit) Varanasi to P.R.O. Allahabad on 2-12-1997 without any request of the applicant at that time and the applicant was also given charge of Income Tax Officer, ward No. VI where he gave record performance. It is stated by the applicant that Sri Rajiv Lev, took over the charge of the Commissioner Income Tax on 23-7-1998 and respondent no.3 summoned the applicant at Lucknow on 29-7-1998. Sri Rajiv Lev also went there and returned on 30-7-1998. It is further stated that Sri Rajiv Lev asked the applicant on 30-7-1998 to withdraw the OA as well as the conempt petition otherwise he will thereafter transfer the applicant and same was repeated on 31-7-1998 by respondent no.1 because the applicant did not follow his instructions. It is stated that the impugned order of transfer was issued in colourable exercise of power. Sri K.G. Khare, assumed the charge on the same date at about 6 P.M. where as the applicant did not have even right of representation. The applicant filed a Misc. Application praying for stay of the operation of the order dated 31-7-1998 alongwith an amendment application and this Tribunal after hearing the arguments passed an order on 6-8-1998. It is also stated that the impugned order of transfer is illegal and is bad in law and, was passed with mala fide which is liable to be quashed.



4. This Tribunal vide order dated 5-1-1999 dismissed the M.A. No. 2457/98 for amendment with the direction that the applicant may file fresh O.A. Therefore, the applicant has filed this fresh O.A.

5. A short counter was filed by the respondents. In the short counter affidavit, the respondents have denied all the allegations of the applicant. It is stated in OA No. 618/1998 the application for amendment and the stay for operation of the impugned order of transfer was rejected vide order dated 5-01-1999 and the stay order issued on 6-8-1998 was vacated and in view of the vacation of stay order, the department made arrangements directing Sri J.R. Gupta, Income Tax Officer to resume the charge of Income Tax Officer Ward No. II, Allahabad who started functioning. The applicant did not performed any work after vacation of the stay order. It is also stated that the impugned order of transfer does not suffer from lack of jurisdiction and was not actuated with malice. The impugned order of transfer was passed for smooth running of the office work and the prayer of the applicant is without any basis and, therefore, is liable to be rejected.

6. A supplementary affidavit was also filed by the learned counsel for the applicant, after concluding arguments on 12-1-1999, which was placed on record.

7. Learned counsel for the applicant has contended that the impugned order of transfer dated 31-7-1998 is illegal, arbitrary and malafide on the part of the respondent authority and it is the 5th transfer during the short span of one year. Therefore, the operation of the order be stayed till the disposal of this OA. He has also submitted that the impugned order of transfer was stayed by this Tribunal vide order

[Signature]

dated 6-8-1998 passed in OA No.618 of 1998 and the present O.A. was filed only because the Tribunal rejected this amendment applicant with a liberty to file the fresh OA.

8. In support of his contention he has referred :-

- (i) Hans Raj S Jain Vs. State of Maharashtra, 1993 SC 334.
- (ii) SB Pannu Vs. UOI & Ors, SLJ 1998(2) PB ND P.145.
- (iii) Abani Kat Ray Vs State of Orissa, 1996(32) ATC P.10.
- (iv) M. Shanker Narain Vs. State of Karnatak, 1993(1) SC P.14.

9. On the other hand, learned lawyer for the respondents while objecting of the arguments as submitted by the learned lawyer for the applicant has argued that the impugned order of transfer was only an order passed by the competent authority for smooth running of the official work. The impugned order of transfer is not causing any hardship in any manner to the applicant. Therefore, there is no basis to interfere in the impugned order of transfer. In support of his contention he has referred to :-

- (i) M. Shanker Narain Vs. State of Karnataka.
- (ii) Union of India & Ors Vs. SL Abbas, AIR 1993 SC 2424.
- (iii) UOI & Ors Vs. NP Thomas, AIR 1993 SC P.1605.
- (iv) Laxmi Narain Mehar Vs. UOI & Ors, (1997 SC(L&S) 43. P.643.
- (v) Rajendra Ray Vs. UOI & Ors, (1993) (1) SC 148.

10. We have given thoughtful considerations to the rival contentions of both the parties and also perused the whole record and legal citations by both the

counsel.

11. The applicant has also filed an application to implead Sri Rajiv Dev against whom malafides have been imputed. The application was filed after hearing arguments on interim prayer. No orders could be passed on this application so far.

12. The reply to the same has also been filed which is on record. The same will be disposed of after hearing the arguments of both the sides in due course of time. The other MAs filed by the parties after hearing the arguments on interim prayer were also to be disposed of after hearing both the sides in due course of time.

13. In B.S. Panu vs. UOI, it was held that frequent transfers without reasons are malafide action and the Court can lift the veil in such matters.

14. In M. Shanker Narain vs. State of Karnataka it was held by the Hon'ble Supreme Court that it cannot always be possible to demonstrate malice in fact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of malafide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuation, surmise or conjecture.

15. In UOI vs. S.L. Abbas, it was held that that the guidelines issued by the Government do not confer upon an employee legally enforceable right.

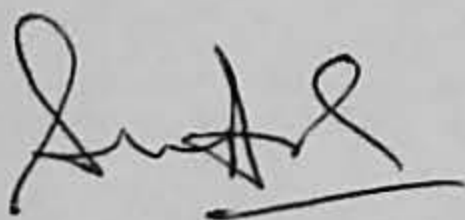
16. In Abbani Kant vs. State of Orissa, ^{/Ray} the Hon'ble Supreme Court held that it is settled law that a transfer which is an incident of service is not to

be interfered with by the Court unless it is shown to be clearly arbitrary or vitiated by malafides or infraction of any processed norms or principle governing the transfer.

17. In Rajendra Roy Vs. UOI, it was held by the Hon'ble Supreme Court that a transfer order which is not malafide and not in violation of service rules and issued with proper justification cannot be quashed by the Courts

18. On the basis of the above legal proposition, it is clear that the High Courts/Tribunals can only interfere with the order of transfer if it is passed with malafide intention and against the violation of professed norms and rules of transfer. The applicant filed this OA as a result of order dated 5-1-1999 passed by this Tribunal dismissing the amendment application no. 2457/1958 and also vacated the interim order dated 6-8-1998 and it was observed that the applicant is free to challenge the order of his transfer dated 31-7-1998 by way of another O.A. Vide order dated 6-8-1998, operation of the impugned order of transfer was stayed by this Tribunal and the respondents were directed not to execute the order of transfer dated 31-7-1998. It is important to mention here that in the letter dated 5-1-1999 issued by the Income Tax Office, Allahabad, the applicant was shown as Income Tax Officer, Ward No. II, Allahabad. Therefore, the contention of the respondent that the charge has been assumed by some-one else, appears to be doubtful.

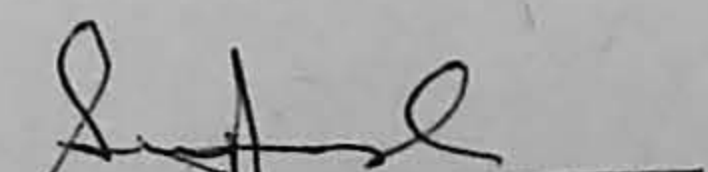
19. In the instant case, admittedly, it is the 5th transfer of the applicant within a short span and



for which no reasons have been assigned by the respondents. Nowhere it is mentioned in the order of transfer that the same was issued in public interest. What was the public interest that has not been made very specific in the impugned order of transfer. Frequent transfers although not shifting from one station to another do effect the image in service of the employee concerned. Nothing has been said about the adverse conduct, behaviour and efficiency of the applicant so as to become a ground for frequent transfers. Rather the applicant has stated in this O.A. that he was given a reward for his exceptional performance, which is not denied by the respondents. The manner in which the impugned order of transfer was issued, executed and non-payment/late payment of arrears of his salary on account of implementation of Vth Pay Commission recommendations establishes the fact of malafide on the part of the respondents. No doubt, the respondents are having powers to transfer the applicant but it is expected from the respondents to use these discretionary powers judiciously and not arbitrarily. Prima-facie this Tribunal feels inclined to interfere in the impugned Order of transfer on the basis of the reasons mentioned above.

20. We, therefore, allow the interim prayer of the applicant and stay the operation of the Order of Transfer dated 31.7.1998 till further orders. However, this Order will not preclude the Competent Authority to transfer the applicant in public interest in future.


MEMBER(A)


MEMBER(J).28/1/99

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