

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 30th day of March, 2001

C O R A M :- Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

Original Application No. 1170 of 2000

M.L. Keral, Deputy Commissioner of Income Tax  
Circle 1 (1), Agra.

.....Applicant

Counsel for the applicant :- Sri A.K. Gaur

V E R S U S

1. Union of India through the Secretary M/O  
Finance, Central Board of Direct Taxes, New Delhi.
2. Sri S.K. Goel, Chief Commissioner of Income Tax,  
Kanpur.
3. Commissioner of Income Tax, Agra.

.....Respondents.

Counsel for the respondents:- Sri R.C. Joshi

O R D E R (Oral)

(By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.)

By this application under section 19 of the Administrative Tribunal's Act, 1985, applicant has challenged the order dt. 04.07.00 transferring him from Agra to Kanpur. Applicant is serving as Dy. Commissioner of Income Tax in Income Tax department. Applicant has also prayed for quashing of the order dt. 28.07.00 by which representation of the applicant was rejected.





2. This O.A was filed on 18.10.00 i.e after, about 3 months of the order of transfer and about more than 6 <sup>weeks</sup> ~~months~~ from the date representation of the applicant was rejected. This Tribunal by order dt. 20.10.00 directed the respondents to show cause <sup>notice</sup> ~~notice~~ as to why this O.A may not be admitted and also directed <sup>to</sup> ~~to~~ decide the representation of the applicant dt. 02.08.00. Tribunal further directed that till 10.11.00 status quo may be maintained. It is an admitted fact that the applicant proceeded on leave on 25.07.00 and he is still continuing on leave. He is not working at Agra on the post for which he was transferred. The order directing status quo dt. 28.10.00 thus <sup>was</sup> ~~is~~ in-effective. On the request of learned counsel for the applicant, this court on 10.11.00 gave further direction to the following effect :-

"Sri A.K. Gaur has an interim grievance that inspite court order, the departmental authorities have not allowed the applicant to continue at Agra. There is no CA so far from the side of respondents nor there is clear cut definitive statement as to whether the applicant has been relieved to proceed on transfer or not, or the next incumbent has joined at his place and the relevant dates for the same.

Without going into the controversy, there is mention on behalf of the applicant that be accommodated at Agra till June, 2001 so as his son may prosecute his studies in the peaceful atmosphere who is preparing for professional exam. It has also been mentioned that he is not very much interested in the post holding presently, but may be considered at any post under respondents establishment at Agra. I find some force in this submission but subject to availability of the post at Agra and therefore, the respondents are directed to reconsider the matter within a week and issue necessary direction. Put up on 20.11.00 for orders. Copy of this order may be furnished to Senior Standing Counsel "

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3. In pursuance of the order dt. 10.11.00, applicant was communicated by letter dt. 16.11.00 that matter has been carefully considered by the Chief Commissioner, Income Tax, Kanpur and in view of the existing policy of Board and circumstances of the case <sup>no change in</sup> the earlier decision <sup>has</sup> communicated to you vide office letter dt. 07.11.00 is feasible <sup>is</sup>. This Tribunal vide order dt. 21.12.00 observed that the direction of the Tribunal and position raised in this order dt. 10.11.00 has not been satisfactorily explained. The Tribunal further directed that in the meantime the authorities in respondents establishment shall pass the order keeping in view the observations of the Tribunal as per order dt. 10.11.00 and the prayer of the applicant only for stay up to June, 2001 in view of the studies of the son of the applicant who is preparing for professional examination. In pursuance of order dt. 21.12.00, Chief Commissioner Income Tax, Kanpur has passed order dt. 23.01.01 which has been filed as S.A-2 to the Suppl. Affidavit of the applicant. From the perusal of this order it is clear that the grievance of the applicant with regard to study of his son at Agra has not been considered. Sri Gaur has submitted that even after repeated directions of the Tribunal <sup>they</sup> have not been complied with. The applicant may be allowed to continue at Agra <sup>state</sup> ~~state~~ by the order of this Tribunal.

4. Sri R.C. Joshi, learned counsel for the respondents on the other hand submitted that the applicant is admittedly on leave since 25.07.00 and he is not working at Agra for more than 8 months. It is also submitted that in place of the applicant K.K. Sharma, Dy. Commissioner Income Tax has already joined on the post which is clear from the order of Chief Commissioner Income Tax, Kanpur. Sri Joshi has also invited attention to the facts stated



in the order that the applicant has remained at Agra for the last 19 years. It has been submitted that in these circumstances it will not be proper to allow the applicant to continue at Agra.

5. I have carefully considered the submissions of the learned counsel for the parties.


6. It is true that the applicant is continuing on leave and he can not be allowed posting, against the post on which other incumbent has already joined. However, from the order it is clear that against 15 sanctioned post only 10 officers <sup>were</sup> ~~is~~ working in the rank of Dy. Commissioner Income Tax, so ~~that~~ it will not be difficult to accommodate the applicant if he satisfies the Chief Commissioner Income Tax, <sup>that his stay</sup> at Agra is necessary for the academic interest of his son till June, 2001. <sup>Such</sup> ~~This~~ order is also necessary because Chief Commissioner failed <sup>to</sup> carried out the order of this Tribunal containing <sup>in</sup> in two orders mentioned above. This Tribunal by two orders dt. 10.11.00 and 21.12.00 gave specific direction to consider the academic interest of son of the applicant which has not been taken into account. Though this may be <sup>termed</sup> ~~be termed~~ as contempt of this Tribunal, <sup>however</sup> to avoid any such <sup>unpleasant</sup> ~~unpleasant~~ steps <sup>against</sup> to the Chief Commissioner or his subordinates. I, <sup>therefore</sup> ~~therefore~~, once again direct to comply with the orders dt. 10.11.00 and 21.12.00 by passing specific order confined <sup>to</sup> to the <sup>of his</sup> ~~education~~ of son of the applicant and possibility <sup>for</sup> ~~for~~ retaining only for two months as prayed by him.

7. The O.A is accordingly disposed of finally with the direction to Chief Commissioner Income Tax, Kanpur to reconsider the matter in the light of observation made above and pass suitable order within two weeks from the date a copy of this order is filed before him.

There will be no order as to costs.

Copy of this order shall be given to counsel for the parties within a week.

/Anand/

  
Vice-Chairman.