

RESERVED

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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

ORIGINAL APPLICATION NO. 903 OF 2000

THIS THE 12th DAY OF NOVEMBER, 2002

HON. MRS. MEERA CHHIBBER, MEMBER-J

Miss Lilly Kutty,
D/O Shri (late) K. Samual,
presently posted as Income Tax Officer,
Agra.Applicant.

(By Advocate:- Shri A.K.Gaur)

Versus

1. Union of India through the Secretary,
Govt. of India Ministry of Finance
New Delhi.Respondents.
2. Sri S.K.Goyal,
Chief Commissioner of Income Tax,
Kanpur.
3. Commissioner of Income Tax,
Agra.Respondents.

(By Advocate:- Shri S.Madhyan)

O R D E R

HON. MRS. MEERA CHHIBBER, MEMBER-J

By this O.A the applicant has sought quashing of the order dated 8-6-2000 (page 19) and 22-6-2000 (page 23). She has further sought a direction to the respondents not to transfer the applicant outside the jurisdiction of CIT Agra, vide order dated 8-6-2000. The applicant has been transferred from CIT Agra to CIT Meerut while other ITO's have been transferred to



to other places by CCIT, Kanpur and vide order dated 22-6-2000 her representation against her transfer has been rejected on the ground that she has been transferred to Meerut on her written request vide her letter dated 17-4-2000. Moreover she has already completed her 8 years at Agra therefore, she was due for transfer in normal course as well.

2. The applicant has challenged these orders on the following grounds :-

"(a) order is malafide in as much as respondent No. 2 was annoyed with her and even though she had explained her difficulties to respondent No.2 yet she was transferred from Agra to Meerut when vacancy is very much available ^{RAH 12} CIT, Agra. She has further submitted that she was promoted as ITO only in November, 1994 and had completed her 8 years services as ITO in Agra therefore her transfer prior to completion of 8 years is contrary to respondents own instructions as they couldn't have counted 8 years by including her posting as Inspector at Agra.

3. She has referred to the instructions of Central Board of Direct Taxes at page ___ to suggest that at the level of Addl CIT/JCIT and Dy/Assist. CIT normally the stay at one place is 3 years with Commissioner charge 5 years and in case of ITO normally the stay at one station is 3 years and within Commissioner of Income Tax charge it is 8 years. She has further submitted that there was no justification whatsoever to transfer her specially when her commissioner had strongly recommended her case for retention in present position which is non-assessment side ~~is~~ I.T.O(vigilance). It is alleged by applicant that the respondent No. 2 because more biased against her and in order to see that she is posted out even

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abolished the post of ITO(vigilance) vide order dated 22-6-2000 (Annexure A-4) which according to her proves malice on the part of respondent No.2 .

She has further submitted ^{that} respondent No.3 in order to accommodate the applicant posted her temporarily as ITO (Tax Assistance Centre) created vide Board's order dated 28-7-99 till the disposal of her ^{& but he} representation by respondent No.2 even cancelled the ^{said} order by order dated 11-7-2000 and posted another person on that post which clearly shows his illwill towards the applicant. She has further submitted that in last 3 years applicant has undergone 2 surgeries and since she is a spinster, she needs assistance of some relatives who are available at Agra but her representation has been rejected without considering these facts therefore, she has been forced to file the present O.A.

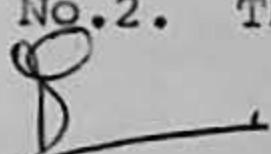
4. The applicant's counsel strongly argued that applicant has alleged malafides against respondent No.2 and has even impleaded him by name but he has not even bothered to rebut the allegations therefore malafides stand proved in law. He relied on the Judgment of N.K.Singh.

5. The respondent on the other hand have opposed the O.A. They have taken a preliminary objection to the maintainability of O.A ^{on} the ground that the authority who has passed the impugned order has not been impleaded as a party therefore the O.A. is ^{for} non-joinder of necessary parties and is liable to be dismissed on this ground itself.

6. On merits they have submitted the applicant has been working at Agra in various Cadres since

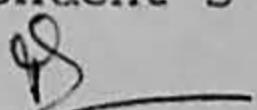
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last 26 years and has completed 5 years as ITO as well. As per policy, she was due to be transferred to other station under the same commissionerate but she made written request for her transfer to Meerut Commissioner charge as no other station except Agra suited her. She infact requested for posting her at Ghaziabad which is under Meerut charge accordingly her request was acceded to and she has been posted at ~~as per her own request~~ Ghaziabad, therefore she can not have any grievance. They have referred to transfer policy annexed as Annexure CA I. They have further stated transfer is an incidence of service and she has transferable job therefore there is no question of discrimination or malafide. This is annual chain of transfer whereby number of persons have been transferred and she alone has not been singled out. Simply because she is a female she cannot avoid transfer. They have further explained that the post of ITO vigilance was non-sanctioned post and some have been abolished in various other stations as well viz. Kanpur, Agra and Meerut pursuant to Govt. directions therefore it cannot be linked with applicant's transfer. They have denied there is any malafides. The respondents have stated the applicant approached Minority Commissioner and Central Women Cell as well, to pressurise the authorities ^{to} ~~cancel~~ her transfer which in itself is a misconduct. They have further stated that applicant has not given any reasons for annoyance on the part of respondent No 2. They have submitted averments have been made in a routine manner. The applicant had met the answering respondent only for few minutes requesting him to allocate her to merrut charge otherwise there is no interaction between applicant and respondent No.2. They have thus submitted



thus submitted that baseless allegations have been
~~2 by M.P. Gaur &~~
made against Senior Officers. As far as recommendations
are concerned they have submitted recommendations are
not binding on higher authorities as they have to pass
orders keeping in view various factors and guidelines
and if some subordinate Officer passes wrong
orders, it has to be corrected. The respondents
counsel relied on S.L. Abbas, Rajendra Roy and
Shilpy Bose's Judgments where in Hon'ble Supreme
Court has held malice cannot be proved with vague
suggestions and that transfer is an incidence of
Service therefore courts should not interfere in
the transfer matters as it is best to be decided
by the administration as to where and how the
services of Officers can be best utilised keeping
in view the guidelines. They have prayed that O.A
may be dismissed with costs.

7. I have heard both the parties and perused
the pleadings. The first objection taken by
respondents that the O.A is bad for non-joinder of
necessary parties is very technical in nature
in as much as the authority who had issued the
impugned order is very much impleaded as a party
but since the applicant has alleged malafides against
him, she has impleaded him by name. To say that
he has not been impleaded in official capacity would
be too technical. The fact remains he has been
served with notice therefore this objection is
rejected. The applicant's main grievance is that
she has been transferred out of Agra due to malice
on the part of respondent No.2 but I have read the
entire O.A and didn't find any basis as to why he
should be prejudiced against the applicant or have
any grudge against her. The respondent's counsel



has rightly pointed out that allegations of malafides are absolutely vague and without any basis. Simply because an Officer has been transferred from one place to the other against the recommendations of ~~commissioner~~ ¹⁸ ~~commissaire~~ ¹⁸ ~~commissaire~~, it doesn't mean the transfer order is malafide. The respondents have explained applicant had been at Agra for the last 26 years in different capacities and as per the transfer guidelines dated 9-11-1999 (page78) it is made absolutely clear in Para 1 that All Group 'A' Officers will be liable for transfer ~~on~~ the the commencement of next financial year if they have completed 8 years of continuous stay in any cadre controlling Chief Commissioner/Commissioner range/Charge and for ~~computing~~ ¹⁸ continuous stay, service in a lower grade shall also be taken into account. In para 2 it is further clarified that stay at a station will not exceed eight years in respect of metropolitan cities of Mumbai, Calcutta, Delhi, Chennai and Ahmedabad but at other stations the stay will normally be 3 years. In para9 it is stated an Officer is liable to be transferred to any part of the country at any time at a short notice on administrative grounds. Thus a perusal of transfer guidelines clearly shows that applicant has All India transfer liability and since while computing 8 years of continuous stay even service in lower grade was also to be taken into account naturally the applicant's contention that her period of 8 years could have been counted only from 1994, when she was promoted as ITO, is not tenable in law accordingly her contention that she could not have been transferred. ¹⁸ before 8 yrs is rejected ¹⁸ As far as abolition of post of ITO (vigilance) is concerned, the respondents have explained that these posts had to be abolished as per directions of the Board as they were not sanctioned and the vigilance work of



group 'B' was centralised with the office of Chief commissioner of Income Tax moreover it was not only at Agra but at Kanpur and Meerut also ^{these} ~~also~~ posts were abolished so it cannot be said that the post of ITO (vigilance) was abolished at Agra due to any malice. So long the Officer has transfer liability and transfer is done as per transfer policy, the Courts cannot interfere in such matters. Apart from it in this case it is seen that in one of her representations the applicant had specifically stated as under :-

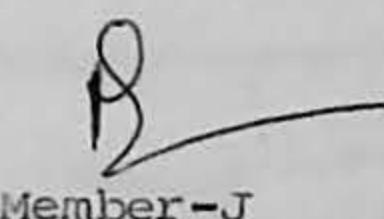
" It was, however, mentioned in my above representation that if at all it is necessary to shift me from Agra, I may be transferred to Meerut Charge looking to the possibility that I may be shifted to any mofussil station of Agra charge which are not safe for personal life and property being an unmarried lady of a minority community i.e. Christain Community."

8. Thus it is clear that she had herself preferred to be transferred to Meerut rather than being posted in some other station of Agra Commissionerate. Now taking a different stand will not help the applicant. She cannot be allowed to approbate and rapprobate in same breadth. From the above discussion, it is clear that she has indeed been transferred to Meerut as per her own desire therefore, the vague allegations of malafides do not hold the field. It is not a case where applicant has been singled out but is a routine transfer order wherby number of other persons have also been transferred. The contention of applicant that since there was a vacancy available at Agra her transfer is not justified is also not sustainable. Simply because a vacancy is available it doesnot mean that transfer guidelines have to be ignored. The respondents have explained she has been at Agra for the last 26 years. She cannot claim as a matter

of

of right to be retained at Agra throughout her life simply because she is a lady . If all the ladies are allowed to stay at one stations the men would say they are being discriminated on the ground of sex which is not permissible. I therefore am of the opinion that applicant has not made out any case for interference by us. The applicant must report at the place of her transfer however after joining there, if she has any valid difficulties, she can always represent and I am sure in case there is any valid problem or difficulties faced by her, the respondents would consider the same sympathetically and with concern. I was informed the applicant had approached the other forums also against her transfer. It goes without saying that so long applicant is liable to be transferred under law, she has to comply with the orders. Putting unnecessary pressure on the authorities would not help her. None of the counsel knew the final outcome of those cases so I leave it at that.

9. In view of the above discussion, I find the O.A is without any merit ~~and~~ the same is rejected without any order as to costs.



Member-J

Madhu/