

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 1195 OF 2003

ALLAHABAD THIS THE 23rd DAY OF FEBRUARY, 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Kuldeep Narayan Saxena,
s/o Late B.N. Saxena,
R/o N-174, Income-tax Colony,
Shastri Nagar, Japur Road,
Meerut.

.....Applicant

(By Advocate : Shri K.C. Sinha)

V E R S U S

1. Union of India through Secretary,
Central Board of Direct Taxes,
Ministry of Finance,
Department of Revenue,
New Delhi.
2. Chief Commissioner of Income Tax,
Meerut.
3. Commissioner of Income Tax,
Meerut.
4. Commissioner of Income tax,
Aligarh,
5. Addl. Commissioner of Income Tax,
Range-III, Etah.

....Respondents

(By Advocate : Shri G. R. Gupta)

O R D E R

By this O.A., applicant has challenged his transfer from Meerut to Aligarh issued vide order dated 22.08.2003(Pg.27). He has sought the following relief(s):-

- "(i) This court may be pleased to set-aside the order dated 22.08.2003(Annexure A-3) to the original application with compilation No.1) through which the petitioner was transferred from commissioner of Income-tax, Meerut to

Commissioner of Income-tax Aligarh.

- (ii) To set aside the order dated 28.08.2003 (Annexure A-4 to this O.A. with compilation No.1) issued by respondent No.4 posting the petitioner in the office of respondent No.5.
- (iii) To set aside the order dated 25.09.2003 (Annexure A-8 to the O.A. with compilation No.1) through which the respondent No.3 has directed the petitioner to hand over the charge to Shri Surendra Kumar Gang the Income Tax Inspector.
- (iv) To set aside the order dated 26.09.2003 (Annexure A-10 to this O.A. with compilation No.1) through which the petitioner was informed that his representation has been rejected.
- (v) The respondent No.2/3 may be directed to permit the petitioner to continue as Income tax Inspector in the office of respondent No.3.
- (vi) Any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case may be given in favour of the petitioner."

2. It is submitted by the applicant that he was promoted as Inspector vide order dated 27.10.1995 (Pg.32) and was posted at Meerut (Pg.34) He represented against his transfer on 27.08.2003 (Pg.38) but without disposing off his representation applicant was directed to hand over the charge vide order dated 25.09.2003 by next day or he would be deemed to be relieved w.e.f. 26.09.2003. On 26.09.2003 (Pg.31) another order was issued stating therein that ^{representation} stands rejected so order dated 25.09.2003 stands.

3. Counsel for the applicant challenged this transfer on 3 grounds:

- A. Transfer is contrary to the guidelines as according to policy dated 08.06.1995 (Pg.49) he could not have been transferred before 10 years whereas he had completed only about 7½ years at Meerut.
- B. Transfer is bad in law as it has been issued during the mid academic session and studies of his children would be affected.



C. Transfer order has been issued in colourable exercise of power as the reason has come out in counter wherein respondents have stated that he was transferred out for having kept his luggage in another quarter without taking any permission.

It is submitted by the applicant ^{s counsel} that if applicant had kept his luggage in another house, at best, respondents could have claimed damages from him but this is no ground to transfer him from Meerut to Aligarh.

3. Respondents have opposed this O.A. They have submitted that transfer is an incidence of service and applicant has All India transfer liability. He has been transferred on administrative grounds because he had been posted in Meerut for over 30 years and it came to light after enquiry that he had occupied another quarter illegally (Annexure CA-II) which showed he was trying to exploit his lengthy stay at Meerut. Counsel for the respondents relied on 2002(1) ATJ 108 ~~and XXXXX XXXXX~~ and submitted that since applicant was transferred on administrative grounds, this case calls for no interference. It may therefore be dismissed.

4. Counsel for the applicant relied on 2003 ATJ(1)688, 1992(20)ATC 87, 1991 (17)ATC 15 & 1994 SCC(L&S)1304 and submitted that applicant has already vacated the quarter on 21.09.2003 (Annexure RA-IV) therefore the basis on which he was transferred no more exists.

5. We have heard both the counsel and perused the pleadings as well as judgments.

6. It is not disputed by applicant that he had been posted at Meerut for the last 30 years and that he had kept his luggage in another quarter without taking permission from the competent authority. Applicant's submission that at best damages could



have been taken from him cannot be accepted because that would not be ^a deterrant. Anybody who has money would then occupy the quarter illegally and say he is prepared to pay the damages. The question here is not ^{to be quantified} in terms of money but to stop such kind of activity. In these circumstances if the CCIT thought it proper to post such an officer to a different station, we don't think it can be termed as colourable exercise of power. The judgments relied upon by applicant's counsel are not applicable in the present facts because in 2003(1)ATJ 688 it was held no prima facie enquiry was made and his transfer was issued on account of complaint whereas in the instant case an enquiry ^{was held} wherein it was established that applicant had occupied another quarter illegally and this fact has not been denied by the applicant himself. On the contrary he requested the authorities in writing to ^{Meerut} him to remove his luggage (Annexure RA-IV). Similarly in 1992(10)ATC 87 also, transfer was done on the basis of exparte enquiry within 1 year from his earlier transfer whereas in the instant case it is not denied by the applicant that he had been in Meerut for the last over 30 years and 7½ years after his promotion. Moreover, applicant is not challenging the enquiry as findings of enquiry are admitted by applicant. In 1991(17)ATC 151 the Tribunal held that no administrative exigency was shown therefore, there was no urgency to post the applicant out without permitting him to stay for the minimum period as stipulated in the guidelines. Once again this case is distinguishable because respondents have justified why need arose to transfer the applicant from Meerut to some other place and we are fully satisfied with the reasoning. No malafides have been alleged against the CCIT and if he had taken a decision to keep up his clean administration, we don't think it can be termed as colourable exercise of power.

7. Hon'ble Supreme Court on the other hand have repeatedly held that Tribunals and Courts should not interfere in case of



transfer as it is not only an incidence of service but is a condition of service where employee is appointed against a transferrable post or has All India Transfer liability. It can only be interfered if either the order is passed due to malafides or in exercise of colourable power or is contrary to the instructions.

8. In the instant case, applicant's ^{Counsel B} [redacted] relied on instructions dated 08.06.1995 and 08.02.1991 which for ready reference reads as under:-

" प्रशासनिक आधार पर स्थानान्तरण किये जाने के संबंध में यह सहमति हुई कि केवल शिकायत के आधार पर ही स्थानान्तरण नहीं किया जाना चाहिए जब तक कि इस बात का कोई ठोस सबूत न हो। प्रशासनिक आधार पर स्थानान्तरण करने के लिए आयकर उपायुक्त की रिपोर्ट पर्याप्त कारणों सहित होनी चाहिए।

स्टे बेसिस पर स्थानान्तरण न करने के संबंध में दोनों पक्षों में सहमति हुई परन्तु प्रशासन की ओर से यह कहा गया कि जिन मुख्य लिपिकों/पर्यवेक्षकों तथा आयकर निरीक्षकों को वर्तमान पद पर कार्य करते हुए वर्तमान स्टेशन/रेंज में 10 वर्ष से अधिक समय हो गया है, उनका स्थानान्तरण कर दिया जायेगा।"

Normally, all Group 'D' officials and Group 'C' officials upto and inclusive of Tax Assistants (including UDCs and Ordinary Grade Stenographers) should not be transferred from place to place periodisally. To this principle the following are the exceptions:

(i) On promotion, a person should normally be transferred from the place he is working to another place. However, if a vacancy in the grade/cadre, to which the person has been promoted, is available at the same station, he may be adjusted/posted against the vacancy, as far as possible subject to administrative constraints and exigencies of service. If the promotion comes in the middle of the year, the transfer may be effected with the next annual general transfers unless the official finds it convenient to be transferred immediately."



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(ii) A person may be transferred to another place at his own request on grounds of hardship if this can be done without causing equal hardship to someone working at the other place where he wants to go.

(iii) A person may be transferred from one place to another on administrative grounds, namely, where there are numerous complaints against him and there is some reason to believe that the complaints were justified, or where exigencies of service require his posting to another place.

9. Perusal of the above ^{para 12} make it clear that there is no specific bar in transferring an individual before 10 years ^{and} if administrative exigency so requires, it can always be done specifically when complaints are found to be justified.

10. In view of the above ^{coupled 12} with the fact that complaint given against applicant was found to be true, We are satisfied that transfer cannot be said to be contrary to the guidelines.

11. Counsel for the applicant next contended that applicant could not have been deemed to have handed over as there is no such provision. We also don't accept this contention because it is often seen that when officers are transferred from one station to other, some officers either refuse to take the orders or avoid even service of the order. In such circumstances it becomes necessary for the department to issue strict orders calling upon the officers to either hand over the charge or they would be deemed to have been relieved. Charge is then handed over to another officer by either making inventory or in the presence of two other responsible officers. In the instant case, also it is seen vide order dated 25.09.2003 applicant was directed to handover the charge or else he would be deemed to have been relieved w.e.f. 26.09.2003 therefore, he stood relieved w.e.f. 26.09.2003. The first order was passed by this court on 07.10.2003 stating therein clearly that in the meantime applicant may not be relieved if not already relieved. Since he



stood relieved already on 26.09.2003 therefore, there was no stay in favour of applicant.

12. Applicant's counsel next contended that his representation could not have been rejected in a mechanical manner without passing a specific order as Hon'ble Supreme Court has repeatedly held that whenever an employee is transferred, he should first give ~~give~~ representation to the authorities concerned and it is also held that when representation is given by an employee it should be decided by a reasoned order. On this point we would agree with the applicant that if he had given a representation, the same should have been decided by a reasoned order which would atleast show application of mind.

13. The O.A. is accordingly disposed off with a direction to the respondents to consider his representation and pass a reasoned order thereon within a period of 2 months from the date of receipt of a copy of this order under intimation to the applicant ^{with} / no order as to costs.



Member (J)

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