

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 5th day of November, 2003.

QUORUM : HON. MRS. MEERA CHHIBBER, J.M.

O.A. No. 1331 of 2003

Jhabbar Yadav, Senior Tax Assistant S/O Shri Ram Roop Yadav,
Income Tax Office, Basti.....

..... Applicant.

Counsel for applicant : Sri S. Mandhyan.

Versus

1. Union of India through Secretary, Ministry of Finance,
North Block, New Delhi.

2. Chief Commissioner of Income-Tax, Aaykar Bhawan, Ashok
Marg, Lucknow.

3. Commissioner of Income-Tax, Faizabad.

4. Additional Commissioner of Income-Tax, Gonda Range, Gonda.

5. Income Tax Officer, Basti.

.....

..... Respondents.

Counsel for respondents : Sri R.C. Joshi.

ORDER (ORAL)

BY HON. MRS. MEERA CHHIBBER, J.M.

By this O.A., filed under section 19 of A.T. Act, 1985, applicant has challenged the order dated 17.10.03 whereby he has been transferred from Basti to Gonda. It is submitted by the applicant's counsel that applicant is working as Senior Tax-Assistant and he is being harassed, which is evident from the letter written by I.T.O. Hq.-I to the Addl. Commissioner of Income-Tax filed at page 16 to the O.A. It is specifically mentioned therein as follows :-

"The other grievance of Shri Jhabbar Yadav, U.D.C., was that no increment was given to him from 1994 to the present date. The CIT had adversely noted that there was no case for not giving annual increment year after year in the normal course. This is a case of pure harassment."

2. He has further submitted that earlier also applicant was transferred from Basti to Bahraich vide order dated 4.7.03



(Page 18) but when he represented against the said transfer, the said order was cancelled vide order dated 18.8.03 by the Joint Commissioner, Gonda Range, Gonda (Page 20). However, within two months thereafter applicant has once again been transferred by the impugned order dated 17.10.03 from Basti to Gonda.

3. It is submitted by the applicant that being aggrieved he has once again given representation to the Joint Commissioner of Income-Tax (Page 21), Commissioner of Income-Tax, Faizabad (Page 22) and the Chief Commissioner of Income-Tax, Lucknow stating therein the reasons as to why his transfer order should be cancelled but till date neither any reply has been given on the said representations nor his prayer has been acceded to but the applicant has already been relieved from Basti vide order dated 29.10.03 (Page 14). It is, thus, submitted by the applicant's counsel that applicant is being harassed and the order has been passed only because he had ^{increased} agitated the grant of ~~interim relief~~ earlier. He has further submitted that six children of the applicant are school going and this transfer order has been issued during the mid-academic session when there was no such urgency to issue the same as nobody else has been posted ~~in~~ his place. He has further submitted that till date no other person has joined in his place at Basti. Therefore, he may be given the order of status-quo till the disposal of the O.A.

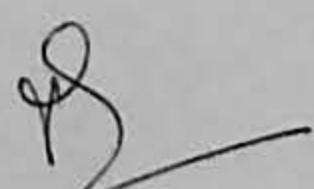
4. Counsel for the respondents was seeking time to file reply to the O.A. He, however, submitted that applicant has already been relieved, therefore, there is no question of granting the order of status-quo. He further submitted that Hon'ble Supreme Court has repeatedly held that courts should not interfere in routine transfer orders unless they are shown to be issued with malafide intention or contrary to the statutory rules or instructions. In this case, since neither applicant has alleged malafide against any particular officer



nor this order can be said to be passed contrary to any statutory rules, therefore, it calls for no interference and the case may be dismissed.

5. I have heard both the counsel and perused the pleadings. I am fully aware that Hon'ble Supreme Court has repeatedly held that Tribunal should not interfere in the case of transfer as it is a ~~conditional~~ ^{of} service. However, Hon'ble Supreme Court has also held that respondents should try and see that transfer orders are not passed during mid-academic session and the same should be passed only in absolute necessary circumstances. In the instant case, applicant has stated categorically that no other officer has so far taken over or joined in his place at Basti nor is there any order of any other officer available on record to show that any other person has been transferred in place of applicant. Applicant has already submitted his representation to the Joint Commissioner of Income-Tax, Commissioner of Income-Tax and Chief Commissioner of Income-Tax against his transfer which, according to applicant, has not been decided till date. Hon'ble Supreme Court has also held that in case applicant is aggrieved by the transfer, he should first give representation to the authorities concerned so that they may apply their mind to the given facts and pass appropriate orders thereon. In the instant case, since it is submitted by the applicant's counsel that respondents have still not passed any order on the representation given by the applicant, I think this case ~~may~~ ^{can} be decided at the admission stage itself without expressing any view ~~on~~ of the

R merits of the case by giving a direction to the respondents to consider the representation given by the applicant to the authorities, which are enclosed with this petition ~~as pages~~ ^{or} Annexure 5, 6 and 7 within a period of two months by passing a reasoned and speaking order under intimation to the applicant and till such time if no other officer has joined in place ^{yet} ~~as~~



of applicant at Basti, the transfer order should be kept in abeyance for two months and he should be allowed to perform his duty at Basti and pay him salary as well. However, in case some other officer has already joined at Basti in his place, applicant would have to join at his place of posting and wait for the orders to be passed by competent authority.

6. With the above direction, this O.A. is disposed of.

No order as to costs.



J.M.

Asthana/