

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 1576 OF 2003

ALLAHABAD, THIS THE 8th DAY OF April, 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)
HON'BLE MR. S. C. CHAUBE, MEMBER (A)

Gauri Shankar aged about 59 years,
son of Lat Keshari Lal, Posted as
Commissioner of Income Tax, Bareilly,
resident of Village Hardua, Nababjanj,
District-Bareilly.

.....Applicant

(By Advocate : Shri V. Budhwar)

VERSUS

1. Union of India through Secretary, Ministry of Finance, New Delhi.
2. Chairman, Central Board of Direct Taxes, New Delhi.
3. Chief Commissioner of Income Tax, Bareilly.
4. Shri Akhilesh Prasad, Commissioner Income Tax, Lucknow.

....Respondents

(By Advocate : Shri V.V.Mishra & S.C.Chopra)

O R D E R

By Hon'ble Mrs. Meera Chhibber, Member (J)

By this O.A. applicant has challenged the order dated 18.12.2003 whereby he has been transferred from CIT Bareilly to CIT(CIB) Kolkata with immediate effect.

2. It is submitted by applicant's counsel that this transfer cannot be stated to be in administrative exigency as it is not mentioned in the order and since applicant is due to retire on 31.07.2004 there is absolutely no justification

to post him out of his home town at fag end of his career specially when the guidelines on the subject of transfer speak otherwise. He relied on clause 1, 12 and 13 of the guidelines to suggest that since he had not yet completed 8 years at Bareilly he could not have been posted out. He submitted since only about 4 months are left in his superannuation, he should be allowed to stay at his home town without disturbing him. Counsel for the applicant also relied on the recommendations made by Central Vth Pay Commission whereby it was recommended as follows:-

"Generally, transfers should not be made after a Government servant has attained an age three years less than the age of his superannuation and wherever possible a retiring Government servant should be transferred to a station of his choice, three years prior to his superannuation."

3. He further submitted that in any case now applicant has been appointed as Expenditure observer by the Election Commission which is evident from letter dated 17.03.2004 therefore, he cannot be transferred out.

4. Respondents have opposed the O.A. and have filed an application for vacating the stay on the ground that applicant has not approached the court with clean hands in as much as another officer Shri Akhilesh Prasad had already assumed the charge of CIT Bareilly on 22.12.2003(Annexure-8) but applicant suppressed this fact from the court on 30.12.2003 when he took the interim order. They have thus, prayed that applicant is not entitled to any relief. The interim order may therefore be vacated.

5. On merits they have submitted the transfer guidelines dated 09.11.1999 hold the field as thereafter no other guidelines have been issued superceding these guidelines. Counsel for the respondents relied on Clause 2 & 9 of the said guidelines to state that it clearly spells out that an officer is liable to be transferred



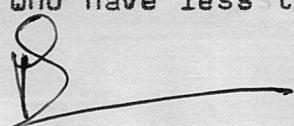
transferred to any part of the country at any time at short notice on administrative grounds and as far as the duration at a station is concerned in clause-2 it is 3 years normally whereas applicant had already completed more than 3 years at Bareilly, therefore, he has no right to claim as a matter of right to be continued at Bareilly only.

6. Counsel for the respondents further submitted that neither applicant has made out a case of malafides nor there is violation of any statutory rules, therefore, this O.A. may be dismissed as Hon'ble Supreme Court has repeatedly held that courts should not interfere in transfer matters lightly as who is to be posted where are the matters, which should be left the competent authority to decide and courts should interfere only if transfer is done due to malafide reasons or is contrary to some statutory rules. He relied on number of judgments. In particular he relied on the case law reported in AIR 1993 S.C. 2444 Union of India & Ors Vs. S.L. Abbas.

7. We have heard both the counsel and perused the pleadings as well. The scope of interference in matters of transfer is very limited as Hon'ble Supreme Court has repeatedly held that courts should not interfere in transfer matters unless it is shown to be due to malafides or is contrary to some statutory rules. In the instant case, applicant has not even alleged malafides and has not been able to demonstrate that transfer order is contrary to any statutory rules.

8. In fact his whole case is that since applicant is due to retire im July 2004 he could not have been transferred out. For this purpose he has relied on certain clauses of the guidelines viz clause 12 and 13 which for ready reference read as under:-

Rule 12 : Persons who have less than two years service



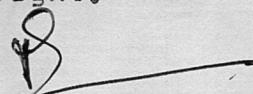
left may not be transferred on stay basis or after promotion if it is practicable to retain them in the same Region/Charge.

Rule-13: Officers who have got less than 3 years of service to retire may be posted to their Home Town/State at their own request provided that they have not been so posted at any time during the last 10 years.

9. Perusal of the these clauses would show that it does not give him an enforceable right to claim that he should be continued at Bareilly only. In fact clause 13 would not even apply in his case as admittedly as per his own showing in para-5 he has been at Bareilly since 15.12.2000 which means he cannot get the benefit of clause 13 because Bareilly is his home town and he has already been at Bareilly for almost more than 3 years. As far as clause 12 is concerned, it is not mandatory and is only directory in nature as it states may not be transferred and in fact the opening sentence of guidelines itself states that transfers in Income Tax Department will hereafter be made as far as practicable in accordance with the guidelines laid down.

10. At this juncture it would be relevant to quote the relevant portion from the judgment of S.L. Abbas wherein another O.M. was issued and almost the same expression was used there also. The O.M. was with regard to posting husband and wife at same station as far as practicable. After discussing the various points urged by both the parties ^{it was} held as follows:-

"Who should be transferred where is a matter of appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guidelines however does not confer upon the Government employee a legally enforceable right."



11. It is thus clear that guidelines do not give any enforceable right to the applicant. In any case guidelines have to be read in totality and one clause can not be read in isolation. In this guideline itself clause-9 reads as under:-

" An officer is liable to be transferred to any part of the country of any time at short notice on administrative grounds."

12. Even otherwise Hon'ble Supreme Court has repeatedly held that transfer is an incidence of service and once transfer is ordered employee must comply with it and in case he has some genuine problem he should give representation to the authorities. In the instant case it is seen applicant had given his representation to the Chairman Central Board of Direct Taxes on 20.12.2003 itself (Pg.41) It is specifically stated in para 4.3 of the O.A. and is said to have been received by respondent No.2. This averment is not disputed by the respondents. It seems representation has not been decided probably because there was interim order granted by this court on 30.12.2003. Since applicant representation is already pending with the respondents and now he has been appointed as Expenditure observer by the election commission, we feel it would be better if this O.A. is disposed off by giving a direction to the respondents No.2 to decide his representation within 4 weeks from the date of receipt of a copy of this order by passing a reasoned order under intimation to the applicant.

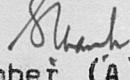
13. It is seen that applicant had specifically mentioned in para 4.32 that respondent No.5 who is posted as CIT II Lucknow has been asked to take over additional charge of CIT Bareilly (who is competent to pass such an order) but applicant has not handed over charge to any person. This averment has not been denied by the respondents in their reply categorically. on the contrary they have stated that Shri Akhilesh Prasad had

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assumed charge on 22.12.2003 but after the interim order applicant has taken back the charge from respondent No.5. In these circumstances it cannot be said that applicant had suppressed the facts. It is an admitted position that Shri Akhilesh Prasad was given only an additional charge of Bareilly even though he is posted at Lucknow and pursuant to interim order applicant has already been given the charge back therefore till his representation is decided, respondents shall maintain statusquo with regard to the applicant.

14. With the above directions, this O.A. as well as M.A. No.1337/2004 is disposed off with no order as to costs.


Member (A)


Member (J)

shukla/-