

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

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Original Application No. 1053 of 2003.

this the 24th day of December 2003.

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

Yaduvir Singh, aged about 39 years, S/o late Fateh Singh,
Posted as Income Tax Officer, Badaun, R/o Civil Lines,
Income Tax Compound, Badaun.

Applicant.

By Advocate : S/Sri V. Budhwar & S.K. Misra.

Versus.

1. Union of India through Secretary, Ministry of Finance, New Delhi.
2. Chief Commissioner of Income Tax, Bareilly.
3. Commissioner of Income Tax, Moradabad.
4. Sri A.K. Singh, Income Tax Officer-II, Bijnor.

Respondents.

By Advocate : S/Sri A. Gopal & N.C. Tripathi.

ORDER

By this O.A., applicant has challenged the orders dated 27.8.2003 and 2.9.2003 whereby the applicant was posted from the post of Income Tax Officer, Badaun to the post of Income Tax Officer (TDS), Moradabad (Annexure-1 & 1-A). He has further sought a direction to the respondents not to interfere in the peaceful functioning of the applicant on the post of Income Tax Officer, Badaun and to pay salary to the applicant as and when it falls due on month to month basis regularly.

2. The applicant has challenged this transfer order basically on two grounds. Firstly that the respondents are resorting ^{to 13} the successive transfers and due to personal hardship as he has submitted that his mother, who is aged

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about 75 years old and sick. Similarly his wife was also ill and his children are studying and his transfer has been ordered in mid academic session.

3. It is submitted by the applicant that on 25.4.2001 applicant was transferred from Mirzapur to Moradabad and was posted vide order dated 1.8.2001 as OSD, Moradabad. Thereafter on 1.8.2001 he was posted at Bijnor within four months i.e. 8.5.2002, He was posted from Bijnor to Badaun within three months. Once again he has been posted by the impugned order from Bijnor to Moradabad. He has, thus, submitted that successive transfers of an individual itself shows arbitrariness on the part of the respondents and should not be allowed. Being aggrieved, he had given a representation, but vide order dated 2.9.2003 even the said representation has been rejected (page 36). Therefore, finding no alternative, he has filed the present O.A.

4. The respondents, on the other hand, have submitted that the transfer is not an incidence of service, but is the condition of service and the Hon'ble Supreme Court has held that when ever an officer is transferred, he must report at the place of his posting and the transfer ~~is~~ ^{should be} not to be interfered with by the Courts in normal routine, unless it is stated to have been issued due to malafides or is contrary to the statutory rules or instructions of the department. He has also submitted that in the instant case, applicant has neither alleged any malafides against any of the officers, nor this transfer can be said to be any statutory rules and instructions on the subject, therefore, this O.A. calls for no interference and the same is liable to be dismissed.

5. They have explained that it is wrong on the part of the applicant to allege that the respondents are transferring the applicant frequently because these transfer orders as alleged by the applicant had to be issued either at his own request or due to administrative reasons. For example : Applicant had

himself requested vide his application dated 3.4.2001 (page 12) for transfer from Allahabad Commissionerate to Bareilly Commissionerate. Therefore, he was transferred from Mirzapur to Bareilly Commissionerate vide order dated 25.4.2001 and since there was no vacancy available, he was adjusted vide order dated 3.5.2001 as OSD, Moradabad within the same range. Thereafter re-structuring had taken place and he was posted at Bijnor by giving him two charges vide order dated 1.8.2001 as there was acute shortage of Income Tax Officers, therefore, it cannot be said to be a transfer but was infact adjustment to a person who had sought transfer on his own request. Thereafter, a policy decision was taken to trasnfer the officers who were on the ~~side B~~ ^{to B} assessment for a long time ~~to be shifted from~~ non-assessment side, therefore, the order was issued in keeping ~~view~~ ^{decision. B} with the said policy. They have further submitted that as as per the transfer and posting rules, every Govt. servant has been provided privilege to keep his family at old station for six months from the date of his handing over charge on the old station. Even otherwise, they have submitted that the distance from Badaun to Moradabad is only 50 Km, therefore, he can easily commute from one station to other. They have also submitted that in place of the applicant, respondent no.4 has already joined, but in view of the interim order passed by this Tribunal, applicant has been allowed to join as OSD without any work. They have further explained that there were some serious complaints against the applicant and on enquiry, it was ^{found to be a} ~~prima facie~~ case, where the applicant did exceed his jurisdiction and this fact has indeed been admitted by the applicant in his reply dated 25.7.2003 (page 21). The respondents have, thus, submitted that there is no illegality in the order of transfer as he was working in the assessment side for the last 9 years, therefore, as per the policy dated 21.8.2003 ^{applicant was transferred to} issued by the CCIT from assessment side to non-assessment

post. They have, thus, submitted that the U.A. may be dismissed and stay order may be vacated.

6. The counsel for the applicant submitted that in the counter affidavit the respondents have themselves stated that there was a complaint against the applicant. From the Member of Parliament, therefore, his transfer could not have been effected at the behest of the politician. In support of his claim, he has relied on the following judgments:

- (i) 1994 HWD(Alld) Vol.1 page 6 in the case of Pradeep Kumar Agrawal Vs. Director, Local Bodies U.P. and another.
- (ii) 2002 (4) AWC 2998 in the case of Smt. Sneh Sharma Vs. Regional Asstt. Director of Education (Basic), Agra & others.
- (iii) 2002 (2) ESC (Alld) 794 in the case of Sarita Saxena (Smt.) Vs. State of U.P. & Others.

7. I have heard both the counsel and perused the pleadings as well.

8. Though at the time of arguments, counsel for the applicant tried to improve his case by saying that this transfer was passed due to malafide grounds because it was done at the instance of the letter alleged to have been written by a M.P., but perusal of the U.A. shows that there is no such ground taken in the U.A. that the order has been passed due to malafide reasons, nor he has impleaded any officer by name for making allegation of malafides. He has impleaded only Sri A.K. Singh by name, who was posted in his place. I have applied my mind to the contention raised by the applicant, but find that the transfer order cannot be said to be issued on the basis of letter written by the M.P alone, as the matter was looked into by holding an in house enquiry after giving an opportunity to the applicant wherein it was



prima-facie established that the applicant had indeed exceeded his jurisdiction in as much as he had retained the Returns of more than five lac amount without sending them to ACIT, Ward-II Moradabad as is evident from page 21 of the C.A. In his reply to the D.O. letter dated 25.7.2003 the applicant had in fact admitted that due to rush of work, it was very difficult to send every return on the same day. He has in fact submitted that as far as the application of instruction No.5/2002 is concerned, the department has still powers under section 154 and 147. These instructions can deal better than instruction No. 5/2002 and there are several other courses open for the department like rectification of mistake u/s 154/155, re-assessment u/s 147 and revision of orders u/s 263 of the Income Tax Act. Therefore, A.C.I.T., Range-II, Moradabad may be requested to take action in liable cases as per law. Perusal of this reply clearly shows that he did retain some of the returns with him, even though he had no jurisdiction to retain them. However, since I am not required to look into this aspect of the matter (as that is not the subject matter before me), I would not like to comment on that.

The fact remains that his transfer can not be said to have been done on the basis of the letter written by the M.P., as the matter had been enquired into and his reply was also called on the irregularities found against the applicant, therefore, transfer cannot be said to be at the instance of a politician. Moreover, the applicant has been transferred as per the policy decision because it was decided that the officers who were on the assessment side should be shifted to non-assessment side and applicant had been on the assessment side for over, therefore, it cannot be said that his transfer was based



on the letter written by M.P alone. In this context, I would be failing in my duties if the judgments cited by the applicant's counsel are not discussed. In the case of Pradeep Kumar Agrawal (supra) the impugned order itself showed that the order was passed on the letter written by the M.P addressed to the Minister for Urban Development, therefore, that would be different circumstance all-together, whereas the facts of the present case are quite different, therefore, this case would not be applicable in the present set of facts. Similarly the facts of other two judgments also show that they would have no applicability to the present case because in cases of transfers, each case has to be decided on the given facts available on record. Counsel for the applicant also submitted that the letter alleged to have been written by the M.P. was in fact never written by him as he had written so in the subsequent letter, however what is important is that whatever was written in the earlier letter was enquired into by the department to satisfy themselves and since it was found that there was some correctness in the allegations pointed-out against the applicant, therefore, it hardly makes any difference whether the said letter was written by the said M.P or not.

9. Coming to the submission of successive transfers, since the applicant had himself requested for being transferred from Allahabad Commissionerate to Bareilly Commissionerate and he was adjusted in spite of no clear vacancy in Bareilly by posting him as DSO, Muradabad, It is not even open to the applicant to say that he has been transferred successively. If he was transferred on his own request or due to re-structuring or due to acute shortage of Income Tax Officers and finally as per the policy decision taken by the CCIT to post a person from



assessment side to non-assessment side it cannot be said that applicant was transferred successively due to malafides, therefore, this contention of the applicant has to be rejected.

10. The counsel for the applicant next submitted that there were some personal difficulties, which the applicant was facing as his old mother and wife, both were ailing and his children were studying in the school, therefore, he could not have been transferred in August '2003 as that would be in mid academic session. However, it is seen that after the impugned order was passed, applicant had approached this Tribunal and his rights were protected by the Tribunal, inasmuch as this Tribunal had held as under:

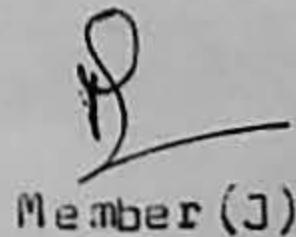
"In the interest of justice I am of the view that the applicant has an arguable case and he is entitled for legal protection. In view of the statement of the applicant that the transfer during the mid-academic session will adversely affect the education of the children and also that the applicant has been transferred for 4 times during the last 2 years, the order dated 27.08.2003 is stayed in respect of the applicant. The interim order shall be in force till the next date".

Therefore, applicant was continued at Badaun. Moreover in his representation, the applicant had requested the authorities to stay his transfer upto 30.04.2004 so that education session of his children may be over peacefully, but his representation has not been acceded to by the authorities. I am informed that the distance between Moradabad and Badaun is only 50 Km and the respondents have already stated that they allow the privilege to the family at old station for six months, therefore, either applicant can commute from Badaun or his children and complete the session at Badaun. I would, however, agree with the applicant's counsel that since the applicant has been transferred in mid academic session, he should be allowed to retain the accommodation and other privilege

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at Badaun upto 30.04.2004 so that his children may complete the session peacefully.

11. Hon'ble Supreme Court has repeatedly held that who is to be posted where, are the matters which should be left to the department to decide as they are best judges to know how best work can be taken from officers. The Hon'ble Supreme Court has also repeatedly held that so long the transfer is based on valid consideration, the court should not interfere with the same as otherwise it would be difficult for the administration to run, therefore, I do not think this case calls for any interference. There is yet one more reason why interim order needs to be vacated. It is submitted by Respondents that the person who is posted against the applicant has already taken over the charge, but the applicant is being continued under the orders of the Court. Admittedly his posting was done as per policy decision taken by the authorities to transfer those persons who have been on the assessment side for a long time to non-assessment side. It is a valid ground in order to see that vested interest do not develop in one place. Since applicant has been transferred on valid consideration, I do not find any irregularity or illegality in the stand taken by the respondents. Therefore, there is no need to interfere in the orders passed by the respondents. The O.A. is accordingly dismissed but with a direction to the respondents to allow the accommodation/other privilege as admissible to the applicant at Badaun Station upto 30.04.2004, so that his children may finish their session peacefully in the same station. No costs.



Member (J)