

8

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.685 OF 1998
Cuttack, this the 1st day of April, 1999

Sri Jayanta Kumar Hota Applicant

Vrs.

Union of India and another Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No*

(G.NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

*Comm. Jem.
1.4.99.*

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 685 OF 1998
Cuttack, this the 1st day of April, 1999

CORAM:

**HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)**

.....

Sri Jayanta Kumar Hota, aged about 46 years,
son of Jagannath Hota, at present working as Additional
Director of Income Tax (Exemption),
Bhubaneswar, residing at 324, Saheed Nagar, Bhubaneswar,
District-Khurda Applicant

Advocates for applicant - M/s Ashok Mohanty
T.Rath
S.Natia
J.Sahu
G.Misra
H.K.Tripathy

Vrs.

1. Union of India, represented through Central Board of Direct Taxes, North Block, New Delhi-1.
2. Commissioner of Income Tax, 15, Forest Park, Bhubaneswar, District-Khurda.... Respondents

Advocate for respondents - Mr.A.K.Bose,
Sr.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 7.12.1998 at Annexure-5 transferring the applicant from Orissa to Bihar. There is also a prayer to keep it in abeyance till the commencement of the next financial year and for a direction to the respondents to give a posting to the applicant considering his choice ~~for~~ ^{of} Delhi. By way of interim relief, it was prayed that the impugned order of transfer be stayed. On the date of admission of the application on 23.12.1998 the order

S.Som.

of transfer was stayed and that interim order has continued till date.

2. Facts of this case, according to the petitioner, are that he was transferred to Orissa in June 1995 in the order dated 16.5.1995 at Annexure-1. Prior to his posting to Orissa, he was on deputation to Orissa Industrial Infrastructure Development Corporation, a State Government Undertaking, as Chief General Manager (Finance) from August 1991 to June 1995. The applicant belongs to Group-A of Indian Revenue Service. The transfer policy is laid down by the Central Board of Direct Taxes from year to year. The transfer guidelines for Group-A and Group-B officers as published in the news letter have been given at Annexure-3. According to Annexure-3, it is seen that all Group "A" officers will be liable for transfer at the commencement of the next financial year if they have completed 8 years of continuous stay in any cadre controlling Chief Commissioner/Commissioner's Region/Charge. It is also laid down that the period spent on deputation outside IRS cadre either in CBDT in the Department of Revenue or Central deputation or deputation to other Departments/Organisations will be excluded for reckoning the period of stay of 8 years/14 years in a particular Region/Charge. It is further laid down that the total stay of an officer during the course of his entire career in all grades in Group-A in a particular Region/Charge should not exceed fourteen years. Clause 6 further lays down that officers at any level who had rendered more than 3 years in any of the Charges like Tamil Nadu, West Bengal, Kerala, North-East or Bihar will get preference in getting foreign training and also in getting preference for the place of their choice when they have completed their tenure in these Regions. The applicant states that according to the transfer policy an officer belonging to Group-A is not

S. Jam.

liable to be transferred before completion of 8 years of continuous stay in any cadre controlling Chief Commissioner/Commissioner's Region/Charge. The applicant has already spent a period of more than three years in West Bengal and therefore, is entitled to be considered for preferential posting as per his choice. The Central Board of Direct Taxes have circulated a proforma to be filled in by all officers for effecting annual general transfer of Commissioner, Additional Commissioner, Deputy Commissioner and Assistant Commissioner of Income-tax. A copy of the letter of the Central Board of Direct Taxes enclosing the proforma is at Annexure-4. The applicant states that only those officers who have completed eight years of stay in a particular Region are liable to be transferred. In Orissa Region the officers are working under Commissioner of Income Tax, Bhubaneswar (respondent no.2). According to the applicant, those officers, who joined the Region/Charge by 1.4.1990, should be deemed to have completed their stay of eight years and in their cases only the proforma is required to be forwarded. The applicant filled up the transfer proforma categorically stating that he would like to continue in Orissa due to his family difficulties. He was expecting that he would not be transferred as he had not completed eight years of continuous stay in Bhubaneswar Region. But in order dated 7.12.1998 at Annexure-5 he has been transferred to Bihar. The applicant has stated that this transfer order is in violation of the transfer policy guidelines. He has also stated that there are many other officers of the same rank as Additional Commissioner and Joint Commissioner who have put in much longer years at Bhubaneswar than him. In paragraph 4.25 he has given the names of those officers. He has further stated that he had completed three years in West Bengal and therefore, he ought to have got a preference of posting in the place of his choice and accordingly he exercised his option to come to Orissa and to continue in Orissa region. But this aspect has been ignored while transferring him to Bihar in the impugned

S. Jom.

order. The applicant has further stated that his son is studying in Standard V and the transfer order has been issued in the middle of the academic session. It is also stated that the applicant's wife is working as a Chemist in a local Company and the transfer is likely to result in losing her job. His parents are old and ailing. On the above grounds, the applicant has come up in this petition with the prayers referred to earlier.

3. The respondents in their counter have opposed the prayer of the applicant on the ground that the transfer has been ordered for administrative convenience and in public interest. It is stated that the applicant is liable to be transferred to any part of the country at a short notice. As regards the transfer policy, the respondents have stated that besides the guidelines laid down in the transfer policy, administrative exigency has also to be kept in view for effecting transfer. The respondents have admitted the averment of the applicant with regard to giving preference for foreign training and place of posting, to the officers who have served in the Charge of Tamil Nadu, West Bengal, etc. They have, however, contested the averment of the applicant that a Group-A officer is not liable to be transferred before completion of eight years continuous stay. According to the respondents, the transfer guidelines only lay down that on completion of eight years of continuous stay an officer is liable to be transferred outside the Region. That does not mean that an officer cannot be transferred before eight years. Paragraph 9 of the transfer policy specifically provides for transfer liability of an officer, at short notice, to any part of the country. As regards the period of stay of eight years, the respondents have stated that in metropolitan cities of Bombay, Calcutta and Delhi, the stay should not be more than

S. J. M.

eight years. This is restricted to five years in respect of the cities of Madras, Hyderabad, Ahmedabad and Bangalore and for other stations the stay will normally be three years. The respondents have stated that even though the applicant has not completed eight years of stay in Bhubaneswar Region, his liability for transfer is there. It is also stated that transfer policy nowhere mentions that choice of posting will be considered after completion of three years in Orissa. On the above grounds, the respondents have opposed the prayer of the applicant.

4. The respondents have filed another memo with copy to the other side in which it has been mentioned that transfer of the applicant was ordered to fill up the post of Additional Commissioner of Income Tax (Audit) in Bihar Region in pursuance of an assurance given to the Public Accounts Committee who had visited Patna in November 1998 and adversely commented on a large number of vacancies in the Audit Wing of the Department in Bihar Region. In view of this, it has been mentioned that the transfer order has been issued in administrative interest.

5. The applicant has filed a rejoinder in which it is stated that every member belonging to All India Service is undoubtedly liable to be transferred to any part of the country in administrative convenience and in public interest, but the same power should not be exercised arbitrarily and has to be exercised in a just and proper manner. The transfer guidelines filed by the respondents at Annexure-A of the counter have been endorsed to the General Secretaries of various Service Associations and from this, it is clear that the transfer policy guidelines have been formulated after taking into consideration the grievances of the service officers. It is also stated that the impugned order at Annexure-5 does not speak of administrative necessity or public interest. It is also stated that in

SJM

pursuance of Annexure-5 Chief Commissioner of Income Tax, Patna, has issued the order posting the applicant as Additional/Joint Commissioner of Income Tax (Audit), Patna, but nobody has been posted in the place of the applicant at Bhubaneswar. It is stated that the respondents have admitted that the applicant had served in Calcutta prior to his posting in Orissa Region. It is also admitted by the respondents that the applicant was on deputation for four years from August 1991 to June 1995 and this period has to be excluded while reckoning the stay of 8 years / 14 years in a particular Region and the liability of transfer will commence only at the beginning of the financial year subject to the condition that the officer has completed eight years of stay in any Region/Charge. The applicant has further stated that transfer orders are to be issued in consonance with the guidelines, and the transfer in case of administrative exigency has to be, as far as possible, in consonance with the guidelines. It is also stated that the respondents have not refuted the averment of the applicant that there are six other officers who have joined Orissa Charge much prior to the applicant. But while they have not been transferred, the applicant has been singled out for being transferred out of Orissa to Bihar. The applicant has also stated that the transfer guidelines make a clear distinction between the stay at one station and the stay at a Charge or a Region. But this aspect has been ignored by the respondents while issuing the impugned order of transfer. The applicant has reiterated other points mentioned in the OA about his wife working at Bhubaneswar and the age and indifferent health of his parents. On the above grounds, the applicant has reiterated the prayer in the OA.

S. J. M.

6. We have heard Shri Ashok Mohanty, the learned counsel for the applicant and Shri A.K.Bose, the learned Senior Standing Counsel appearing for the respondents, and have also perused the records.

7. Paragraph 9 of the transfer policy guidelines lay down that an officer is liable to be transferred to any part of the country at any time at short notice on administrative grounds. But such transfer would be by way of exception. Normally transfer will be worked out in accordance with guidelines. As a matter of fact, the letter at Annexure-A filed by the respondents specifically provides that henceforth the transfers/postings will be made in accordance with the revised transfer guidelines. Coming to the guidelines, paragraph 1 of the guidelines lays down that all Group-A officers will be liable for transfer at the commencement of the next financial year if they have completed 8 years of continuous stay in any cadre controlling Chief Commissioner/Commissioner's Region/Charge. There is provision for relaxation and allowing an officer to stay beyond eight years on compassionate and administrative grounds in appropriate cases. It is further laid down that at a Station other than metropolitan cities and other Stations mentioned in paragraph 2 of the guidelines, the stay will normally be for three years. The other points laid down in the transfer guidelines do not concern us in the present dispute. From the above perusal of the transfer policy guidelines, it is seen that transfers are normally to be effected at the beginning of the financial year. The petitioner also prayed, as an interim relief, in his Original Application that the transfer be stayed upto 1.4.1999. By virtue of the stay order, which is continuing till today, the applicant has continued in Orissa in his present post till today and this prayer of the applicant already stands allowed.

S. Jam

8. In course of hearing, the learned counsels of both sides made submissions with regard to the point whether after three years the applicant is liable to be transferred to another Station within Orissa till he completes eight years within Orissa or he is liable to be transferred outside Orissa even before completion of eight years. According to paragraph 1 of the transfer guidelines, the applicant is liable to be transferred outside Orissa only after he has completed eight years continuous stay in Orissa excluding the period spent by him on deputation to a State Public Sector Undertaking in Orissa. So, in normal circumstances, the applicant is liable to be transferred outside Orissa only after he has completed eight years from 1995. But the transfer guidelines also speak of liability of transfer of a Group-A officer to any part of the country at short notice in public interest. In the instant case, in pursuance of an assurance given to the Public Accounts Committee, which is a very high ranking body of the Parliament and which adversely commented on a large number of vacancies in the Audit Wing of the Department in Bihar Region, the applicant has been transferred. Thus, the transfer of the applicant cannot be said to be without public interest.

9. The next aspect of the matter is that there are many other officers who have put in longer years of stay than the applicant in the Orissa Region, but they have not been transferred and the applicant has been picked up for transfer. The respondents in their counter have not denied the fact that there are officers who have put in longer years of stay than the applicant in the Orissa Region. But that by itself does not prove anything because some of these officers may be on the verge of retirement. The transfer guidelines have special provisions for officers who are going to retire within a period of three years.

S. S. M.

10. It is submitted by the learned counsel for the petitioner that the impugned order of transfer at Annexure-5 does not mention that this has been issued in public interest. It is not necessary that the order itself must indicate that the transfer order has been issued in public interest. In the instant case, the respondents have pointed out the circumstances which prompted them to issue the order transferring the applicant from Orissa to Bihar. It is also seen that subsequently the applicant has been posted by the Chief Commissioner of Income Tax, Patna, to the Audit Wing of the Department at Patna. In view of this, it cannot be said that the transfer order is not in public interest because it has been done in pursuance of an assurance given to the Public Accounts Committee.

11. It has been laid down by the Hon'ble Supreme Court in a series of decisions that the scope of interference in a transfer matter by the Tribunal is limited. In the case of N.K.Singh v. Union of India and others, (1994) 28 ATC 246, their Lordships of the Hon'ble Supreme Court have laid down that in the case of judicial review of transfer order, interference would be justified only in case of mala fides or infraction of any professed norm or principle. In the instant case, no ground of mala fides has been taken. As regards violation of the transfer guidelines, we have already noted, paragraph 9 of the guidelines provides for transfer liability throughout the country and therefore, it cannot be said that the transfer is in violation of the transfer guidelines.

S. J. M.

12. In consideration of all the above, we hold that the applicant has not been able to make out a case for quashing the impugned order of transfer. This prayer of the applicant is accordingly rejected.

13. The other aspect of the matter is that the applicant has worked for three years in West Bengal Region and it is admitted by the respondents in their counter that because of this he is entitled to preferential treatment with regard to posting and accordingly he has been posted to the Region of his choice, i.e., Orissa. After completion of eight years normally he would be liable to be transferred from Orissa Region. But that does not prevent the departmental authorities to transfer him from Orissa in public interest even before completion of eight years. The next aspect is that after he has completed three years at a Station inside Orissa, he can be transferred to another Station in Orissa. But in this case the applicant has been transferred to Bihar. The applicant has mentioned about his personal difficulties. These matters are to be considered by the departmental authorities and the Tribunal cannot consider these aspects and direct transfer of the applicant to some other place more convenient to him. At the time of hearing of this Application, it was submitted by the learned counsel for the petitioner that in case he has to be transferred from Orissa, then his transfer to Delhi should be considered. In consideration of this submission, while we decline to quash the impugned order of transfer, we direct the respondents to consider the prayer of the applicant for being posted at Delhi and pass appropriate orders. But the applicant must carry out the order of transfer at Annexure-5 and join at Patna at the first instance after which his case for transfer to Delhi should be considered by the respondents. The petitioner, if he is so advised, may file a representation to the departmental authorities after joining at Patna.

14. With the above observation and direction, Original Application is disposed of, but without any order as to costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN