

7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 224 of 2004
Cuttack, this the 20th October, 2004

Bijna Kishore Mohanty. Applicant.

-Versus-

Union of India & Ors. 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? Yes.


(MANORANJAN MOHANTY) 20/10/04
MEMBER (JUDICIAL)

8

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 224/2004
Cuttack, this the 20th day of October, 2004

C O R A M:-

THE HONOURABLE MR. MANORANJAN MOHANTY, MEMBER (JUDL.).

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SHRI BIJNA KISHORE MOHANTY,
Aged about 39 years,
S/o. Late Pravakar Mohanty,
Working as Income Tax Officer,
Rourkela, Dist. Sundargarh. Applicant.

By legal practitioner: M/s. J.M. Patnaik,
S. Mishra,
R.K. Pattnaik,
P.K. Rout,
D.P. Mohanty,
Advocates.

-Versus-

1. Union of India represented by the
Secretary, Ministry of Finance,
Department of Revenue,
Central Secretariat,
NEW DELHI-110 001.
2. The Chairman,
Central Board of Direct Taxes,
Department of Revenue,
NEW DELHI.
3. The Chief Commissioner of Income Tax,
Orissa, Ayakar Bhawan, Bhubaneswar,
Dist. Khurda.
4. The Commissioner of Income Tax, Sambalpur,
At/Po/Dist: Sambalpur.
5. The Additional Commissioner of Income Tax
(Hqrs.) (Admn.), Office of the Chief
Commissioner of Income Tax, Orissa,
Ayakar Bhawan, Bhubaneswar, Dist. Khurda.
6. The Additional Commissioner of Income Tax,
Rourkela, Dist. Sundargarh.

... Respondents.

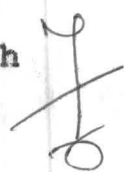
By legal practitioner: Mr. A.K. Bose, S.S.C. (Central).

9

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):-

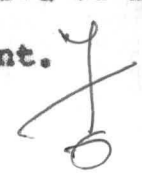
Applicant Bijna Kishore Mohanty, an Income Tax Officer, is now stationed at Rourkela. He came to be posted at Rourkela (on transfer from Bhubaneswar) by an order under Annexure-A/2 dated 14-05-2003. That order was passed within a span of eight months of his posting at Bhubaneswar. Having faced another transfer order (under Annexure-A/3, dated 21-05-2004) to go from Rourkela to Sambalpur (that too within a year of his posting at Rourkela), he has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985. He has challenged the transfer order dated 21-05-2004, by branding the same to be bad on the ground that the same (Annexure-A/3 dated 21-05-2004) has been issued in gross disregard to the Office Memorandum under Annexure-A/5 dated 14-05-2004, in which transfer guidelines for Gr. 'B' Officers of Orissa Region CCIT were framed. In the said guideline, it is alleged, it has been provided that after his stay for three years at a particular station, a Gr. B Officer may only be disturbed on transfer. It is also the case of the Applicant that education of his childrens shall be seriously disturbed; if the impugned order of transfer is allowed to be operated. The Applicant has also alleged that the impugned transfer to be an outcome of malice/malafide and intended to punish



=2=

him without giving any prior opportunity. He, therefore, prayed to quash the impugned order of transfer that was issued under Annexure-A/3 dated 21-05-2004.

2. Respondents have filed a counter disclosing therein that the Applicant was transferred from Bhubaneswar to Rourkela on consideration of his representation/option (for his transfer either to Rayagada, Keonjhar or Jharsuguda) and that his request/option was duly considered and, as there were no vacancy in the grade of Applicant, in any one of those opted places, he was transferred to Rourkela (which was also close to Jharsuguda; one of his preferred places of destinations) during 2003-2004. In paragraph-10 of the Counter it has been disclosed by the Respondents that the Applicant has faced the impugned order of transfer (from Rourkela to Sambalpur) for administrative reasons and on official exigencies. The detailed reasons/grounds basing on which the impugned transfer order was passed has been supplied in a closed folder. Although privilege has been claimed under section 124 of the Indian Evidence Act, 1972; no petition (supported by Affidavit/Verification from the highest authority of the Respondent Department) has been filed in this case. Respondents have also denied plea of malice that has been raised by the Applicant.



3. Applicant has filed a rejoinder to the Counter filed by the Respondents and the Respondents have also filed a reply (to the rejoinder filed by the Applicant) which have also been contested.

4. Having heard Mr.Patnaik, Learned Counsel appearing for the Applicant and Mr. A.K.Bose, Ld. Senior Standing Counsel appearing for the Respondents, the materials (including the materials placed in closed cover) placed on record, have been perused.

5. Submissions advanced by the respective counsel do not need any emphasis; because violation of the guidelines (framed with regard to transfer and posting of the employees of the Income Tax Department) gives no right enforceable by the Applicant. That apart, the plea of mala fide as urged by the Applicant has no prudential value in absence of any documentary proof. It is reiterated that it is easy to urge mala fide but difficult to prove. It is a fact that the Applicant is holding a transferable post in the Department. It is also settled law that transfer is an incident of Service and interference in an order of transfer is very very limited by the Courts/Tribunals. The interference in an order of transfer is possible only when the same is made in gross violation of statutory and mandatory rules or when the same is made with proved mala fide. The interference is also possible, if the order

J

12

-4-

of transfer is made due to intervention of external parties or by way of punishment, without giving any opportunity to the person concerned.

6. As a last straw of the Camel's back, learned counsel for the Applicant has led emphasis for opening the file to prove his allegation that the order of transfer has been made by way of punishment without opportunity to the Applicant and, in the said premises, the file (as produced by the Respondents, dealing with the transfer of the Applicant) was opened and perused. On perusal of the file, it is seen that on the basis of an anonymous petition (without name, address of the sender and date) sent to the Chief Commissioner of Income Tax, Bhubaneswar (Copy stated to have been sent to the Directorate General of Income Tax (Vigilance), New Delhi) the file was opened on 04-05-2004 with the following notes:-

"The Directorate General of Income Tax (Vig.) New Delhi vide their letter No. DGIT(V)/CVO-1/103/04/51 have forwarded the complaint against Shri B.K. Mohanty, ITO, Ward-1, Rourkela being of administrative nature to the CCIT, Bhubaneswar (Flag-'A'). The complaints contain basically the misuse of office and power by Shri Mohanty. It was enquired into and it was found that Shri Mohanty is in the habit of asking bribe from the taxpayer and harassing them in case they do not succumb to it. This is a regular practice adopted by him. In fact he has damaged the reputation of the Department before the taxpayers. It was found that Shri Mohanty

13

=5=

was instrumental in conducting some surveys in and around Rourkela. Due procedure of law, as laid down in the Income Tax Act, 1961, was not followed in the post Survey Investigations and assessment. This is a practice resorted by him for harassing the tax payer and collecting bribe from them. If this practice goes on and on, then the image of the Department will take a serious jolt.

Submitted for kind perusal and consideration of the CCIT".

Thereafter, in the file the CCIT, on 04-05-2004 noted as under:-

"The complaints received against Shri Mohanty, ITO Ward-I, Rourkela only confirms the reports received from some of the taxpayers and counsels of Rourkela and surrounding areas about the harassment and coercion by Shri Mohanty and the Addl. CIT, Shri S.R. Senapati in forcing them to submit to their unlawful demands. Reports have been received that they have conducted surveys without proper authorisation nor the surveys were recorded, or reported in the Departmental records, C.I.T. (Sambalpur) has been asked by me to ensure that this sort of activity is stopped at once. Further they should obtain prior approval of the CIT before undertaking survey activity specially during the months of May to July, 2004.

Immediate Vigilance inspection be carried out of this ward and also of the work done by Shri Mohanty during the period he was posted in this ward. Enquiries may also be made about the clandestine and unauthorised surveys conducted by him. Till the inspection/enquiry is completed he may be given a non-assessment posting outside Rourkela Range".



As it appears, in the above premises, the Applicant has been transferred from Rourkela to Sambalpur.

7. It is seen that allegations were there in the anonymous petition against one JCIT Shri Senapati and also against the Applicant (Shri B.K.Mohanty), I.T.O.; but no whisper has been made in the note-sheet, about the said JCIT ~~in regard to said~~ Shri Senapati.

8. On close perusal of the note-sheet, it is seen that it has been noted that the complaints contain, basically, allegation of misuse of office power by the Applicant/Shri Mohanty and that the same were enquired into with findings that Shri Mohanty was in habit of asking for bribe from taxpayers by harassing them in case they do not succumb to pay bribe. It has, however, not been disclosed in the note (nor anywhere in the file) as to who conducted the enquiry and on which date(s); as to whether while making such enquiry, sufficient opportunity was given to the Applicant to defend his case; as to on what basis the said findings had been arrived at as against the Applicant; who identified the anonymous petition and who substantiated the allegations?. From all these the first portion of the notesheet smacks mala fide of the

7

authorities; because of what has been stated in the second part thereof. In the second part, there are instructions to cause an enquiry. The second part of the noting goes to show that the CCIT of Orissa asked to conduct an enquiry on the allegation raised in the anonymous petition. If that apart of the notings are accepted, then the previous notings (pertaining to enquiry) was definitely a false one. It appears, the anonymous petition was brought into record and first part of notings are the outcome of mala fides and intended to put the Applicant in difficult situation/transfer.

9. Since the matter has been ordered to be enquired into (as is seen in the second part of the notesheet; apparently of the CCIT), the next question arises as to what shall be enquired into, especially in absence of the complainant.

10. Before proceeding further, the position of law is examined herein below. Government of India have, time and again, issued various instructions disclosing therein as to what action should be taken on anonymous petitions and that it has been rightly instructed that anonymous petition (without any name, address and date) ought not to have been entertained at all. If the Government machinery shall start taking note of such unfounded letters, who shall come forward to support the anonymous letters and

in that case how can natural justice be complied with?. Therefore, rightly it has been instructed in para 5:2:1 of Chapter-12 of the Manual of Office procedure (Vol.I-Admn.) issued in February, 2003 by the Directorate of Income Tax (Organisation and Management Services) of Central Board and Direct Taxes of Department of Revenue of Government of India that ordinarily no action should be taken on any anonymous or pseudonymous complaints and that such complaints, in normal course, should be filed. The said Government of India instructions are consistent with the principles of natural justice and are statutory in character under the Constitution of India. At the outset of entering into enquiry on such complaints, one shall face hurdle of "nobody to support the complaint" and, in absence of a person (persons) to support the complaint, no action can be taken against the individual, against whom the allegations have been levelled and, therefore, rightly it has been instructed by the Government of India just to file such complaints. At the best, the Government can keep close watch on the allegations contained in such letters against a Government servant and, if the authorities are satisfied that there are any iota of truth, then only, after giving opportunity, can proceed against the said Government servant.

11. Now coming to the case in hand, it is seen that on the basis of allegations alone, the Applicant

-9-

has been asked to face transfer, which amounts to be a punitive order of transfer. Ordering transfer pending enquiry, can also be branded as a punitive action; which ought not to have been done without giving prior opportunity to the Applicant to have his say in the matter.

12. At this stage, it is worthwhile to reiterate the view taken by the Hon'ble Apex Court of India in the case of E.P.ROYAPPA vrs. STATE OF TAMIL NADU (reported in AIR 1974 SC 555); wherein My Lord Justice Bhagwati J. (speaking for the majority) held as under:-

"Articles 14 and 16 strike at the arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situated and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action as distinguished from motive inducing from the ante chamber of the mind is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Article 14 and 16".

In the case of GENERAL ASSEMBLY OF FREE CHURCH etc. vrs. OVERTON 1904 AC 515 at 695, the House of Lord said:-

"I take it to be clear that there is a condition implied in this as well as in other instruments which create powers, namely, that the power shall be used bona fide for the purposes for which they are conferred".

The Hon'ble Supreme Court in the case of

MANAGE OF SYNDICATE BANK vrs. THE WORKMEN, 1966 AIR SC 1283 specifically considering when an order of transfer can be interfered with by Courts and Tribunals held as under:-

"If an order of transfer is made malafide or for some ulterior purpose, like punishing an employee for his trade union activities, the Industrial Tribunals should interfere and set aside such an order of transfer, because the mala fide exercise of power is not considered to be the legal exercise of the power given by law. But the finding of mala fide should be reached by Industrial Tribunals only if there is sufficient and proper evidence in support of the finding. Such a finding should not be reached capriciously or on flimsy grounds".

In the case of LACHMAN DASS vrs. SHIVESHWARKAR AND OTHERS (AIR 1967 Punjab 76, Justice H.R. Khanna J. (as His Lordship then was) observed as under:-

"When a transfer is made in violation of any legal provision or is otherwise mala fide can be quashed by the Court, is now well settled".

It is also not out of place to mention here that transfer is an exigency of service and may be ordered for administrative reasons and the employer is the best judge in this regard; as an order of transfer (as observed by V. Khalid J. as His Lordship then was) in the case of P. PUSHPAKARAN vrs. CHAIRMAN COIR BOARD (Kerala) 1979 (1) SLR 309) "It can uproot a family, cause irreparable harm to an employee and drive him into desperation. It is on account of this that transfers when effected by way of punishment,

-11-

though on the face of it may bear the insignia of innocence, are quashed by Courts".

In the case of G. RAMANATHAN vrs. ACTING ZONAL MANAGER, FOOD CORPORATION OF INDIA, MOUNT (1980 (1) SLR 309) the Hon'ble High Court of Madras considered the scope and extent of the judicial review in matters of transfer and declared that no doubt, a normal order of transfer can, under no circumstances, be misunderstood as punitive measure. But in the circumstances surrounding such an order leads to a reasonable inference by a well instructed mind, that such an order was made in the colourable exercise of power and intended to achieve a sinister purpose and based on irrelevant consideration, then the arms of the court can be extended so as to decipher the intendment of the order and set it aside on the ground that it is made with a design and motive of circumventing disciplinary action and particularly when a Civil Servant is involved, to avoid the stringent but mandatory procedure prescribed in Article 311 (2) of the Constitution of India.

In PRAKASH CHANDRA SAXENA vrs. STATE OF MADHYA PRADESH AND OTHERS (1980 (1) SLR 788) a single Judge of the Madhya Pradesh High Court quashed an order of transfer on the ground that it was not bona fide when it was ordered on suspicion that there was something wrong and fails to make further enquiry.

7/5

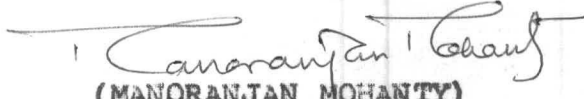
A Bench of the CAT at New Delhi in the case of K.K.JINDAL vrs. GENERAL MANAGER, NORTHERN RAILWAY AND OTHERS (reported in ATR 1986 CAT 304) have also quashed the order of transfer; for the same has been made as a punitive one.

Apart from the above, as observed by the Hon'ble Supreme Court, frequent and unscheduled transfer of a Government servant may upset the family cause irreparable harm to an employee and drive him into desperation.

It has further been held by the Hon'ble Apex Court that mid-academic transfer be avoided if there are no compelling reasons.

13. In the background of what has been discussed above, since the mid-academic issuance of the impugned order of transfer is proved to be a punitive one (and has got no legs to stand, being based on an anonymous petition) and an outcome of arbitrary exercise of power, the same is hereby quashed.

14. As a consequence, this case is allowed. No costs.


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL) 20/10/04