

14


IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.284 of 2008
Cuttack, this the 06th day of April, 2009

Ashok Kumar Chatterjee Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?


(C.R. MOHAPATRA)
MEMBER (ADMN.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.284 of 2008

Cuttack, this the 06th day of April, 2009

C O R A M:

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Ashok Kumar Chatterjee, aged about 56 years, Son of Sudhir Kumar Chatterjee, hitherto working as Commissioner of Income Tax (Appeals-I), Bhubaneswar in the Region of the Chief Commissioner of Income Tax, Orissa Region, Ayakar Bhawan, Bhubaneswar, Dist. Khurda.

.....Applicant

By Advocate : M/s.J.M.Patnaik, S.Mishra, P.K.Nayak,
P.K.Rout.

- Versus -

1. Union of India represented by the Secretary (Revenue), Ministry of Finance, Department of Revenue, Central Secretariat, New Delhi-110 001.
2. The Chairman, Central Board of Direct Taxes, Department of Revenue, North Block, New Delhi-100 001.
3. The Chief Commissioner of Income Tax, Orissa, Ayakar Bhawan, Bhubaneswar, Dist. Khurda.
4. The Chief Commissioner of Income Tax, Bihar, Patna.

....Respondents

By Advocate - Mr. U.B.Mohapatra.

O R D E R

MR.C.R.MOHAPATRA, MEMBER (A):-

Applicant is working as Commissioner of Income Tax (Appeals-I), in the office of the Chief Commissioner of Income Tax, Orissa Region, Bhubaneswar. In this Original Application u/s.19 of the A.T. Act, 1985, he challenges his order of transfer under Annexure-A/2 dated 11th July, 2008 to Hazaribagh vice Shri

Pradosh Chandra Mohanty who is now continuing as CIT, Cuttack. According to him, as per the transfer guidelines, the tenure of an officer of his rank in a particular place of posting is two years whereas he has been transferred just after completion of ten months of his date of posting in Bhubaneswar being September, 2007. Since the transfer has been ordered in violation of the transfer guidelines the same is liable to be quashed. His further contention is that before being posted to Bhubaneswar, he opted for his transfer and posting either at Hyderabad, Vijayawada, or at Guntur in order to facilitate him to take care of his old ailing father who is suffering from throat cancer and is under periodical checkup at Hyderabad; education of his son who is prosecuting his Engineering course at Hyderabad, family including marriageable daughter who is working at Hyderabad. But without considering his option he was posted to Bhubaneswar. Now within a short span, to say on completion of ten months, he has again been transferred to Hazaribag and in case the transfer order is effected, there would be serious dislocation in the treatment of his father and the education of his children. His next contention is that he submitted representation soon after his order of transfer under Annexure-A/2 but before receipt any decision on the said representation he has

unilaterally been relieved from his present place of posting. By placing reliance on several decisions of co-ordinate Benches of the Tribunal as also Hon'ble Supreme Court, Learned Counsel for the Applicant vehemently contended that the order of transfer being an out come of malice to accommodate Shri Mohanty, the order of transfer is liable to be quashed.

2. Opposition on the side of the Respondents in the counter is on the grounds that the applicant had already completed a total period of stay of 19 years and 2 months including 8 months on probation period in the East Region. His option to be posted at Cuttack or at Hyderabad could not be materialized there being no vacancy in either of the places to accommodate the Applicant. Transfer is an incident of service. The Applicant having accepted and joined the post which has all India transfer liability should not oppose the transfer on the ground of his personal difficulties especially when transfer has been effected in public interest/administrative exigency. The guideline provides that ordinarily one may not be transferred before completion of a particular tenure but that does not mean that one cannot be transferred if public interest requires to do so. In support of their stand that interference in the order of transfer is not warranted especially when it has been made in public

2

8
interest, they have also relied on a catena of decisions of the Hon'ble Apex Court and accordingly prayed for dismissal of this OA.

3. Heard rival submissions of the parties and perused the materials placed on record.

4. According to the Applicant he belongs to 1979 batch of Indian Revenue Service. After being selected he joined in the service on 20.11.1979 and posted as ITO Grade A at Nagpur. During the period he faced several transfers and postings in various capacities through out the country. He had worked in the South Zone for a period of seven years and seven months and in the East Zone for a period of 17 years and 11 months. The total service period in Orissa Region is 7 years and 2 months in different capacities out of which in Class B stations for a period of 6 years and nine months and Class C stations for a period of 5 months. He was posted in Orissa Region on 12.11.1980 as a probationer on the job training from Nagpur for a period of eight months after which he returned to Nagpur for training. The first regular posting to Orissa as an ITO (Grade A) was in July, 1983 when he joined at Cuttack. Thereafter he served in different places. He was also transferred and posted from Andhra Pradesh region just after six years in the month of June, 1989 though the

2

19 maximum tenure permissible was eight years in Hyderabad and 16 years in the State of Applicant against his will. Accordingly, Learned Counsel for the Applicant reiterated his prayer made in this OA. On the other hand, Learned Counsel for the Respondents relying on the contentions raised in the counter opposed the stand of the Applicant and it has been stated that be that as it may since the order of transfer has been made in public interest and the applicant joined the service fully knowing that the service is having all India transfer liability, he should not have objected to the present order of transfer. He has also contended that as per the decision of the Hon'ble Apex Court even if the transfer is contrary to the guidelines, the applicant can have no right to resist his order of transfer.

5. It may be stated that power of judicial review in other words interference in the order of transfer of Government servants from one place to other by the Tribunal is no more *res integra*. In a plethora of judicial pronouncements the Hon'ble Apex Court deprecated the interference in the order of transfer by the Tribunal. At the same it is observed by the Hon'ble Apex Court in the case of **B. Varadha Rao v. State of Karnataka**, (1986) 4 SCC 131 as under:-

L

6. One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralization. It therefore follows that the policy of transfer should be reasonable and fair and should apply to everybody equally. But, at the same time, it cannot be forgotten that so far as superior or more responsible posts are concerned, continued posting at one station or in one department of the government is not conducive to good administration. It creates vested interest and therefore we find that even from the British times the general policy has been to restrict the period of posting for a definite period."

6. In the instant case the Applicant has been transferred from his present place of posting just after completion of ten months of his joining. It is the specific case of the Applicant that his father is suffering from throat cancer and is under medical treatment. One cannot lose sight of the fact that cancer is a life taking disease and the patient only counts his days. Although violation of the transfer guidelines cannot give absolute right to an employee to claim cancellation of the order of transfer yet the circumstances under which the applicant is transferred i.e. hardly before he completes one year in his present place of posting cannot be totally ignored by the Tribunal.


2

Transfer of an Additional Commissioner of Income Tax in violation of the transfer guidelines came up for consideration before the Principal Bench of the Tribunal in OA No.44 of 2007. Considering all aspects including various decisions on the subject, the Principal Bench of the Tribunal in order dated 31st July, 2007 quashed the said order of transfer as the same was done in violation of the transfer guidelines. Hon'ble Apex Court in an unequivocal term held in the case of **Sub-Inspector Rooplal v. Lt. Governor**, (2000) 1 SCC 644 that the decision rendered by one Bench of the Tribunal is binding on the other Benches. It has been held that in case the Bench hearing similar matter does not agree with the decision rendered by another Bench earlier, it can refer the matter to Full Bench but certainly cannot take any other view than what has been decided earlier. I find no justifiable reason to differ with the view taken by the Principal Bench of the Tribunal. For the reasons stated above, I find sufficient force in the contention of the Learned Counsel for the Applicant that the order of transfer is made in contravention of the transfer guidelines besides being a frequent and unscheduled one is not sustainable in the touch stone of judicial scrutiny. Yet I refrain from quashing

1

the order of transfer under Anneure-A/2 as on perusal of the order of transfer it is seen that one Shri Pradosh Chandra Mohanty, CIT, Cuttack who has been posted in place of applicant although is a necessary party has not been made as a party in this OA.

7. In view of the above, ends of justice would be met if Respondent No.2 (to whom representation is made by the Applicant and the same is yet to be disposed of) is directed to consider and dispose of the pending representation of the Applicant, keeping in mind the observations made above, within a period of thirty days from the date of receipt of this order and till then the Applicant shall be allowed to continue in his present place of posting. It is so ordered and the OA is disposed of accordingly. No costs.


(C.R. MOHAPATRA)
MEMBER (ADMN.)

Knm,ps