

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A. No.364 of 2011
Biranchi Narayan DashApplicant
Vs
UOI & Ors.Respondents

Order dated: 14-07-2011.

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

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Applicant is an IRS Officer, presently working as Deputy Commissioner of Income Tax (Special Jurisdiction), Bhubaneswar. According to him, he joined in the Income Tax Department on 17.8.1983 as Inspector of Income Tax. Thereafter, he was promoted to the post of Income Tax Officer w.e.f. 11.10.1990 to the post of Assistant Commissioner of Income Tax w.e.f. 07.11.2001 and Deputy Commissioner of Income Tax w.e.f. 01.01.2006. In order dated 25.03.2011 (Annexure-A/5), along with others, the Applicant was transferred to Chennai (CCA TN). This order of transfer was challenged by the Applicant in OA No. 364/2011. The said OA No. 364/2011 was disposed by this Tribunal on 29-03-2011. Relevant portion of the order is quoted herein below:

“4. Shri Panda, Ld. Counsel for the applicant further submits that non-consideration of the option is a violation of their own guidelines and that against the order of transfer the applicant is going to submit his representation at the earliest. Since paragraph 5 of the order of transfer at Annexure-A/1

8
stipulates that all officers mentioned in the above list should be relieved before 10.04.2011 positively, he submits that the applicant may be allowed to remain here at least till disposal of his representation.

5. Mr.Mohapatra, Ld. Sr. Standing Counsel submits that the applicant has still not been relieved and no representation so far has been made by him and in case he makes such representation it is for the competent authority to take a decision on the same.

6. Having considered the submissions made by the parties, we are of the opinion that since it is a question of transfer of a Group A officer having all India transfer liability, at this stage, we are not able to go into the merits of the case particularly when the applicant himself has stated that he has not made any submission before his authority as required under the extant instructions and as per the judgment of the Hon'ble Apex Court. We are of the opinion that at this stage, ends of justice would be made if the Respondent No.2 is directed to consider the representation if made by the applicant and pass a reasoned order before relieving the applicant taking into consideration the option exercised by the applicant.

7. If the applicant submits his representation well in time, the same should be considered as per instruction/guidelines and the rules governing the matter relating to transfer of Income Tax Department within the period of 10days keeping in view that the last date of relieving the applicant has been fixed as 10.4.2011. Ordered accordingly."

Accordingly, Applicant preferred representation dated 29.03.2011. The representation of the Applicant, as it appears, was placed before the Placement Committee in CBDT in the meeting held on 29.4.2011. The result of the consideration was communicated to the Applicant in letter dated 25th May, 29011 copy of which is placed at Annexure-A/1 to the OA. Relevant portion of the order is quoted herein below:

"7. WHEREAS, after examining the grounds cited by CCIT (CCA), Bhubaneswar, the placement committee decided to recommend the transfer of Shri Biranchi Narayan Dash from CCA, Bhubaneswar to CCA, Chennai on administrative grounds (Deficient region), with the approval of the Competent

Authority, in accordance within the purview of clause 7.1 of the Transfer/placement guidelines for officers of IRS (IT). CBD 2010.

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10. Therefore, CCIT (CCA), Bhubaneswar may be requested to relieve Shri Biranchi Narayan Dash and direct him to report for duty in compliance of Transfer Order No. 48/2011 dated 25.03.2011 vide F.No.A-22013/2/2011-Ad.VI."

2. Being aggrieved by the aforesaid order, the Applicant has approached this Tribunal for the second time in this OA seeking to quash his order of transfer in Annexure-A/5, the order of rejection of his representation in Annexure-A/1 and to direct appropriate action against the erring officers for causing undue motivated harassment and damage to the applicant for the sake of vindication of justice. He has also sought to award compensation and/or cost to the Applicant. It has been stated by the Learned Counsel for the Applicant that the present impugned order is not a routine transfer but for the reason of the recommendations made by the Respondent No.3 for transferring the applicant from Orissa Region (as the applicant challenged the remarks recorded in his ACRs/APAR for various years in which this Respondent No.3 has been made as one of the Respondents by name) and as thus, the same is not tenable. Further contention of the Learned Counsel for the Applicant is that there are many promotee officers of IRS(IT) who are continuing in the same Region(s) even after being promoted from Gr.B to Gr.A Service. In terms of the

10
Transfer/Placement Guidelines (IRS) 2010, the applicant was not due for transfer out of Odisha Region. Respondent No.2 before issuing the impugned order of transfer published a tentative list of DCsIT/ACsIT who were due for transfer in which the name of the applicant did not figure. Despite the above, the applicant was transferred without considering his option for place of posting in case he is transferred from his place of posting. Hence the order of transfer being bad in law is not tenable. Next contention of the Applicant is that unless the order of transfer is stayed he may take decision to go on VRS because the present transfer would cause him unique and serious personal and family problems.

3. It has been contended by the Respondents that the personal allegations levelled by the applicant are baseless and after thought. The Applicant is an IRS Officer and as such is having all India transfer liability. He has been working in Orissa Region since 1983 i.e. from the date of his entry into the service of the Income Tax Department. They have denied the allegation that the applicant was not due for transfer. However in substance it has been contended that there was no illegality or illegality committed by the Respondents while ordering his transfer which was made keeping in mind the public interest/administrative exigency vis-à-vis the option exercised by the applicant giving his choice place of

posting. Accordingly, Respondents have prayed that this OA being devoid of any merit is liable to be dismissed.

4. Learned Counsel appearing for both sides have reiterated the stand taken in their respective pleadings and having considered the submissions at a considerable length, perused the materials placed on record.

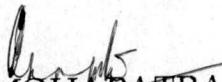
5. It is trite law that transfer of an officer holding a transferable post cannot be objected to. The Government is the best judge to decide to distribute and utilize the services of an officer in public interest which is of paramount consideration compared to any of the personal difficulties. Further, transfer within the cadre no objection can be made by the officer/employee against the order of transfer and that the Tribunal is not the Appellate Authority to decide on transfer of the officers on administrative grounds as the authority manning the administration knows who should be transferred where and at what point of time and the wheels of the administration should be allowed to run smoothly. The Tribunal is not expected to interdict/interfere the working of the administrative system by interfering in the day to day transfer and posting of the employees. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or

position as long as he desires. The transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service. At the same time law is well settled in a plethora of judicial pronouncements that where the transfer of an officer is actuated with motive or *mala fide* or is in violation of statutory Rules or is in infraction of any of the provisions/Rules prohibiting such transfer, then the Tribunal should rise to the occasion to protect the interest of the officer by interfering in such order of transfer.

6. I have examined the case of the applicant keeping in mind the parameters set out above and it is pointed out that admittedly the applicant is in a cadre which has all India transfer liability. It is not in dispute that the applicant has been continuing in Orissa Region since his entry in the Department. The applicant has tried to show that his transfer is the out come of *mala fide* exercise of power as his transfer was made on the basis of the recommendation of the Respondent No.3 and the Respondent No.3 has made such recommendation being biased due to filing of cases by the applicant making Respondent No.3 as party by name. In this regard it is pointed out that the transfer has been effected by the CBDT, New Delhi. Also, as it appears, the representation submitted by the applicant against his transfer was placed before a

Committee who after examining the matter with reference to the transfer guidelines submitted its report which was duly accepted by the Competent Authority. Therefore, the presumption of the applicant that his transfer was made without due application of mind being swayed by the recommendation of Respondent No.3 is incredible and appears to be based on apprehension, conjecture and surmises. I find no illegality in the order of transfer or rejection of his representation. The transfer of the applicant is in order as according to the Respondents it has been done in public interest. In view of the above, quashing the order of rejection of his representation is unwarranted.

7. For the discussions made above, this OA being devoid of any merit stands dismissed. There shall be no order as to costs.


(C.R.MOHAPATRA)
Member (Admn.)