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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.429 of 2011

Cuttack this the 28th day of July, 2014

Haramohan Moharana...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? ✓
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? ✓


(R.C.MISRA)
MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.429 of 2011

Cuttack this the 28th day of July, 2014

CORAM

HON'BLE SHRI R.C.MISRA, MEMBER (A)

Sri Haramohan Moharana

Aged about 55 years

Son of late Banambar Moharana

Residing at Plot No.456(5),

Shreevihar, PO-Patia, PS-Chandrasekharapur

Bhubaneswar

At present working as Deputy Commissioner of Income Tax (Systems)

Bhubaneswar in the district of Khurda

...Applicant

By the Advocate(s)-M/s.B.Panda

B.B.Sahu

B.Panda

-VERSUS-

Union of India represented through

1. The Secretary
Ministry of Finance, Department of Revenue
North Block
New Delhi-110 001
2. Central Board of Direct Taxes
Represented through its Chairman
Department of revenue
North Block
New Delhi-110 001
3. The Chief Commissioner of Income tax (in short CCIT),
Odisha,
Aayakar Bhawan, Rajaswa Vihar
Bhubaneswar-751 007
Dist-Khurda
4. Under Secretary to Government of India
Ministry of Finance,
Department of Revenue
CBDT, North Block
New Delhi-110 001



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5. Sri Kamala Kanta Mohapatra
Chief Commissioner of Income Tax
Aayakar Bhawan
Rajaswavihar
Bhubaneswar-751 007
Dist-Khurda

...Respondents

By the Advocate(s)-Shri U.B.Mohapatra

ORDER

R.C.MISRA, MEMBER(A):

The applicant, who is an officer of the Income Tax Department, and was working as Deputy Commissioner of Income Tax (Systems), Bhubaneswar has approached the Tribunal challenging the order dated 30.6.2011 (Annexure-A/1) to the O.A.) in which the applicant's representation under Annexure-A/7, was rejected, and the applicant was transferred from Odisha region to Patna region.

2. The specific prayer of the applicant is for quashment of the order at Annexure-A/1, and the order of transfer in respect of the applicant at Annexure-A/6. He has made a further prayer that compensation and cost may be awarded to him, and action be taken against the officers who have caused him motivated harassment, by passing this order of transfer.

3. The basic facts of the case need to be sifted out from the large volume of details mentioned in this Original Application. The applicant had joined the Income Tax Department as Inspector of Income Tax in the year 1982, and eventually got his promotions as Asst. Commissioner of Income Tax and Deputy Commissioner of Income Tax. During his



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incumbency as Deputy Commissioner, Income Tax (Systems), Bhubaneswar, he was transferred vide order No.48 of 2011 dated 25.3.2011 of the CBDT from Bhubaneswar (CCA Odisha) to Patna (CCA – Bihar) on the ground of administrative requirements. The applicant's case is that he had not requested for transfer out of Odisha Region in the Online Transfer Option Form that he had submitted. The Central Board of Direct Taxes had published a tentative list of DCs and ACs of Income Tax who were due for transfer and in the said list, the applicant did not figure. He was not due for transfer as per the transfer guidelines. Being aggrieved the order of transfer, applicant submitted a representation on 4.4.2011 to CBDT through proper channel with a prayer that he may be retained at Bhubaneswar on compassionate ground. Thereafter, applicant filed O.A.No.266 of 2011 in this Tribunal, and the Tribunal on hearing the case at the stage of admission issued a direction to the CBDT to consider and dispose of the representation dated 4.4.2011 with a reasoned order. It is pertinent to mention here that the applicant submitted further addendum to his representation to the CBDT in the meantime.

4. The CBDT complied with the direction of this Tribunal vide order dated 30.6.2011 which is placed at Annexure-A/1 to the O.A. This order mentioned that a meeting of the Placement Committee in CBDT was held on 20.6.2011 to consider the representation of the applicant, and as per the minutes of the meeting the said representation was disposed of. As a part of this order, the CCIT, Bhubaneswar was requested to



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 ^ relieve the applicant to report for duty in compliance of the transfer order No.48/2011 dated 25.3.2011.

5. The Respondents in their counter affidavit have submitted that in the meeting of the Placement Committee, all facts and materials with regard to the representation were carefully considered, and basing on the recommendation of the said Committee, a reasoned order on 30.6.2011 was issued rejecting the request of the applicant for cancellation of transfer. The applicant in his O.A. had mentioned the case of Mathura Mohan Naik decided by the Hon'ble High Court of Orissa, and the case of Somesh Tiwari decided by the Hon'ble Apex Court. In reply, the Respondents have pleaded that the facts involved in these cases are dissimilar to the current facts of the applicant's case. Contesting the claim of the applicant he has got 'outstanding' grading in his ACRs, the Respondents have submitted that although he got 'Very Good' and 'Outstanding' grading in the years 2007-08 and 2108-09, such grading cannot nullify his dissatisfactory performance earlier or after. Moreover, the applicant in his career was never posted out of ^{Odisha} Orissa, after his promotion as ACIT in 2001. In fact, he has been working in Odisha Region since the year of his joining in the year 1982. Therefore, it cannot be contended that his transfer on the ground of administrative requirement to Patna is in dereliction of transfer guidelines.

6. The Respondents have further denied that the Respondent No.5 had only mala fide intention against the applicant, when he sent

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^ recommendation of transfer of certain officials including the applicant to the Respondent No.2, i.e., the CBDT.

7. Finally, the Respondents have submitted in the counter affidavit that after the rejection of his representation, the applicant has been relieved from his duty on 04.07.2011.

8. The applicant has also filed a rejoinder to the counter-affidavit.

9. Interestingly, during the hearing of this O.A., the learned counsel for the applicant submitted that the applicant has joined Patna (CCA-Bihar) and meanwhile has got a promotion. He is not pressing for the relief as mentioned in the O.A. In fact, he is no longer interested for any transfer back to Odisha. On being confronted with the fact that the Tribunal will have to confine itself to the pleadings in the O.A., and that the O.A. is now virtually infructuous, the applicant's counsel contended that he is now pressing for a pronouncement from the Tribunal that the order of transfer being motivated, is bad in law.

10. In support of the above contention, the applicant's counsel has drawn our attention to a letter dated 10.3.2011 sent by Sri K.K.Mohapatra, CCIT(CCA), Odisha to Member Personnel, CBDT, a copy of which the applicant obtained by filing an RTI Application to the CBDT. In this letter a request has been made to transfer 6 officers including the applicant out of Odisha charge on administrative grounds. In respect of the applicant, the CCIT mentions that he has not been posted outside Odisha, his ACRs for 2005-2006 and 2006-07 are 'good' and that he has the unenviable reputation of applying for long leave on medical grounds



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whenever he is posted outside Cuttack and Bhubaneswar. Besides, he makes unsubstantiated^e accusations and allegations against the administration. The CCIT has mentioned in his letter that transfer of the officers outside Odisha will have a salutary impact on their efficiency and send a clear message to other offices that they are not irreplaceable.

11. The issue raised by the applicant's counsel is that the CCIT's letter speaks of his mala fide and bias against the applicant. Such a recommendation based upon which transfer was made makes the order of transfer punitive. Therefore, the transfer order should be pronounced bad in law. There is no doubt that the letter of the CCIT contains some adverse remarks regarding the performance of the applicant and five other officers, on the basis of which their transfer outside Odisha has been proposed. But it is also evident that the Placement Committee in their meeting dated 20.6.2011 considered the representation of the applicant and decided to retain the earlier orders of transfer on the ground of administrative requirement. Therefore, it will not be reasonable to argue that the transfer order was sustained only on the ground of the adverse report of the CCIT, since it is finally the CBDT which has taken the decision of rejecting the representation of the applicant. The letter of CCIT is only a proposal of transfer of a few officers outside Odisha in the interest of administration, and these were^e his views that he submitted for the consideration of CBDT. There are certainly some comments of general nature regarding the applicant's performance based upon which some adverse inference



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against the applicant could be drawn. But the correspondence is in the nature of administrative proposal between CCIT and ^cBDT^r. Only when such remarks are recorded in the ACRs, they need to be communicated to the applicant to allow him an opportunity to make a representation. The most important point for consideration is whether the order of transfer would be termed bad in law, just because this letter was sent to CBDT. The answer to this question is an emphatic 'no', since the CBDT is the final authority to issue orders of transfer, and also since the Placement Committee of CBDT considered the representation carefully and decided to retain applicant's order of transfer. More relevant to this issue is the fact that applicant after rejection of his representation, joined his charge at Patna. He has got a promotion there, and as his counsel has submitted, he is not interested to come back to Odisha, nor has he made any representation in this regard.

12. The applicant's counsel in his written note of argument cited some case laws, arguing again that the transfer order was motivated being issued under the influence of the CCIT's letter, and the order of rejection of representation is in violation of the principle of natural justice. But, I find that such arguments are of no consequence, when the applicant has obeyed the order of transfer, joined in his new charge, and has not expressed any interest of making a representation to be posted back to Odisha. The prayer of the applicant in the O.A. has admittedly become infructuous not being pressed and yet the applicants' Advocate in contrast to the pleadings in the O.A. has argued that the only relief


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^ he prays for now is that the order of transfer should be pronounced as bad in law. I find such a prayer to be wholly unacceptable.

13. Coming finally to the basic issue in this O.A., it needs to be observed that this is a matter of transfer which is incidental to Government service. The applicant had a grievance against his transfer to Patna, and he made a representation to CBDT. He also filed an application before the Tribunal, in which the Tribunal gave a direction to CBDT to dispose off the representation. The Placement Committee of CBDT after consideration of the representation rejected the representation. Thereafter, the applicant has joined his new place of posting, and got a promotion there and has not made any further representation to be posted back to Odisha. He has no doubt made some allegation⁸ of punitive transfer; but those could not be substantiated, and against the background of simple narration of facts as stated, this O.A. has no legs to stand upon, and is accordingly dismissed.

Parties to bear their own costs.


(R.C.MISRA)
MEMBER(A)

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