

57
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 376 OF 2013
CUTTACK, THIS THE 20th DAY OF February, 2015

CORAM
HON'BLE MR. A.K. PATNAIK, MEMBER (J)

Artabandhu Patra,
aged about 56 years,
Son of Late Bhagaban Patra,
Residing at-V/2, Central Revenue Colony,
Rajaswarih, Bhubaneswar,
At present working as Commissioner of Income Tax (Appeals)-1,
Bhubaneswar, Dist. Khurda under the jurisdiction of
Chief Commissioner of Income Tax, Odisha Region, Bhubaneswar.

...Applicant

(Advocates: M/s- J.M.Patnaik, C.Panigrahi)

VERSUS

Union of India Represented through

1. Secretary (Revenue),
Ministry of Finance, Department of Revenue,
Central Secretariat, New Delhi-110001.
2. Chairman, Central Board of Direct Taxes,
Ministry of Finance, Department of Revenue,
North Block, New Delhi-110001.
3. Chief Commissioner of Income Tax,
Odisha Region, Ayakara Bhawan,
Bhubaneswar, Dist- Khurda.
4. Director, Ad. VI,
Govt. of India, Ministry of Finance,
Department of Revenue, Central Board of Direct Taxes,
New Delhi.
5. Chief Commissioner of Income Tax,
Kolkata Region, West Bengal.
6. Shri Manoranjan Panigrahi,
Commissioner of Income Tax (OSD),
Ayakara Bhawan, Annex Building,
Bhubaneswar, Dist- Khurda.

... Respondents

(Advocate: Mr. B.K.Mohapatra)

.....
B.K. Mohapatra

ORDER

A.K. PATNAIK, JUDICIAL MEMBER

The Applicant who is an IRS Officer of 1983 batch and at present working as Commissioner of Income Tax (Appeals-1), Bhubaneswar being aggrieved by the order dated 14th June, 2013 in which he has transferred as CIT (OSD), Kolkata has filed this Original Application praying to quash the said order dated 14th June, 2013 and to direct the Respondent-Department to allow him to continue at his present place of posting till completion of his tenure. Alternatively, he has prayed for a direction to the Respondent No.2 to consider his transfer as per the option exercised by him and to quash the order of rejection of representation which he had submitted against his order of transfer.

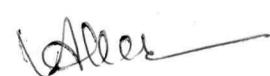
In this context, his contention is that being posted at various places, lastly he was posted to his present place of posting i.e. at Bhubaneswar in April, 2011. He has less than four years service to retire on reaching the age of superannuation of sixty years. The Respondent-Department given to understand to its employees by way of promise through a policy issued on 16th February, 2010 in which a time limit of posting/continuance of an officer in a particular place/region has been fixed. In sub clause 3(i)(b) of Clause of the said transfer policy/guidelines five years continuous stay at Bhubaneswar has specifically been provided with a rider in sub clause 4.3(c)(ii) that an officer may, however, be transferred out before the completion of tenure on own request/administrative ground/public interest and, therefore, if at all the transfer of the applicant was inevitable then the same could have been done only on or after April, 2016. It has been stated that though the applicant was not due for his transfer yet option was sought from him and others and in response to the same he has opted for a posting either at Delhi, Mumbai or Hyderabad. But despite such option, the Respondents have transferred him to a



non-cadre post i.e. CIT (OSD), Kolkata vice Respondent No.6. He preferred representation but the Respondent-Department rejected the same without giving proper regard to the policy of transfer and the points raised by him in his representation. According to him as the transfer has been made to a non cadre post, in gross violation of the transfer policy, without considering the option exercised by him, passed by an authority who is not competent to do so and not for any administrative exigency/public interest, he is entitled to the relief claimed in this OA. In support of the above, he has also relied on the decision of the Principal Bench of the Tribunal in OA No. 1510 of 2006 which was upheld by the Hon'ble Delhi High Court in Writ Petition Civil No. 360/2007 and in OA No. 44 of 2007 disposed of on 31st July, 2007.

2. Despite service of notice, no counter has been filed by Respondent No.6.

3. However, Respondent-Department have filed their counter in which it has been stated that as per the phrase employed in cl.4.3(i)(a) and 4.4(ii) of the transfer/placement guidelines (TPF) for IRS Officers, 2010 officer shall be liable for transfer on completion of tenures specified therein. This clause specifies overall limit (5 years) for any officer to continuously stay in field posting/exempted posting in Bhubaneswar. No right is conferred on an officer to demand that he/she should mandatorily be posted for five years in field/exempted posting in places like Bhubaneswar. It is not administratively possible and desirable to provide opportunity to each and every officer before transfer/posting orders are issued especially when no such procedure has been prescribed in the transfer/placement guidelines for IRS Officers, 2010. The transfer and posting of officers vests with the competent authority on the recommendation of the Placement Committee and



on the recommendation of the said Placement Committee and with due approval of the competent authority the transfer of the applicant has been ordered as for operational and administrative reasons the department is competent to post its officers to any post as it deems fit and proper. The representations submitted by the transferees, including the applicant, were duly considered with reference to the transfer guidelines and the same were disposed of and the same was also mentioned in the order dated 14.6.2013. The claim of the applicant that he was not liable to be transferred out of Bhubaneswar as he had not completed five years of stay in field/exempt posting in Bhubaneswar as per clause 4.3(i) of TPG,2010 is not tenable since the said provision specifies overall limit for any officer to continuously stay in field posting in Bhubaneswar. Such interpretation directly contradicts clause 3.3 of TPG-2010 which states that on promotion the officers will normally be transferred out and thereby makes the provision in clause 3.3 meaningless and redundant. In Clause 7.1 of TPG-2010 power is vested with the Placement Committee to transfer, retain or post any officer to any station region or a specific post if it considers necessary to do so in public interest and on a congenial reading of the provision made in clause 3.3 and 4.3 of TPG-2020 it will be evident that the transfer of the applicant is well within the overall ambit of TPG-2010. Further it has been stated that as transfer and posting within the domain of the authorities as per the law laid down by the Hon'ble Apex Court, the same needs no interference by this Tribunal.

4. Applicant, more or less reiterating the stand taken in the OA has filed rejoinder which I am not inclined to reiterate once again as the same can be dealt into while dealing with the arguments advanced by the learned counsel for the Applicant.

Alor

5. Mr. J.M.Patnaik, Learned Counsel appearing for the applicant by drawing my attention to Annexure-A/4 dated 14.6.2013 submitted that the applicant has been transferred from CIT (A)-1 to CIT (OSD), Kolkata (CCA, WB) but no whisper has been made whether the same was in public interest of administrative exigency. Similarly, by drawing my attention to clause 4.3 of the guidelines issued by the CBDT dated 16.02.2010 he submitted that it has been stipulated that an officer who have minimum five years of continuous stay in the field postings in respect of certain stations in which Bhubaneswar has been included shall be liable for transfer but admittedly the applicant has not yet completed 5 years of continuous posting at Bhubaneswar. However, he has also candidly brought to my notice the provisions made in clause 4.3(ii), in which it has been incorporated to the effect that "officers may, however, be transferred out before completion of their tenures on their own request or on administrative grounds/in public interest". Again by drawing my attention to Annexure-A/4, Mr.Patnaik submitted that though the administrative authorities are well within their domain to transfer an officer but in his transfer order neither the administrative ground nor own request has been mentioned in the remark column. It has been submitted that the applicant being the CIT (Appeal) he should have been transferred as CIT (Appeal) and the authorities cannot post him as CIT (OSD) which is not a cadre post. It can only be done by the authorities at Kolkata to post him as OSD. Further by drawing my attention to the order dated 16.09.2014 of the Government of India, Ministry of Finance (CBDT), New Delhi, Mr.Patnaik submitted that the order of transfer of Respondent No.6 who has been posted in place of the applicant has already been modified and Respondent No.6 has been posted as CIT (TDS) at Bhubaneswar but not as CIT (Appeal). Mr.Patnaik

Alka

submitted that the order of transfer of the officer who was posted to the place of Respondent No.6 has been stayed by the Calcutta Bench of the Tribunal. Though it is admittedly a chain transfer but the officers who are supposed to come in place of Respondent No.6 has got a protection from the Kolkata Bench of the Tribunal as well as the transfer and posting of Respondent No.6 to the place of applicant has been cancelled/modified by the departmental authorities and as such there is no impediment on the part of the authorities to consider the case of the applicant and allow him to continue at his present place of posting or at best post him to one of the places as per the option exercised by him. Lastly it was submitted by Mr.Patnaik that during the pendency of the OA the applicant has undergone cardiac surgery and is under constant treatment. Therefore, his transfer to such faraway place will jeopardise his orderly manner of treatment. Accordingly, Mr.Patnaik has prayed for the relief claimed in the OA.

On the other hand, Mr.B.K.Mohapatra, Learned Additional CGSC appearing for the Respondents submitted that the applicant is an IRS Officer having All India Transfer Liability. He was transferred in public interest that too on the recommendation of the Placement Committee formulated for the purpose. The Hon'ble Apex Court time and again deprecated the indulgence of the Courts and Tribunal in the matter of transfer made in public interest. He has contended that the stand taken by Mr.Patnaik is of no consequence as transfer guidelines are only guidelines and therefore cannot confer any indefeasible right on the applicant to claim his continuance irrespective of public interest or administrative exigency. Further by drawing my attention to the provision made in clause 7.1, 33 and 4.3 of TPG-2010 and some of the decisions of the Hon'ble Apex Court it has been contended by Mr.Mohapatra that as the transfer has been made in public interest on



the recommendation of the Placement Committee this Tribunal should not interfere on the same and the OA is liable to be dismissed.

6. I have considered the rival submissions of the parties and perused the record. I am in agreement with Mr. Mohapatra that as the applicant is an IRS Officer having all India transfer liability, he can be transferred on the recommendation of the placement committee duly accepted by the competent authority to any place throughout India in public interest/administrative ground or on own request. But on perusal of the order of transfer dated 14.06.2013, I find that in the said order specific remarks have been stated against the officers who have been transferred as a regular measure viz; 'administrative ground', 'working spouse' etc. whereas nothing has been mentioned in the remark column in respect of the applicant's transfer. When option was called for by the Respondent-Department and the applicant has duly exercised his option nothing is forthcoming as to why his request was not acceded to. Fact remains that the order of transfer/posting of Respondent No.6 who was posted in place of the applicant has been modified/cancelled and the order of transfer of the officer who has been transferred/posted in place of Respondent No.6 has been stayed by the Calcutta Bench of the Tribunal. No whisper has been made either in the counter or in course of hearing that the post of CIT (OSD) is a cadre post. Law is well settled in a plethora of judicial pronouncements that a cadre officer cannot be posted to a non-cadre post as has been done in the instant case. Similarly, it is not the case of the Respondent-Department that the applicant has completed his tenure at Bhubaneswar as enumerated in the policy of transfer. I have also gone through the decisions relied on by Mr. Mohapatra and find that the factual aspects of those decisions are quite different/distinguishable/unconnected to the facts of the present



42

case and as such, the same have no application to the case in hand. Rather I find that transfer and posting of the IRS Officer in violation of the transfer policy came up for consideration before the Principal Bench of the Tribunal in OA No. 1510 of 2006 which was allowed and upheld by the Hon'ble Delhi High Court in Writ Petition Civil No. 360/2007 and in OA No. 44 of 2007 disposed of on 31st July, 2007. The stand of the applicant that by now he has less than three years of service to retire on reaching the age of superannuation has also not been disputed. I also find that the Respondent-Department has rejected the representation of the applicant summarily without assigning any reason or considering the points raised by him and in the counter they have tried to substantiate the order of transfer/order of rejection though law is well settled that an order which is otherwise invalid cannot be validated by providing reason in the counter. In view of the facts and law stated above I find no reason to sustain the order of transfer of the Applicant especially when the transfer order of Respondent No.6 has already been cancelled/modified in the meantime. Hence, the order of transfer dated 14.06.2013 in so far as the applicant is concerned is hereby quashed/set aside.

7. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.


(A.K. Patnaik)
Member (Judicial)

RK/CM