

30

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A NO.380 OF 2013

Cuttack this the 20th day of October, 2014

CORAM

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

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

Shri Prafulla Kumar Dash
Aged about 59 years
S/o.late Ambika Prasad Dash
Plot No.204,
Aadeet Residency,
Kanaanvihar, Phase-II
Bhubaneswar,
Dist-Khurda
At present working as Commissioner of Income Tax
Arunodaya Market, Cuttack
At/PO/Dist-Cuttack/Odisha

...Applicant

By the Advocate(s)-M/s.J.M.Pattnaik
C.Panigrahi

-VERSUS-

Union of India represented through

1. The Secretary(Revenue),
Ministry of Finance
Department of Revenue
Central Secretariat
New Delhi-110 001
2. The Chairman Person
Central Board of Direct Taxes
Ministry of Finance
Department of Revenue
North Block
New Delhi-110 001
3. The Member(P&A)
Central Board of Direct Taxes
Ministry of Finance
Department of Revenue
North Block
New Delhi-110 001



31

4. The Chief Commissioner of Income Tax
Odisha Region
Ayakara Bhawan
Bhubaneswar
Dist-Khurda
5. Director, Ad.VI,
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
New Delhi
6. The Chief Commissioner of Income Tax
Chennai
Tamilnadu
7. Shri Ajay Kumar Kurapati
Commissioner of Income Tax
Vijayawada

...Respondents

By the Advocate(s)-Mr.B.K.Mohapatra

ORDER**R.C.MISRA, MEMBER (ADMN.):**

Applicant is presently working as Commissioner of Income Tax. He has moved this Tribunal being aggrieved with the order passed by the Respondents-department vide Annexure-A/1 dated 14.06.2013 transferring him in the same capacity from the present place of posting to Chennai (CCA TN). Soon after receipt of transfer order applicant appears to have represented his grievance before the Chairperson, CBDT, with a request for an alternative posting to some non-functional posts like CIT (ITAT), Cuttack or CIT (Audit), Bhubaneswar, citing his personal difficulties and having received no response, he has



32

invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, seeking reliefs as under :-

"To quash the order of transfer dated 14th June, 2013 at Annexure-A/1 dated 14th June, 2013 in so far as it relates to Applicant and Respondent No.7 is concerned."

2. This O.A. was admitted on 25.06.2013 and accordingly, notice was directed to be issued to Respondents. As an interim measure, it was directed that status quo in respect of relieving of the applicant would be maintained till the next date of listing. While the matter stood thus, Respondents filed their counter opposing the prayer of the applicant in the O.A. Thereafter, M.A No. 905 of 2013 was filed by the Respondents on 10.12.2013 with a prayer for vacation of the order of status quo that had been granted on 25.06.2013.

3. This matter came up on 10.09.2014 for considering further continuance or otherwise of the interim order. Vide order dated 11.09.2014, this Tribunal after dealing with the matter in its entirety made the interim order of status quo absolute with direction to list the matter on 15.09.2014 for final disposal on priority basis. However, vide order dated 18.09.2014, the matter was finally heard and orders reserved. In the meantime, on being permitted Respondents have filed their written note of submission along with some decisions of the Hon'ble Supreme Court in support of their case.



33

4. It is the case of the applicant that during the last three years, he has been subjected to three transfers. According to him as per AGT – 2010, he was transferred from Chennai to CIT, Sambalpur, Odisha. As per AGT – 2012, he was transferred from CIT, Sambalpur to CIT, Cuttack Charge, Cuttack where he joined in October, 2012. It is the case of the applicant that when he is yet to complete one year in this posting and having less than 2 years' service till retirement, he has been again transferred to Chennai as CIT (Audit-1). According to him, he had never opted for his transfer out of CCIT, Bhubaneswar Region. Besides, the above, applicant has brought out his health problems and other problems in his family. It is the submission of the applicant in the event of his transfer to Chennai, he would be put to immense problems.

5. In the counter filed by the Respondents, it has been submitted that after due deliberations conducted by the Placement Committee of CBDT and after approval by the competent authority, applicant's transfer has been made. According to Respondents, Clause 4.3 (i)(a) and 4.4(ii) of the Transfer Guidelines, makes it very clear that officers shall ^{be} liable for transfer on completion of tenures specified therein. Thus, as is self-evident, this clause only specifies overall limit for any officer to continuously stay in field posting/exempted postings at a particular station. In the circumstances, it has been submitted that the said Transfer Guidelines nowhere confer any



34

right or entitlement on the officers to demand that he should mandatorily be provided postings for maximum possible periods at a particular station. According to Respondents, there is no impediment to transfer an officer before completion of his tenure on administrative grounds/public interest. It has been further submitted that as per Clause 7.1 of the Transfer Guidelines, the Placement Committee may, if it considers necessary to do so in public interest and in furtherance of organized objections, transfer, retain or post any officer to any station/Region or a specific post.

6. Citing various decisions of the Hon'ble Supreme Court, the Respondents have submitted that guidelines/instructions do not confer any right on the employee to challenge the transfer order on the ground of violation thereof. Mere^{ly} because the guidelines are violated is not sufficient ground to quash the transfer order as mala fide. Orders of transfers on administrative grounds can still be passed even if it is in violation of such guidelines which have no statutory force. It has been submitted that the executive has unfettered rights to transfer its employees from one place to another place.

7. With these submissions, Respondents have vehemently opposed the prayer of the applicant and prayed that the O.A. being devoid of merit is liable to be dismissed.



35

8. We have heard the learned counsel for both sides and perused the records.

9. Since this is a matter pertaining to transfer and the law laid down by the Hon'ble Supreme Court regarding the scope of interference by the Tribunal in such matters is well understood, we do not want to go deeply into the various arguments and counter arguments advanced by the learned counsel for both the sides. However, in the present state of affairs the Tribunal, having regard to the grounds urged by the applicant, is only concerned to adjudge whether the order issued by the Respondents transferring the applicant from Cuttack to Chennai stands to judicial scrutiny or not.

10. Law is well settled that the Tribunal can interfere in the matters of transfer if such transfer is made in violation of statutory mandatory rules or the order of transfer is actuated with bias or mala fide.

11. Having regard to the above basic principles of law, we have looked into the grounds urged by the applicant in his representation as well as in the O.A. against the orders of transfer vis-à-vis the grounds urged by the Respondents in their counter-reply. During the course of hearing, learned counsel for the applicant has brought to our notice transfer guidelines issued by the Respondents' Department vide Annexure A/3 dated 16.02.2010. The main thrust ^{is on} of the



36

transfer guidelines as outlined vide Paragraph- 3 (3.5) "**posting guidelines for officers at different levels**" reads as under :-

"3.5. Officers who have 3 years or less service left shall be posted to the station/region of their choice to the extent possible."

12. As indicated above, this Tribunal, made the interim order of status quo absolute solely based on this provision of the transfer guidelines. Admittedly, when the applicant was issued with the impugned order of transfer, he was having 17 months' of service left till his retirement, which is quite less than 3 years' service. The strength of language in Paragraph 3 (3.5) as quoted above, "**shall be posted**" conveys the sense of an instruction of mandatory nature, even though the transfer guidelines are not statutory in character. The occurrence of the qualification '**to the extent possible**' does not dilute the seriousness of this provision, but on the contrary, enhances the responsibility of the transferring authorities to ensure its maximum observance. This vital point, in our considered view, ought not to have been lost sight of by the authorities while issuing the orders of transfer in so far as applicant is concerned. Since this provision is made in transfer guidelines in order to give some premium to the officers, who are left with 3 years or less service to retire to choose to come to the region/station of their choice, a duty is cast on the competent authority to post those officers on transfer to the extent possible, in accordance



37

with the choice so exercised. There is no doubt that transfer is an incident in the Govt. service, and the administrative authorities are only competent to decide who is to be posted where. It is not the Tribunal's call to examine the administrative exigencies. But the authorities themselves have formulated the transfer guidelines after due deliberation so that arbitrariness and personal prejudice are eliminated, and impartiality and transparency are allowed to govern the decisions. It is apparent in the present case that in terms of application of Para 3(3.5) of the transfer guidelines the Respondent-authorities have not shown their dexterity, and their decision suffers from non-application of mind.

13. In view of the above discussions, we cannot but hold that the order issued by the Respondents transferring the applicant from his present place of posting to Chennai does not stand to judicial scrutiny.

14. It may be mentioned here that private Respondent No.7 though noticed has not chosen to file any counter in this case. Therefore, the inference ^{that} could only be drawn is that he has no objection to the prayer of the applicant in this O.A. being allowed.

15. Incidentally, it would not be out of place to mention the inexplicable manner in which this matter has been handled by the Registry, which is being dealt separately.



38

15. For the foregoing discussions, we quash order of transfer dated 14.6.2013(A/1) in so far as applicant is concerned. In the result, the O.A. is allowed. No costs.

(R.C.MISRA)
MEMBER(A)

BKS

(A.K.PATNAIK)
MEMBER(J)