

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.121/99

Wednesday this the 1st day of September, 1999

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

C.C. Ouseph,
Upper Division Clerk
Income Tax Appellate Tribunal
Cochin Bench.

...Applicant

(By Advocate Mr. T.C.Govindaswamy)

Vs.

1. Union of India represented by
the Secretary to the Government of India
Ministry of Law and Justice
Department of Legal Affairs,
New Delhi.
2. The Hon'ble President,
Income Tax Appellate Tribunal
Central Govt. Office Buildings
4th floor, Maharshi Karve Road,
Mumbai.20.
3. The Registrar
Income Tax Appellate Tribunal
Central Government Office Building,
4th floor, Maharshi Karve Road,
Mumbai.
4. Senior Member,
Income Tax Appellate Tribunal
Kochi.16.
5. Shri B.L. Hirve
Assistant Registrar
Income Tax Appellate Tribunal
Chandigarh Bench,
Chandigarh.
6. The Assistant Registrar
Income Tax Appellate Tribunal
Kochi.16. ...Respondents

(By Advocate R.Madanan Pillai (for R.lto4 and 6)

The application having been heard on 1.9.99, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

This is the second round of litigation
between the applicant Shri C.C.Ouseph, Upper Division

Clerk, Income Tax Appellate Tribunal, Cochin Bench and the respondents over an order of transfer from the Cochin Bench to Mumbai Bench. Initially the applicant was transferred vide an order dated 2.7.98. The applicant assailed the order in O.A.988/98 on various grounds including the ground of incompetence of the authority who issued the order and malafides. The application, after considering the rival contentions, was disposed of by the Tribunal by its order dated 4.12.98 setting aside the order of transfer on the ground that it was unsafe to conclude that the order had the approval of the President of the Income Tax Appellate Tribunal. Now the third respondent has issued the order dated 25.1.99 (copy A.1) transferring the applicant from the Cochin Bench to the Mumbai Bench. This order has now been challenged in this application. It is not necessary to state all the voluminous averments in the application, suffice it to state that the applicant assails the order on the ground that the Order A.1 is being issued without proper approval of the President is incompetent, that the order is vitiated by malafides as the 5th respondent Assistant Registrar is inimically disposed of against the applicant for several reasons and that the order is vitiated as it has been issued as a punitive measure without affording the applicant an opportunity to show cause against such action.

2. The respondents have filed a detailed reply statement.

3. We have perused the pleadings and materials on record and have heard at length the arguments raised by the counsel on either side. First we will consider the objection raised by the applicant regarding the jurisdiction of the Registrar to issue

the impugned order on the ground that it does not have a proper approval of the President of Income Tax Appellate Tribunal, who is the competent authority to transfer. We find that the impugned order itself contains a statement that "it has the approval of the President". In the reply statement filed by the respondents including the second respondent it has been contended that the order was issued with the approval of the President. We have no reason to disbelieve this statement made by the respondents including the President of the Income Tax Appellate Tribunal. Therefore, the contention of the applicant that the order is without jurisdiction and without proper approval of the President has only to be rejected.

4. We will next take the contention of the applicant that the order is vitiated by malafides. The impugned order has been issued with the approval of the President by the Registrar of the Tribunal. There is no allegation that either the Registrar or the President nurtures any illwill towards the applicant. It is immaterial whether the 5th respondent Assistant Registrar is friendly or inimical with the applicant to decide whether the impugned order is vitiated by malafides as the Assistant Registrar has no power to issue the impugned order of transfer and that had to be issued by the competent authority which is higher than the Assistant Registrar, we discard the contention of the applicant that the order is vitiated by malafides.

5. The last point urged by the applicant that the impugned order is not sustainable as it has been issued as a punitive measure for a conduct unbecoming of a Government servant deserves consideration. The applicant has alleged in the application that ^{Since} the order is punitive ~~and~~ has been issued without giving him an opportunity of being heard, the principles of natural justice has been violated and therefore for this reason the order is vitiated. From the averments in the reply statement of the respondents it is seen that this contention of the applicant is well founded. In para 13 the respondents have stated as follows:

"It is submitted that Shri Ouseph , UDC was transferred in the same capacity to ITAT, Mumbai because of his unbecoming nature of a government servant."

In para 22 of the reply statement, the respondents have justified the impugned order stating as follows:

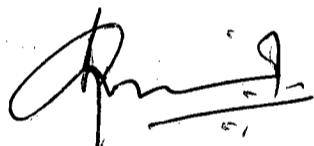
"In the present case the transfer of Shri Ouseph, UDC of ITAT, Cochin Bench to Mumbai Bench was proposed by the Registrar, ITAT (Appointing Authority) and the said proposal was duly approved by the President (Head of Department) regarding the transfer of Shri Ouseph, UDC in the same capacity to ITAT, Mumbai on punishment vide his note dated 1.7.98...." (emphasis added)

It can be seen from what is extracted above that the stand of the respondents themselves is that the

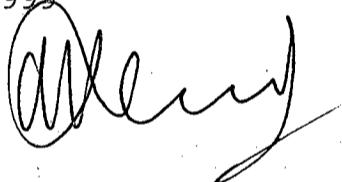
transfer of the applicant by the impugned order was on account of the unbecoming nature as a Government servant of the applicant as a punishment. If a transfer was made for a misconduct or a conduct unbecoming of a government servant as a punishment the principles of natural justice demand that ~~sway~~ notice should be given to the person concerned and he should be heard before taking a decision. Audi alteram partem is the basis of rule of law. Since that has been violated in this case, we find no ~~sway~~ to justify the impugned order.

6. In the result, in the light of what is stated above, the application is allowed. The impugned order A.1 is set aside. Parties shall bear their costs.

Dated the 1st day of September, 1999



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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List of Annexure referred to:

Annexure.A1: True copy of the order No.F.84-Ad/AT/98 dated 25.1.99 issued by the third respondent (as extracted by the applicant).

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