

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH : PATNA

Date of Order:- 6.6.2006

Registration No. 341 of 2006

CORAM

Hon'ble Km. Sadhna Srivastva, Member[J]

Sri Rajiva Deva .. Applicant

By Shri P.N. Shahi, Advocate

versus

The Union of India & others .. Respondents

By Shri R.K. Choubey, Additional Standing Counsel

ORDER

[Pronounced in open Court
through dictation]

Hon'ble Km. Sadhna Srivastava, Member[J]: The subject-matter is transfer. The applicant has challenged the order dated 31.5.2006 issued under the signature of the Deputy Secretary, Department of Revenue, Ministry of Finance, Government of India, New Delhi [respondent no.4] as contained in Annexure-A-10 whereby the applicant who is posted as Chief Commissioner of Income Tax-I, Patna, has been transferred to the post of Chief Commissioner of Income Tax-IV, Kolkata. The impugned order has been challenged mainly on the two grounds, firstly the applicant has been subjected to frequent transfers without any valid reason which amounts to breach of Articles 14 & 21 of the Constitution of India as well as guidelines. Secondly, undue hardship has been caused on account of transfer from Patna to Kolkata. The counsel for applicant has placed reliance on two judgments reported in 2000[1] PLJR 914 and SLJ 2000



2. The law is well settled that the transfer is not only incident of service, but ~~also a~~ ^{is also} condition of service. It is also settled that the Court in the case of transfer should normally not interfere, unless mala fides alleged or violation of rules shown. In the present OA the applicant has not alleged any mala fide. He has failed to establish that there is any violation of statutory rule. So far as the guideline as contained in Annexure-A-9 is concerned, though it is not statutory rule but in the guideline itself it is mentioned that the guideline shall not be applicable to the transfer of Chief Commissioner of Income Tax/Director General.

3. I have carefully gone through the judgments cited before me and find that in the case of R.C. Diwedi [reported in 2000[2] SLJ 30] the applicant was transferred for six times during one and half years hence the Tribunal held it as a case of frequent transfer. The fact of case in hand is entirely different hence the ratio laid down in R.C.Diwedi's case [Supra] will not apply in the instant case.

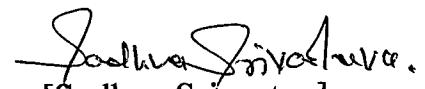
The applicant has further placed reliance on a decision reported in 2000[1] PLJR page 914, but the fact of that case is quite different with the present case because in the present case the transfer order has been passed in respect of 67 officers which is a routine transfer and routine transfer orders are issued always in administrative exigency and as such the plea of malice in law cannot be applicable in the present case.

4. As regards the ground taken by the applicant regarding the eduction of his daughter is concerned, since it is his personal problem and it is settled law that personal inconvenience of the Government employee cannot come in the way of administration in transferring the employee in



administrative exigency. In case the applicant is aggrieved, he can approach the competent authority for redressal of his grievance. In the administrative exigency, it is prerogative of the employer how to man ^{his} office. The Hon'ble Apex Court in S.S. Gaurav vs. State of M.P., 1995, SCC[L&S] 666, has held that the hardship caused to the employee from the transfer order is not a ground for judicial review of transfer order. By plain reading of the transfer order, it does not smack ^{of any} mala fide. Hence the plea of frequent transfers and undue hardship caused from transfer are not tenable in the above circumstances. I do not find any ground to interfere in the matter. Therefore, the OA is dismissed at the admission stage itself.

5. In the last, the applicant's counsel made a request that he may be permitted to approach the competent authority by way of representation which may be decided sympathetically. In this connection, it is open for the applicant to file a representation before the competent authority within ten days from the date of receipt of this order and competent authority will pass a suitable order on his representation keeping in view of the fact that the daughter of the applicant is appearing in B.Com.[Hon.] Examination. The observations made by me in the body of this order will not prejudice in deciding the representation.


 [Sadhna.Srivastva]
 Member[J]

skS