

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

OPEN COURT/PRE DELIVERY JUDGEMENT IN OA 1274/95

~~Hon'ble Vice Chairman / Member (J) /~~

Member (A) may kindly see the above judgement for
approval / signature.

for
~~V.G. Member (J) / Member (A)~~

~~Hon'ble Vice Chairman~~

~~Hon'ble Member (J)~~

~~Hon'ble Member (A)~~

I agree.
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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:1274/95

DATE OF DECISION: 8/11/2001

Mrs.Nirmala Bhatia Applicant.

Shri P.A. Prabhakaran. Advocate for
Applicant.

Versus

Chairman Central Board of Direct Taxes Respondents.
and others

Shri V. D. Vadhavkar for Shri M.I. Sethna Advocate for
Respondents

CORAM

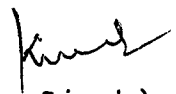
Hon'ble Shri Kuldip Singh, Member (J)

Hon'ble Ms. Shanta Shastry, Member (A)

(1) To be referred to the Reporter or not? No

(2) Whether it needs to be circulated to
other Benches of the Tribunal? No

(3) Library.


(Kuldip Singh)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 1274/95

the 8th day of JANUARY 2001

CORAM: Hon'ble Shri Kuldip Singh, Member (J)

Hon'ble Ms. Shanta Shastri, Member (A)

Mrs. Nirmala Bhatia
W/o Mr. B.M. Bhatia
Residing at
J.N. 2/B-20 Sector 10,
Vashi.

...Applicant.

By Advocate Shri P.A. Prabhakaran.

V/s

1. Chairman
Central Board of Direct Taxes
Ministry of Finance,
North Block, New Delhi.
2. The Chief Commissioner of
Income Tax,
Central Revenue Buildings,
Indraprastha Estates
New Delhi.
3. The Chief Commissioner of
Income Tax,
3rd Floor, Aayakar Bhavan
M.K. Road, Bombay.

...Respondents.

By Advocate Shri V.D. Vadhavkar for Shri M.I.Sethna

O R D E R

{Per Shri Kuldip Singh, Member (J)}

Though this OA the applicant is assailing the policy of transfer being followed by the respondents with regard to transfer of non-gazetted staff from one charge to another charge under Central Board of Direct Taxes (CBDT).

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2. The applicant has also challenged the order of respondent vide which applicant on compassionate transfer from Delhi charge to Bombay charge has been posted as LDC at Bombay, while at Delhi she was posted as Tax Assistant (T.A.). Thus she alleges that it is an order of reversion and her pay has also been reduced.

3. Facts in brief are that applicant joined the Income Tax Department at Delhi as an LDC and was promoted to the post of T.A.

4. During her service, she got married and her husband got settled at Bombay. Since they were living separately she applied for transfer to Bombay on compassionate grounds. Her application for transfer was ultimately allowed in terms of the transfer policy of department dated 14.5.1990 and 23.7.1990 (Annexure 1-A and 2 A). Consequent thereupon she was posted as LDC and here pay was fixed at Rs. 1500/- i.e. maximum in the LDC scale as per F.R. 22(3) as against her existing pay scale at Rs. 1760/-.

5. The applicant has alleged that transfer policy dated 14.5.1990 is arbitrary, it is stated ^{that} prior to 14.5.1990. Transfer from one charge to another charge used to be adjusted against the direct recruitment quota only even when the transferee happened to be promotees. It is further stated that impugned transfer is inhuman and is in the nature of punishment, since it is in effect a reversion and reduction of pay.

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6. It is stated that letter dated 14.5.1990 is a retribution against the staff who had been agitating for their grievances.

7. It is also pleaded that there are direct recruitments in UDC cadre also and applicant could have been absorbed.

8. The applicant also claims, that she has been illegally reverted and her pay has been reduced. She has also been discriminated as there are instances where a Tax Assistant has been transferred as T.A.

9. The OA is being contested by respondents who state that the transfer of the applicant was at her own instance by accepting reversion from T.A. to LDC and now she cannot challenge the same. It is also stated that the same is in conformity with the policy of department approved by CBDT. The pay of the applicant is also stated to have been fixed in accordance with the instructions of the department issued by CBDT.

10. It is denied that there is any discrimination and it is categorically stated that no specific instance of T.A. having been transferred as T.A. has been quoted by applicant.

11. Reversion, as well as reduction is not by way of any penalty rather the same is as per transfer policy which has been accepted by applicant herself. So it is prayed the OA be dismissed.

12. We have heard the learned counsel for the parties and have gone through the record.

13. The learned counsel appearing for the applicant submitted that as the transfer policy intends to take away the service rendered by the applicant at Delhi charge and she has been placed as LDC instead of T.A. In support of his contention the learned counsel relied upon a judgement "Scientific Advisor to Raksha Mantri and another V/s V.M. Joseph" {1998 SCC (L& S) 1362 } wherein it is held "that service rendered at an earlier station before the transfer has to be counted towards experience and eligibility for promotion".

14. The counsel for the applicant also submitted that applicant is also entitled to pay protection as her pay could not have been reduced.

15. In reply to this counsel for respondent submitted that transfer of applicant was at her own request and in terms of policy dated 14.5.1990. She could be adjusted only against the post of LDC.

16. In our view the ruling relied upon by the learned counsel for applicant does not help the applicant because even in the case of Scientific Advisor to Raksha Mantri (Supra) though the Apex Court has held that the service rendered by employee before transfer can be counted for the purpose of experience and eligibility for promotion but the fixing of seniority at bottom at the transferred station was not set aside rather nofault was found in that principle.

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16. In this case also we find that the applicant has not been able to challenge the letter dated 14.5.1990 (Annex. !-A) and subsequent clarification issued on 23.7.1990 (Annexure 2A) as violative of any rules or fundamental rights of the applicant.

17. Applicant is also unsuccessful to show that she has been discriminated in any manner.

18. On the contrary we find that there is another circular i.e. Cir No. A-26017/14/98-Ad IX dated 30.11.1998 Govt. of India Ministry of Finance (CBDT) on the subject which is reproduced as under:

Subject: Pay drawn in higher post on regular basis is to be protected, even on transfer to a lower post at one's own request.

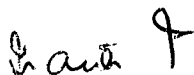
I am directed to say that references have been received from various charges seeking clarification as to how the pay is to be fixed when an individual is transferred from a higher post to a lower post on his own request and whether the pay drawn in the higher post can be protected on such transfer.

The matter has ^eben considered. It is hereby clarified that under the provisions of FR 22(1)(a) (2) read together with FR 22(1) (a) (3), when an individual is transferred from higher post which he had been holding on regular basis, to a lower post, on his own request his basic pay in the higher post is to be protected and his pay in the lower post should be fixed at the same stage or the next higher stage, subject to condition that, if the pay drawn in the higher post is more than the maximum of pay in the lower post, his pay shall be restricted to the maximum of pay in the lower post. The pay of all such individuals may, therefore, be fixed in accordance with the above. (Emphasis supplied)

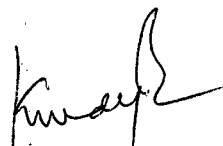
19. The perusal of above circular would show that the pay of the applicant has been rightly fixed in accordance with the policy of department. There is no element of punishment eg. reduction of pay or reversion to post of LDC from the post TA/UDC.

20. As such there is no ground to interfere in the OA.

21. The OA is accordingly dismissed. No costs.



(Ms. Shanta Shastri)
Member (A)



(Kuldip Singh)
Member (J)

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