

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 833 OF 1998.

Date of Decision: 29.04.1999.

Sudhir Vasant Thakkur,

Applicant.

Shri P. A. Prabhakaran,

Advocate for
Applicant.

Versus

Union Of India & Anr.,

Respondent(s)

Shri V. G. Rege,

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R. G. Vaidyanatha, Vice-Chairman.

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

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

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 833 OF 1998.

Dated the 29th day of APRIL, 1999.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

Sudhir Vasant Thakkur,
Type-II, Qtr. No. 26,
Near State Bank,
New C.I.D.C.O.,
Nashik - 422 009.

Employed in the office of
Commissioner of Income-Tax
(Appeals)-II,
Kendriya Rajaswa Bhavan,
Old Agra Road,
Nashik - 422 002.

... Applicant

(By Advocate Shri P.A. Prabhakaran)

VERSUS

1. Union Of India through
The Chief Commissioner of
Income Tax, Pune,
Aayakar Bhavan,
Sadhu Vaswani Marg,
Pune - 411 001.

2. Commissioner of Income-Tax
(Appeals)-II,
Kendriya Rajaswa Bhavan,
Old Agra Road,
Nashik - 422 002.

... Respondents.

(By Advocate Shri V. G. Rege)

OPEN COURT ORDER

PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN

This is an application challenging the order
of transfer dated 25.09.1998. Respondents have filed
reply opposing the application. I have heard both the
counsels regarding admission.

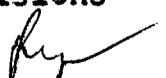


2. The applicant who is working as a Staff Car Driver attached to Commissioner of Income-Tax (Appeal)-II at Nasik has now been transferred under the impugned order to Aurangabad to which place the office of the Commissioner of Income-Tax (Appeal)-II has been shifted. The applicant is challenging the order of transfer on many grounds. The main ground will is that the applicant/be put to great personal difficulties if the order of transfer is enforced. He has given number of reasons about his personal and family problems. Then he alleges discrimination in transferring the applicant from Nasik to Aurangabad.

3. The respondents in their reply have justified the order of transfer being in public interest and exigency of service since the very office of the Commissioner of Income-Tax (Appeal)-II has been shifted from Nasik to Aurangabad.

4. After hearing both the Counsels, I do not find that any case is made out for interfering with the order of transfer.

Now it is fairly well settled by number of recent decisions by the Supreme Court that the scope of judicial review in matters of transfer is very very limited. The Supreme Court has cautioned the Courts and Tribunals in interfering with the order of transfer as if they are sitting as an Appellate Authority. The Supreme Court has made it clear that Courts or Tribunals cannot sit in appeal over the administrative decisions



of order of transfer. The Supreme Court has laid down only two grounds on which the order of transfer can be interfered with by a Court or Tribunal, namely - when the order of transfer is contrary to statutory rules or when the order is malafide. As far as personal grounds, family problems and personal difficulties are concerned, the Supreme Court has observed in many cases that these are grounds to be urged before the competent authority or higher authorities but certainly not before a Court or Tribunal vide the following decision :

- (i) A.I.R. 1993 SC 2444 .. (Union Of India & Others V/s. S. L. Abbas).
- (ii) 1995 SCC L & S 666 .. (State of Madhya Pradesh & Another V/s. S. S. Kaurav & Ors.)
- (iii) A.I.R. 1993 SC 1236 .. (Rajendra Roy V/s. Union Of India).

Now coming to the present case, there is no allegation that the impugned order of transfer is contrary to any statutory rules. Though the Learned Counsel for the applicant contended that the order of transfer is malafide, I do not find sufficient pleadings on this point. It is not the applicant's case that the Commissioner who issued the order of transfer bears any ill-will or the transfer is ordered due to any extraneous consideration, etc. As could be seen from the pleadings, the applicant who is a Staff Car Driver attached to a particular office has been shifted from Nasik to Aurangabad in view of the shifting of the office itself. It is purely a transfer in administrative exigencies and in public interest. Therefore, this is not a case where the order of transfer suffers from any malafide.

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5. The only ground which was pressed by the Learned Counsel for the applicant is the ground of discrimination. He argued that most of the officials of this particular office have not been transferred to Aurangabad and only the applicant has been transferred. The Learned Counsel for the respondents submitted that whenever other officials are available who are willing to go to Aurangabad, they have been considered and may be, some officials of this particular office have been retained at Nasik. He further submitted that as far as Staff Car Drivers are concerned, there is no other Staff Car Driver willing to go to Aurangabad and, therefore, the applicant who is attached to Staff Car of this particular office has been transferred in view of the shifting of the office.

The applicant is only a Staff Car Driver attached to this office. Therefore, the applicant cannot compare himself with a Head Clerk, L.D.C. or a U.D.C. who have not been transferred but some other officials of other offices have been transferred to Aurangabad. Therefore, it is not a case of discrimination at all. If there were two Staff Car Drivers attached to this particular office and one is transferred and the other is not transferred, then there may be a question of discrimination. But here, the applicant is the only Staff Car Driver and he is transferred alongwith the post because of the shifting of the office. Therefore, in the facts and circumstances of the case, I do not find that any case of discrimination is made out.

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6. It may be that the applicant has some personal difficulties which he has mentioned in the ~~pleadings~~ rejoinder. It is open to the applicant to make a representation to the Competent Authority or Higher Authorities through proper channel and it is for the administration to decide and pass appropriate orders according to law. But that is not a matter which calls for interference by this Tribunal on the ground of personal difficulties.

7. In the result, the application is rejected at the admission stage. The status-quo order dated 08.10.1998 is hereby vacated. However, on the request of the applicant's counsel, on humanitarian grounds, the respondents are directed not to relieve the applicant from the present post at Nasik till 31.05.1999. No order as to costs.

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.