

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

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6/ 6A 244/95

Date of Decision: 21-7-95.

K.P. Joshi s/o Late Shri D.P. Joshi, r/o Village Thoi, Tehsil Shrimadhapur, District Sikar.

...APPLICANT.

VERSUS

1. Union of India through its Secretary, Ministry of Finance, Department of Revenue, Vitti Bhawan, New Delhi.
2. Chief Commissioner of Income Tax, Rajasthan, Jaipur.
3. Shri D.K. Roy, Chief Commissioner of Income Tax, Rajasthan, Jaipur.
4. Commissioner, Income Tax, Jaipur.
5. Shri S.K. Meena, ITO, Ward-1, Sikar.

...RESPONDENTS.

CORAM:

HON'BLE MR. GOPAL KRISHNA, VICE CHAIRMAN

For the Applicant ... SHRI MAHENDRA SHAH

For Respondents No.1 to 4 ... SHRI H.K. JAIN

For Respondents No.5 ... SHRI SHYAM ARYA

O R D E R

PER HON'BLE MR. GOPAL KRISHNA, VICE CHAIRMAN

Applicant K.P. Joshi, in this application u/s 19 of the Administrative Tribunals Act, 1985, has called into question the correctness of the impugned order dated 8.6.95, by which the transfers and postings in respect of the applicant and respondent No.5 vide order dated 23.5.95 were stayed till further orders.

2. The facts giving rise to this application may be briefly stated as follows. The applicant is an Income Tax Officer and during his posting as such at Jaipur his services were placed at the disposal of the Commissioner of Income Tax, Jaipur, vide order at Annexure A-3A dated 23.5.95. By order dated 31.5.95, at Annexure A-4, he was transferred as ITO, Ward-1, Sikar, vice respondent No.5. The applicant intended to join at Sikar by 10th of June but on 8.6.95 the officiating Chief Commissioner of Income Tax passed the impugned order staying the order dated 23.5.95. This order is challenged as being non-speaking, illegal and arbitrary. It has also been stated that the impugned order has been issued in contravention of the transfer

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guidelines and it was passed in colourable exercise of powers. It is also stated that the respondent No.3 being merely an officiating Chief Commissioner of Income Tax was not competent to stay the operation of the order dated 23.5.95, which was passed by a regular Chief Commissioner of Income Tax. The contention of the applicant is that the impugned order, as a matter of fact, has indirectly affected the order dated 31.5.95, by which the applicant was transferred to Sikar. The respondents, it is alleged by the applicant, did not disclose any valid or reasonable ground for staying the order passed on 23.5.95. The applicant claims that he was transferred to Sikar keeping in view his family problems as he had desired his posting at Sikar, which is his hometown, at the fag end of his service career. The applicant is due to retire on 31.3.96. He has not been relieved from Jaipur intentionally by the respondents.

3. The respondents have contested this application. It is stated by them that the applicant has concealed material facts regarding the guidelines for transfers and postings. As per Item No.11 of the guidelines, an officer may be posted to his hometown/State at his own request provided he has not been so posted at any time during the last 10 years. It is also alleged that the distance of the village, to which the applicant belongs, from Sikar is 90 kms., whereas the distance of that village from Jaipur is only 95 kms. However, the applicant has concealed this fact also. It is also stated that the order dated 23.5.95 has been stayed by the Chief Commissioner of Income Tax vide order dated 8.6.95 and there is no illegality in the impugned order. The applicant having been posted at Sikar from 1991 to 1994, there was no justification to re-transfer him to Sikar. The Chief Commissioner of Income Tax, Smt. Asha Mehra, had been on leave from 29.5.95 and as per the order of the Central Board of Direct Taxes, the charge of the Chief Commissioner of Income Tax was assumed by respondent No.3 and the respondent No.3 was as such fully competent to exercise the powers of the Chief Commissioner of Income Tax. It is also stated that there is no arbitrariness in the impugned order and the power of varying or modifying an order of transfer may be exercised by the transferring authority in the interest of administration. The averment of the applicant that the impugned order was manipulated by respondent No.5, is denied by the respondents. It is categorically stated that in

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this case the respondent No.3, before issuing the impugned order had consulted Smt. Asha Mehra, the regular Chief Commissioner of Income Tax, also and he had put a note regarding discussions with her on the note-sheet of the file dated 8.6.95, before passing the impugned order

4. Heard the learned counsel for the parties. Records of the case have been carefully perused. The parties have agreed to this case being decided finally at the stage of admission.

5. The applicant is an Income Tax Officer (Internal Audit) Jaipur. His services were placed at the disposal of the Commissioner of Income Tax, Jaipur, vide order dated 23.5.95 at Annexure A-3A, which was passed by Smt. Asha Mehra, Chief Commissioner of Income Tax, Rajasthan, Jaipur. Thereafter, the Commissioner of Income Tax passed the transfer order Annexure A-4 dated 31.5.95 transferring the applicant to Sikar as an Income Tax Officer, Ward-1. The applicant had made a representation to the General Secretary, Rajasthan Income Tax Gazetted Officers Association, Jaipur, vide Annexure A-5 dated 16.2.95, requesting the association to use its good offices to get him posted at Sikar so that he may look after his ancestral property and his aged mother. Earlier also the applicant had made representations vide Annexure A-2A dated 4.5.94 and Annexure A-2 dated 7.3.94. He intended to join at Sikar on 10.6.95, as pointed out by the learned counsel for the applicant, but by order dated 8.6.95 (Annexure A-1) the transfers and postings in respect of the applicant and respondent No.5, ordered vide order dated 23.5.95, were stayed till further orders by Shri D.K. Roy, who was holding the charge of the post of Chief Commissioner of Income Tax, Rajasthan, Jaipur. It is this order which has been assailed by the applicant on the ground that the powers exercisable by the Chief Commissioner of Income Tax could not be exercised by Shri D.K. Roy, who was merely holding the charge of the post in the absence of Smt. Asha Mehra, the regular incumbent. Reliance has been placed by the learned counsel for the applicant on 1995 (1) (CAT) 533, Laxminarayan M. Sharma v. Union of India and others. This matter relates to the issue of charge-sheet. The matter in hand relates to transfer. In the circumstances, this decision of the Bombay Bench of the Tribunal (cited supra) is of no help to the applicant. Respondent No.3 was holding the charge of the post of Chief Commissioner of Income Tax in

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the absence of the regular incumbent and as such he was fully competent to pass the impugned order at Annexure A-1 dated 8.6.95. Even otherwise the impugned order was validly passed but in the present case consultation with Smt. Asha Mehra, the regular Chief Commissioner of Income Tax, Jaipur, was also made before issuing the same. In view of these facts, the contention of the learned counsel for the applicant that the impugned order was not passed by a competent authority is not sustainable.

6. It is also contended that no reasons have been shown in staying the order dated 23.5.95 vide the impugned order dated 8.6.95. It is also alleged that the applicant was intentionally retained at Jaipur and administrative decisions having been taken earlier by the regular Chief Commissioner of Income Tax should not have been changed without any just and reasonable cause. The learned counsel for the applicant has also relied on (1993) 2 SCC 299, U.P. Financial Corporation v. Gam Cap (India) Pvt. Ltd. and others, in which their lordships of the Hon'ble Supreme Court, at page 307, held as follows :-

"12. ...it is enough to reiterate for the purpose of this case that the power of the High Court while reviewing the administrative action is not that of an appellate court."

The applicant has further relied on 1979 (2) SLE 478, K.R. Raghavan, Commissioner of Income Tax, Delhi V and others v. Union of India and others, in support of his plea that administrative decisions are reviewable in special circumstances. The impugned order at Annexure A-1 dated 8.6.95 keeping in abeyance the transfers and postings of the applicant and respondent No.5 may amount to an administrative decision but in the circumstances of this case it cannot be said that the impugned order is unjust and unreasonable because the applicant had already been posted at Sikar at his own request vide order dated 25.4.91 and he had remained posted at Sikar for a period of a little less than three years. Attention was drawn by the learned counsel for the respondents to the transfer guidelines for Group-A and Group-B Officers in the Income tax Department Item No.11 of which reads as follows :-

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"11. Officers who have got less than 3 years of service

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to retire may be posted to their Home Town/State at their own request provided that they have not been so posted at any time during the last 10 years."

The applicant is due to retire on 31.3.96. Since the applicant had been posted at Sikar for a considerably long time from 1991 to some date in 1994, it cannot be said by any stretch of reasoning that the impugned order was not justified. The authorities reported in (1987) 5 ATC 918, Shanti Kumar Ghosh v. Union of India and others, and (1988) 8 ATC 677, Debabrata Ray v. Union of India and others, are not of any help to the applicant as the order in question may not cause any great hardship to him. The applicant had already been posted at Sikar for a long time. It is merely an order keeping in abeyance the transfer order dated 23.5.95 in so far as it relates to the applicant and respondent No.5.

7. The transfer order has also been assailed on the ground that it is mala fide and that it smacks of malice. It is also urged that the order staying the order of transfer of the applicant and respondent No.5 was passed with an oblique motive. Reliance has been placed by the applicant on (1986) 4 SCC 131, B. Varadha Rao v. State of Karnataka and others, 1986 (1) SLJ (CAT) 162, S.M. Rahman v. State of Assam and others, (1987) 4 ATC 521, Hira Lal Dhar Dubey v. Jokhu Singh and others. No mala fides have been attributed to respondent No.3. It cannot be said that the impugned order smacks of malice. It is merely a stay order and at this juncture it cannot be said that it has been issued with a view to accommodating other persons. If the applicant has any personal difficulties, he is free to make a representation in regard to his personal grievances to the concerned authorities. Such an order may be passed without affording an opportunity of hearing to the concerned person. Nobody can claim his posting at a place of his choice as of right as there are no vested rights in matters of transfer. In such circumstances, it is not possible to invoke the provisions contained in Articles 14 and 16 of the Constitution. Any such order, as the impugned one, can be judicially reviewed if the same is found to be mala fide or the same has been issued in violation of any statutory rules. In (1995) 29 ATC 553, State of MP and another v. S.S. Kourav and others, their lordships of the Hon'ble Supreme Court, at page

Cyber 554, observed as follows :-

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"The courts or tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundation. In this case we have seen that on the administrative grounds the transfer orders came to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place."

The impugned order does not appear to be arbitrary or unreasonable. It is neither mala fide nor it has been passed in violation of any statutory rules. It does not warrant any judicial interference.

8. In the result, this application is dismissed as being devoid of any substance. No order as to costs.

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(GOPAL KRISHNA)
VICE CHAIRMAN

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