

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Application No. 450 of 2006

Date of Decision 3.10.2006.

Vandana Sagar

-Applicant

Shri M.K. Verma

- Advocate for the applicant

V E R S U S

Union of India and others

- Respondents

Shri Rohit Arya alongwith
Shri S.A. Dharmadhikari

-Advocate for the respondents

Coram:

Hon'ble Dr.G.C.Srivastava, Vice Chairman(A)
Hon'ble Shri A.K.Gaur, Judicial Member

1. Whether Reporters of local papers may be allowed to see the order? - Yes[✓] / ~~No~~
2. To be referred to the Reporter or Not? Yes[✓] / ~~No~~
3. Whether it needs to be sent to the Principal Bench for circulation to other Benches of the Tribunal? Yes[✓] / No.


(A.K. Gaur)
Judicial Member

(V)

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH
JABALPUR

Original Application No. 450 of 2006

Jabalpur, this the 3rd day of October, 2006

Hon'ble Dr. G.C. Srivastava, Vice Chairman
Hon'ble Shri A.K. Gaur, Judicial Member

Vandana Sagar,
W/o. Shri D.C. Sagar,
Aged about 37 years,
R/o. 4E, Lakshya Regency,
Old Palasia, Indore.

.....

Applicant

(By Advocate – Shri M.K. Verma)

VERSUS

1. Union of India, through
Secretary, Department of
Revenue, New Delhi.
2. Chief Commissioner of Income Tax,
Bhopal.
3. Mr. A.K. Luthra, Chief Commissioner
of Income Tax, Bhopal.

.....

Respondents

**(By Advocate – Shri Rohit Arya, Sr. counsel along with Shri
Shri S.A. Dharmadhikari)**

ORDER

By A.K. Gaur, Judicial Member –

In this case the applicant has challenged the transfer order dated 28.6.2006 (annexure A-8) whereby she has been transferred from the jurisdiction of Chief Commissioner of Income tax (for short 'CCIT') Indore to CCIT, Bhopal with Jabalpur as the place of posting.

h

2. The applicant has challenged the order of transfer in the present Original Application mainly on two grounds; (i) transfer is an outcome of malafide of the respondent No. 2/3 and (ii) the order of transfer has been passed by an incompetent authority. It is submitted on behalf of the applicant that on 9.6.2006 an application for earned leave (annexure A-2) with effect from 12.6.2006 to 23.6.2006 (with permission to prefix 10th & 11th June, 2006) was submitted to the CIT-I, Indore by the applicant on the ground that her elder daughter, who has been undergoing physiotherapy treatment at Bombay Hospital, Indore for contracted ligament/muscle, was required to be taken to Mumbai for further check up and opinion, as the local doctors had given conflicting opinions about the necessity or otherwise of a surgical operation. In a state of quandary the applicant decided to consult the senior orthopedic surgeon at Bombay Hospital, Mumbai. Fortunately the appointment with Dr. Jhunjhunwala in Bombay Hospital, Mumbai materialized for 13.6.2006 and with Dr. Viraj Sanghi on 12.6.2006. Looking at the urgency, the applicant requested CIT-I, Indore that the leave may kindly be granted with permission to leave headquarters. The applicant immediately after receiving confirmation from Dr. Jhunjhunwala applied for leave with a covering letter addressed to the CIT-I, Indore (Annexure A-2). The applicant also met the CIT, Indore and narrated her problems. As per the applicant, the CIT-I Indore, considering the seriousness of the situation, recommended applicant's leave. Since the applicant had already submitted an application for leave, the CCIT, Indore, issued an officer's order on 13-6-2006 (annexure A-4) making an alternative arrangement for looking after the ^{charges} ~~work~~ relating to the ITAT, Indore, which was earlier required to be taken over by the applicant in terms of an order (annexure A-3) issued by the CCIT, Bhopal on 7.6.2006. The applicant proceeded for Mumbai and met Dr. ^{h h} Junjanwala on 13.6.2006 and 14.6.2006 and Dr. Viraj Sanghi on 14.6.2006.

✓

Documents relating to the medical check up of the applicant's daughter have been collectively filed and marked as Annexure A-5 and A-6.

3. The applicant has clearly and specifically stated in her OA that despite the fact of the applicant proceeding on leave for genuine reasons, the respondent No. 3 took it as defiance of his order dated 7.6.2006 (annexure A-3) and wrote a letter to the CCIT, Indore on 20.6.2006 (annexure A-7) on the issue of the applicant proceeding on leave. A bare perusal of paragraphs 3 to 6 of the said letter dated 20.6.2006 written by respondent No. 3 to Mr. A. Selvaraj, CCIT, Indore is enough to enable us to arrive at the conclusion that the respondent No. 3 was not very much happy with the applicant. Paragraphs 3 to 6 of the letter are reproduced hereunder:

"3. So far as the case of Smt. Vandana Sagar is concerned after going through the personal file of the officer it is noticed that the leave was applied on 9.6.2006 itself and the reasons given was "treatment of daughter". The CIT while recommending the leave gave the following recommendations "recommended as her daughter needs medical treatment at Mumbai". The said leave application was thereafter sent to the Chief Commissioner's office and it is noticed that this leave has not been sanctioned by the Chief Commissioner.

4. It is therefore, not clear as to how the CIT allowed Smt. Vandana Sagar to proceed on leave without the leave being approved. Moreover, it is also not clear as to how the CIT has mentioned on the application that the daughter of Mrs. Sagar needs medical treatment at Mumbai when the officer herself has not mentioned about medical treatment at Mumbai in the application.

5. In this regard, I would like to draw your attention to the letter dated 16.06.2006 of your Addl. CIT(Hqrs.) "In the last week daughter of Smt. Vandana Sagar was operated upon for some treatment at Indore and thereafter it is learnt that she has taken appointment from a doctor in Mumbai for further treatment. In view of the above position she applied for Earned Leave from 12.6.2006 to 23.06.2006 on 09.06.2006. This being so, arrangement at local level was made directing Shri N.K. Kolhe to relieve Shri S.J. Trivedi after taking the charge of

Sr.A.R., ITAT, in addition to his regular charge of Range 4, Indore, Shri N.K.Kolhe has taken charge on 15.06.2006." The leave application of Smt.Vandana Sagar does not specify whether her daughter was operated and it is not clear whether she proceed on leave in connection with the treatment of her daughter. It is rather surprising that the Addl. CIT(Hqrs.) as also the CIT mentioned that Smt.Vandana Sagar will have to go to Mumbai for the consultation. It is not understandable as to how Smt.Vandana Sagar could take her daughter to Mumbai for consultation if her daughter had undergone an operation as mentioned in the Addl. CIT(Hqrs.)'s letter.

6. The order giving additional charge was issued on 7.6.2006 and she proceeded on 9.6.2006 afternoon and CCIT, Indore left for a meeting on the morning of 9.6.2006. In case, it was so urgent the officer concerned would have met the CCIT and appraised him of the position and in any case my office should have been informed of this difficulty. In this regard, I had in my letter dated 14.6.2006 to Shri Ajit Kumar had mentioned that Shri K.K. Singh and Smt. Sunita Singh were on leave and Shri Hareshwar Sharma was holding additional charge of ADDl. CIT (Hqrs) whereby, leaving only Smt. Sagar, Shri N.K. Kohle and Shri Vivek Kumar available for holding additional charges. I therefore, request you to kindly look into the matter as to how Smt. Vandana Sagar was allowed to proceed on leave leaving all the work of ITAT in total disarray. She has shown utter disregard to the direction of the senior officers. This is an act of insubordination and willful defiance of orders. Similarly, the CIT should have also taken due precaution rather than just sending the application for leave only to ensure that Smt. Vandana Sagar does not take over the charge of ITAT and not showing any concern, of the working of the ITAT office, especially when CIT, DR was also under orders of transfer."

4. The applicant has stated in her OA that she personally visited respondent No. 3 along with her husband and explained the situation of her daughter to him but the respondent No. 3 showed his vindictive attitude towards the applicant. In paragraph 5.17 of the Original Application the applicant has stated that in her department intra-region transfers are done by the placement committee comprising CCIT, Bhopal (respondent No. 3), CCIT, Indore, CCIT, Raipur and DG (Inv.), Bhopal. The respondent No. 3 is head of the committee and

✓

was holding charge of Raipur and the placement committee held its meeting on 23.6.2006. The applicant has alleged that the respondent No. 3 has misused his official position by transferring the applicant from Indore to Jabalpur vide order dated 28.6.2006 and 29.6.2006 (Annexure A-8). She was ordered to be relieved by 3.7.2006. Immediately after coming to know of the transfer order dated 28.6.2006 the applicant submitted a representation on 3.7.2006, wherein she specifically stated ^{that} the quality of the medical treatment required for her daughter was not available at Jabalpur. The copy of the representation dated 3.7.2006 has been filed and marked as Annexure A-9. In this representation the applicant drew attention of respondent No. 3 on certain points and prayed that in these circumstances, moving from Indore and change of school of her daughter at this age can be detrimental to her physique and mental health as well as ^{to} ~~on~~ her over all growth. Thus in consonance of the guidelines laid down by the Board in the transfer policy her posting to Indore on medical and compassionate ground may kindly be sympathetically considered.

5. The applicant also stated that she has not yet completed 5 years at Indore and as per the transfer policy of the Board, a stay of more than 9 months at a station (to be completed on 31st December, of the previous year) will be treated as a complete year. As such on 1.4.2006 the applicant has completed only 4 years. Lastly it was prayed that the applicant may kindly be allowed to continue at Indore for one more year.

6. By order dated 11.7.2006 the operation of the transfer order dated 28.6.2006 was stayed by the Tribunal after hearing the parties' counsel and considering the prima facie case of the applicant.

6

7. The case was again taken up on 26th July, 2006 and on this date the case was heard and following orders were passed:

“Shri M.K. Verma counsel for the applicant.

Shri Rohit Arya Sr. Adv. Alongwith Shri S.A. Dharmadhikari, counsel for the respondents.

Reply has been filed by the respondents with a copy to the applicant.

MA No. 738/06 has been filed by the respondents for vacating the stay order dated 11.7.2006. The applicant has also filed MA No. 746/06 under rule 24 of AT (Procedures) Rules and 747/06 for summoning of records.

The learned counsel for the applicant prays and is allowed one week's time for filing rejoinder. The respondents' counsel has stated that if need be, they will file reply to the MAs filed by the applicant within this period.

We have heard the counsel for the parties about implementation of stay order dated 11.7.2006. It appears that the applicant has been removed from the post of Additional Commissioner (Range-III) which she was holding before passing of the stay order. Statement has been made by the learned counsel for the applicant that another officer Shri L.K. Aggarwal was made to join as Additional Commissioner (Range-III) immediately after information regarding the stay order was given to the respondents. This appears to be a case of willful disobedience of this Tribunal's orders and we take it very seriously.

The learned counsel for the respondents Shri Rohit Arya Sr. Adv. and Shri S.A. Dharmadhikari are directed to produce the records relating to assumption of charge of Shri L.K. Aggrawal, as Additional Commissioner (Range-III) and relieving/alternative posting of the applicant. Meanwhile, we direct the respondents that in compliance of the stay order granted earlier on 11.7.2006 the applicant shall be given back immediately the charge of the post of Additional Commissioner (Range-III) that she was holding before passing of the stay order. The respondents shall ensure immediate compliance of this order and file a compliance report by the next date.

List the matter for final hearing on 11.8.2006.
c.c. to the parties.”

11

8. On 11.8.2006 the aforesaid case was again heard and on this date the learned counsel for the respondents was directed to produce the relevant records including the minutes of meeting of the placement committee. On 28.8.2006, the record and the minutes of meeting of placement committee were placed before this Tribunal and it was also brought to the notice of this Tribunal that the applicant has been given back the charge of post of Additional Commissioner Range-3, as directed by the Tribunal vide its order dated 26.7.2006.

9. An application (MA No.746/06) under Rule 24 of the Administrative Tribunal Procedure Rules, 1987 was also filed by the applicant on 26.7.2006 for taking suitable action against respondent No. 2/3 and the sole prayer made in this application is that this Tribunal ought to have initiated suo moto contempt proceedings against the respondent No. 3 for willful disobedience of the order passed by this Tribunal and further to ensure the compliance of the order passed by this Tribunal in its true letter and spirit and restore the charge of applicant as she was holding as on 28.6.2006. Since the learned counsel for the respondents confirmed on 28.8.2006 that the interim order of this Tribunal has been fully complied with by the respondents, no further directions were considered necessary on MA 746/2006.

10. On 28th August, 2006 an application for taking documents on record was also filed by the applicant. The documents filed by the applicant are being dealt herewith in seriatim:

(i) On 27th June, 2006, the CCCI, Indore wrote a letter to Shri A.K. Luthra, CCIT (CCA), Bhopal (respondent no.2/3) recommending the request of the applicant for retention at Indore during the year. The CCIT Indore has clearly observed in his letter as follows:

"In view of this, I would recommend Smt. Sagar's request for retention at Indore for this year. I understand that she is a strict and conscientious officer and the Department needs to keep her child's welfare in mind while considering her transfer."(emphasis supplied)

H

(ii) On 12th July, 2006 the respondent No. 3 wrote to the CCIT, Indore.

The relevant portions of the letter are being reproduced hereunder:

“3. Now the CAT has given exparte stay against her transfer, till the decision of CAT she has now to be kept at Indore but till that time she will have to be kept without any specific post, as at this moment no post is available to be transferred to Indore.”
(emphasis supplied)

(iii) On 12th July, 2006, the CIT, Indore, wrote to respondent No. 3 that “in view of the stay order, Smt. Sagar has to continue at Indore till a decision by the Central Administrative Tribunal on her application. Though Shri L.K. Agrawal has assumed charge of Addl. CIT, Range-3, Indore, it is a matter for serious consideration whether to put Smt. Sagar without any specific post would not amount to defiance of the CAT’s order”.

(iv) On 14th July, 2006 the CCIT, Indore again wrote to the respondent No. 3. The relevant portion is extracted below:

“It is felt that Smt. Sagar cannot continue at Indore without a post. This problem can be solved by posting her as Addl. CIT (OSD) at Indore against one of the sanctioned posts remaining vacant elsewhere. You may kindly consider this.

(v) On 14th July, 2006 the respondent No. 3 wrote a letter to the CCIT, Indore. In this letter the respondent No. 3 has mentioned that as follows:

“Physiotherapy for Contracted Hip Muscle could be done at any good physiotherapy centre and at any good physiotherapy may be at Indore, Bhopal, Jabalpur, Gwalior, Rewa.”

11. Stay vacation application and counter reply were filed on behalf of the respondents. The respondents have stated in their reply that the applicant has challenged the order of transfer alleging malafides against the respondent No. 3. The allegations made against ^{respondent no. 3} ~~him~~ are unfounded and vague without any specific material. The respondents have acted without there being any personal bias or oblique motive and strictly in accordance with the object, requirements and conditions

of a valid exercise of administrative power. The respondents in paragraph 8 of the reply have clearly stated that the medical ground raised by the applicant pertaining to her daughter was got examined by a Doctor of the Government approved hospital who has opined that "Physiotherapy for contracted hip muscle could be done at any good physiotherapy centre and by any physiotherapist at Indore, Bhopal, Jabalpur, Gwalior, Rewa" (Annexure R-1).

12. It is urged on behalf of the respondents that the malafides cannot be established on the basis of insinuation and making suggestion as laid down by the Hon'ble Supreme Court in the case of Rajendra Roy Vs. Union of India & Ors. – AIR 1993 SC 1236. According to the respondents, the transfer order has been passed purely on administrative exigency and in public interest. The impugned order is neither punitive nor is an outcome of malafides but has been passed in public interest without there being any oblique motive. The transfer order is an outcome of the meeting of the placement committee. The transfer of 22 officers by the impugned order has been done as per the decision of the placement committee and not by the respondent No. 2/3 on his own. It is asserted on behalf of the respondents that it was only the action of the CIT which was being commented upon. It was wrong on the part of the applicant to presume that the respondent No. 2/3 was aware of the problems of the applicant. It is only when the Commissioner of Income Tax (DR) brought to the notice of the respondent No. 2 vide letter dated 14.6.2006 that applicant did not take over the charge of Senior DR and Mr. Vivek Kumar had taken over the charge of Senior DR, ITAT only on 13.6.2006 afternoon that the respondent No. 2 became aware of the medical problems of the applicant's daughter because neither the applicant nor Commissioner of Income Tax-I, Indore brought to

the notice of the respondent No. 2 as to why the order dated 7.2.2006 could not be implemented.

13. In paragraph 21, the respondents have clearly admitted that the applicant met respondent No. 3 only to explain as to why she proceeded on leave. Such meeting with respondent No. 3 was without any appointment and it took place earlier to the issue of transfer orders. The allegation regarding vindictive attitude towards the applicant is nothing but a ruse to avoid posting out of Indore. The applicant has mis-represented the facts so as to create an impression that the respondents are very callous in their approach and are sitting tight over the matter without deciding the representation.

14. In paragraph 25 of the reply filed on behalf of the respondent No. 3 it is stated that it was only the action of the Commissioner of Income Tax which was being commented upon. Further it was wrong on the part of the applicant to presume that the respondent No. 2/3 was aware of the problems of the applicant. It is only when the CIT (DR) brought to the notice of the respondent No. 2/3 vide letter dated 14.6.2006 (annexure R-3) that the applicant did not take over the charge of Sr. DR and Shri Vivek Kumar had taken over the charge of ITAT only on 13.6.2006 afternoon that the respondent No. 3 wrote to the CIT Indore on 14.6.2006 (annexure R-4) that "the CIT (DR) has informed that Smt. Vandana Sagar, Addl. CIT, instead of relieving the transferred officer proceeded on leave w.e.f. 12.6.2006. This is highly irregular and is an act of insubordination. I will like to know, when she applied for leave, on what grounds, the duration of leave and if the leave was sanctioned. Further the act of recommending leave by the Controlling officer not only encourages the insubordination but also sets a bad precedence for juniors. I am sure you would agree with me. Even otherwise after issue of specific order by this office, proceeding of leave by Smt. Vandana Sagar is an act of gross in-discipline and

unbecoming of Govt. Servant. Such in-discipline needs to be checked right away”.

15. By filing rejoinder the applicant has denied the allegations contained in the reply filed on behalf of the respondents Nos. 1, 2 and 3. It is clearly and specifically mentioned in this rejoinder reply that she has been transferred by respondent No. 2/3 without following the procedure laid down by the CBDT with respect to transfers by local placement committee. It is also stated that the meeting by CCIT (CCA), Bhopal was held with the members of the local placement committee separately and not with all members together at the same point of time. Further, the impugned order dated 28.6.2006 refers that the order is consequent to meeting of the local placement committee, whereas as per the guidelines such order should have been passed as per the recommendation of the local placement committee. It is also submitted that the applicant's case was specifically recommended by the CCIT, Indore mentioning that the applicant be allowed to continue at Indore because of the ailment suffered by her daughter. The respondent No. 2/3 was so prejudiced against the applicant that he has ignored the recommendations of the CCIT, Indore and has dictated his terms while transferring the applicant out of Indore and has given a go bye to the categorical instructions issued by the Central Board of Direct Taxes, wherein the Ministry of Finance, Department of Revenue has specifically directed Chief Commissioners to follow the mandate of local placement committee in conformity with the transfer guidelines. In the rejoinder the applicant has clearly mentioned that in case of non-concurrence of all members of the local placement committee, the matter should have been referred to the Board. The Board's policy as contained in clause-9 para 5.3 clearly states that “the minimum and maximum tenures on a post shall ordinarily be 2 and 3 years respectively, whereas the applicant had not even

completed one full year on the post of Joint/Additional CIT-Range III, having joined there only on 27.7.2005. It is also submitted on behalf of the applicant that the respondent No. 2/3 has passed the order of transfer in colourable exercise of power and with malafide intention. In para 7 of the rejoinder, the applicant has clearly stated that the malice was reflected in the response of the respondent No. 3 during the personal hearing with him on 20.6.2006. It has also been submitted on behalf of the applicant that the correspondence between the CCIT, Bhopal and CCIT, Indore with respect to the applicant, subsequent to the order of the dated 11.7.2006 clearly establishes the fact that how biased was respondent No. 3 against the applicant. The respondent No. 2/3 has never been the reporting officer or reviewing officer of the applicant. The respondents have not substantiated the allegations from any records and ~~the~~ no records were placed for consideration before the placement committee. In reply to paragraph 18 of the reply the applicant has clearly stated that on receipt of order number 35 of 2006-07, dated 7.6.2006, the applicant immediately went to the office of CIT (DR) to apprise him of the situation and the fact that she was in the process of seeking appointment in Mumbai. The applicant could not contact him on 7.6.2006, as he was not available in the office. She tried contacting him on 8th and 9th also but he was not available on that dates also. Finally, by 9th afternoon, it was learnt that the appointment in Bombay Hospital, Mumbai has been finalized for 12th and 13th June respectively with Dr. Viraj Singh, Pediatric Neurologist and Dr. H.R. Jhunjhunwala, Orthopedic Surgeon. Under such urgency the applicant had to apply for leave. The leave was duly recommended by the CIT-I, Indore. Later N.K. Kolhe, Joint CIT Range-4 was asked to take charge in ITAT from Shri Trivedi, Sr. AR ITAT. It is factually incorrect to say that the work of ITAT was in total disarray as on not even a single day the work of the ITAT was unattended in the period after 9.6.2006.

M

111

16. We have heard Shri M.K. Verma, learned counsel for the applicant and Shri Rohit Arya, Senior Counsel along with Shri S.A. Dharmadhikari for the respondents and have gone through the records as well as the minutes of the local placement committee which were produced as per the direction of this Tribunal. The photo copy of the minutes of the local placement committee was placed before us in a sealed cover. After perusing the same we were really astonished to see that the CIT, Indore Mr. A Selvaraj who was one of the three members of the committee has not appended his signature to the minutes of the meeting of the local placement committee. The local placement committee comprised Shri A.K. Luthra, CCIT (CCA), Bhopal, Chairman of the committee, Shri A. Selvaraj, CCIT, Indore, member of the committee and Shri M.K. Moghe, DGIT (Inv.), Bhopal also member of the committee. This fact alone raises serious doubts in our mind that the transfer order has not been passed in administrative exigency and in accordance with the provisions of the transfer policy. The relevant extract of the transfer policy of the Central Board of Direct Taxes are being reproduced hereunder:

1. Introduction

The Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, is the Cadre Controlling Authority for IRS (IT) officers. In order to increase transparency, and also to provide better opportunities to officers for excellence and a more planned approach to cadre planning, a proper placement/transfer policy is a vital ingredient. This placement policy has been formulated to address the needs of the Department as well as the Human Resource Development aspects and career management of officers as a whole.

2.

3. The Placement Committee

All transfers/postings of all Group 'A' officers will be done or on the recommendations of, as the case may be, a Placement Committee consisting of the following:

✓

- [a] Chairman of the Board;
- [b] Member (Personnel and Vigilance);
- [c] One Member of the Board to be nominated, in rotation (every six months), by the Chairman of the Board; and
- [d] Joint Secretary (Admn.) posted in the Board as its Member Secretary.

3.1

3.2 The minutes of the meeting of the Placement Committee should be drawn up and approved by all Members within 24 hours of the meeting (not by circulation). These must be approved by the competent authority within one month.

4. Posting policy for officers at different levels

In case of Commissioners and Chief Commissioners/Directors General, the Placement Committee will recommend both the station of posting and the specific charge.

4.1 For officers below the rank of Commissioner, the Placement Committee will place the officers at the disposal of the cadre controlling Chief Commissioner for further posting. In each region under a Cadre Controlling Chief Commissioner of Income Tax, there shall be a Local Placement Committee consisting of:-

- [a] Cadre Controlling Chief Commissioner of Income Tax
- [b] DG (Investigation) concerned
- [c] Two other senior most Chief Commissioners whose jurisdiction falls within the region of Cadre Controlling CCIT

They will consider the intra-region transfers of officers. All postings by the Local Placement Committee will be in accordance with the provisions of transfer/placement policy. Deviations, if any, will need prior permission of the Board."
(emphasis supplied)

17. It was submitted by the learned counsel for the applicant that, as per the aforesaid guidelines, the minutes of the meeting of the local placement committee should be drawn up within 24 hours of the meeting and should be approved by all the members (not by circulation). A perusal of the minutes of the meeting produced before us reveals that the meeting of the local placement committee was held

✓

in two stages – firstly between CCIT, Bhopal and CCIT, Indore on 23.6.2006 and then between CCIT, Bhopal and DGIT (Inv) on 26.6.2006. It is not known as to when the minutes were drawn as the signature of CCIT, Bhopal and DGIT (Inv) are not dated. No reason has been advanced by the respondents for the minutes not having the signature of CCIT Indore. We have also not been apprized of the reasons of holding the meeting in two stages on two different dates. These deficiencies and lapses in respect of the meeting of the local placement committee show clearly that the aforesaid guidelines have not at all been followed by the respondent No. 2/3 while passing the transfer order against the applicant and the same has been passed wholly in utter disregard of the guidelines issued by the Central Board of Direct Taxes. It is, well settled position that if statutory authority exercises his powers for purposes not authorized by the law, the action of the statutory authority is ultra vires and without jurisdiction. It is also settled principle of law that exercise of power by a statutory authority for a purpose other than that which the rules/law intended, would amount to malafide exercise of power in the eye of law.

18. We have also carefully seen the record. A perusal of the letter dated 20.6.2006 (annexure A-7) written by the respondent No. 3 to Shri A. Selvaraj, CCCIT, Indore is sufficient to lead to the conclusion that the respondent No. 3 had a prejudice against the applicant and had adopted an utterly unreasonable attitude towards her. For example, respondent no.3 has mentioned in this letter that "it is also not clear as to how the CIT has mentioned on the application that the daughter of Mrs. Sagar need medical treatment at Mumbai when the officer herself has not mentioned about medical treatment at Mumbai in the application", but we find that in the covering letter through which the applicant submitted her leave application (annexure A-2) she has clearly mentioned about her daughter's medical case and

✓

- [a] Chairman of the Board;
- [b] Member (Personnel and Vigilance);
- [c] One Member of the Board to be nominated, in rotation (every six months), by the Chairman of the Board; and
- [d] Joint Secretary (Admn.) posted in the Board as its Member Secretary.

3.1

3.2 The minutes of the meeting of the Placement Committee should be drawn up and approved by all Members within 24 hours of the meeting (not by circulation). These must be approved by the competent authority within one month.

4. Posting policy for officers at different levels

In case of Commissioners and Chief Commissioners/Directors General, the Placement Committee will recommend both the station of posting and the specific charge.

4.1 For officers below the rank of Commissioner, the Placement Committee will place the officers at the disposal of the cadre controlling Chief Commissioner for further posting. In each region under a Cadre Controlling Chief Commissioner of Income Tax, there shall be a Local Placement Committee consisting of:-

- [a] Cadre Controlling Chief Commissioner of Income Tax
- [b] DG (Investigation) concerned
- [c] Two other senior most Chief Commissioners whose jurisdiction falls within the region of Cadre Controlling CCIT

They will consider the intra-region transfers of officers. All postings by the Local Placement Committee will be in accordance with the provisions of transfer/placement policy. Deviations, if any, will need prior permission of the Board."
(emphasis supplied)

17. It was submitted by the learned counsel for the applicant that, as per the aforesaid guidelines, the minutes of the meeting of the local placement committee should be drawn up within 24 hours of the meeting and should be approved by all the members (not by circulation). A perusal of the minutes of the meeting produced before us reveals that the meeting of the local placement committee was held

✓

appointment with doctors at Mumbai. Further, respondent no.3 comments that the applicant "has shown utter disregard to the direction of the senior officers", and has left "all the work of ITAT in total disarray", although CCIT Indore had already made alternative arrangements for ITAT. These comments show that the respondent no.3 has magnified beyond proportion the consequences of the applicant proceeding on leave with the tacit approval of her local seniors for a purpose whose genuineness cannot be doubted. These are a few instances, which show that the respondent no.3 had developed a prejudice against the applicant for reasons which are not at all justifiable.

19. As per the minutes of the local placement committee, the transfer of the applicant was ordered on the basis of stay. The contention of the applicant is that as per the "Transfer policy for officers of the Indian Revenue Service, 2005" approved^{ed} by the Central Board of Direct Taxes, "the minimum and maximum tenures on a post shall ordinarily be 2 and 3 years respectively" and since the applicant was posted as Addl.CIT - range 3 on 31st August, 2005 she is entitled to remain in her present post up to 2007. The applicant has also contended that she has not yet completed 5 years at Indore, as she was posted there on 8.8.2001 and the stay is counted in terms of completed calendar years (a stay of more than 9 months in a calendar year being treated as a complete year). The learned counsel for the applicant also drew our attention to the letter dated 27.6.2006 written by CCIT, Indore to CCIT Bhopal recommending the applicant's retention at Indore for "this year" on the ground of her daughter's "health and development". It is ^{also} significant that CCIT, Indore did not sign the document, that purports to be the minutes of the meeting of the local placement committee held on 23 and 26 June, 2006. These contentions of the applicant have not been denied by the respondents except that respondent no.3 got the medical details of the applicant's daughter

✓

examined by a doctor of a government hospital, who has opined that treatment recommended for her daughter ("physiotherapy for contracted hip muscle") is possible at Jabalpur. Be it so, we are of the considered opinion that the concern of a mother in respect of the disability of a child, especially a young 11 years old daughter, cannot be taken lightly. As per the medical documents available on record, the applicant's daughter is mildly spastic in lower limbs and on account of that she stands with flexed knees. To have a spastic child is certainly a cause of serious concern to a mother and it would amount to callousness if we thwart her attempt to get what she considers to be the best treatment for her child at a particular place of posting, especially if under normal rules, she can be allowed to stay there as per her entitlement. Further, it is a well known fact that amongst all the cities of Madhya Pradesh and Chhattisgarh, Indore has the best medical facilities. We are, therefore, of the view that the action of the respondent no.3 by which in violation of the existing guidelines, he proposes to transfer the applicant from Indore to Jabalpur on the flimsy grounds that physiotherapy treatment is also available at Jabalpur and that "she has never been posted to a non-assessment and non-investigation post" (vide para 6 of the counter reply) smacks of prejudice and bias. This conclusion is further buttressed from the fact that the applicant through her representation dated 3.7.2006 (annexure A-8) submitted through proper channel to respondent no.3 made a very modest and reasonable request that she may be allowed to continue in Indore for one more year. Respondent no.3 has not acted on this request in spite of the fact that even before the issue of the transfer order the applicant's controlling officer i.e. CCIT, Indore had recommended her retention at Indore (vide letter dated 27.6.2006 addressed to respondent no.3).

20. After going through the minutes of the local placement committee and the guidelines issued by the Central Board of Direct Taxes, 2005 regarding transfer policy for officers of the Indian

Revenue Service as also other documents on record, we are fully satisfied that the impugned transfer order so far as it concerns the applicant has been passed solely at the behest of the respondent No. 2/3 that too clearly in the teeth of the guidelines issued by Central Board of Direct Taxes, 2005 and because of prejudice and bias against the applicant.

21. The learned counsel for the applicant has relied upon the judgment of the Hon'ble Supreme Court in 2005 SCC (L&S) 55 – State of Uttar Pradesh & Ors. Vs. Gobardhan Lal in order to buttress the contention that the transfer is prerogative of the authorities concerned and the court should not normally interfere therewith, except when (i) the transfer order is shown to be vitiated by malafides or (ii) in violation of any statutory provision or (iii) having been passed by an authority not competent to pass such an order. He has further relied upon the judgment of the Hon'ble Supreme Court in 1997 SCC (L&S) 1437 – Arvind Dattatraya Dhande Vs. State of Maharashtra & Ors., wherein after going through the facts of the case the Hon'ble Supreme Court has clearly observed that "in view of the unimpeachable and eloquent testimony of the performance of the duties, it will be obvious that the transfer is not in public interest but is a case of victimization of an honest officer at the behest of the aggrieved complainants carrying on the business in liquor and toddy. Under these circumstances, as stated earlier, the transfer of the appellant is nothing but malafide exercise of the power to demoralize honest officers who would efficiently discharge the duties of public office". Further he has also relied upon 2006 (3) SLR 763 – Dilawar Singh Vs. State of Haryana & Ors., wherein the Hon'ble Supreme Court has held that that "there appears to be some hidden hand at the back of transfer of the petitioner which impel us to observe that the order of transfer is outrageous which defies all logical and moral

w

standards". Further in B. Varadha Rao Vs. State of Karnataka & Ors. – AIR 1986 SC 1955, the Hon'ble Supreme Court has held that normally the court is reluctant to interfere in the matter of transfer but if it appears that the order of transfer is lacking any bonafides, for the sake of justice and fair play court grants relief. In 2004 SCC (L&S) 523 – Sarvesh Kumar Awasthi Vs. U.P. Jal Nigam & Ors., the Hon'ble Supreme Court in unequivocal terms had held that "the power of transferring an officer cannot be wielded arbitrarily, malafides or an exercise against efficient and independent officer or at the instance of politicians whose work is not done by the officer concerned. For the better administration the officers concerned must have freedom from fear of being harassed by repeated transfers or transfers ordered at the instance of someone who has nothing to do with the business of administration".

22. It has been argued on behalf of the learned counsel for the applicant that malice in law is different from malice in fact and in support of his argument he has cited number of decisions:

i) The State of Punjab Vs. Ramji Lal & Ors. – AIR 1971 SC 1228, "To establish malafide, it is not necessary to name in petition particular officer or officers responsible for that official act".

ii) Punjab State Electricity Board Ltd. Vs. Zora Singh & Ors. – 2005 (6) SCC 776, "Even if an order is found to be not vitiated by reason of malice on fact but still can be held to be invalid if the same has been passed for unauthorized purposes, as it would amount to malice in law".

iii) State of A.P. & Ors. Vs. Goverdhanlal Pitti – 2003 (4) SCC 739 "The legal meaning of malice is "ill-will or spite towards a party and any indirect or improper motive is taking an action". This is sometimes described as "malice in fact". "Legal malice" or "malice in law" means "something done without lawful excuse". In other words, "it is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of others".

“Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. If at all it is malice in legal sense it can be described as an act which is taken with an oblique or indirect object. The legal malice, therefore, on the part of the State as attributed to it should be understood to mean that the action of the State is not taken bonafide for the purpose of the Land Acquisition Act and it has been taken only to frustrate the favourable decisions obtained by the owner of the property against the State in the eviction and writ proceedings”.

iv) Additional District Magistrate, Jabalpur Vs. Shivakant Shukla – AIR 1976 SC 1207, “A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far as the state of his mind is concerned he, acts ignorantly, and in that sense innocently. Malice in fact is quite a different thing; it means an actual malicious intention on the part of the person who has done the wrongful act, and it may be, in proceedings based on wrongs independent of contract, a very material ingredient in the question of whether a valid cause of action can be stated”.

v) Smt. S.R. Vankataraman Vs. Union of India & Ors. – 1979 (1) SLR 130, “Thus malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse or for want of reasonable or probable cause. If a discretionary power has been exercised for an unauthorized purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith. It is equally true that there will be an error of fact when a public body is promoted by a mistaken belief in the existence of a non-existing fact or circumstance. This is so clearly unreasonable that what is done under such a mistaken belief might almost be said to have been done in bad faith; and in actual experience, and as things so, these may well be said to run into one another. The influence of extraneous matters will be undoubted where the authority making the order has admitted their influence. It will, therefore, be a gross abuse of legal power to punish a person or destroy her service career in a matter not warranted by law by putting a rule which makes a useful provision for the premature retirement of government servants only in the “public interest”, to a purpose wholly unwarranted by it, to

w

arrive at quite a contradictory result. An administrative order which is based on reasons of fact which do not exist must therefore, be held to be infected with an abuse of power."

vi) Suraj Pal Sahu Vs. State of Maharashtra & Ors. – 1986 (2) Scale 484 "An order is malafide when there is malice in law although there is no malice in fact. The malice in law is to be inferred when an order is made contrary to the objects and purposes of the act".

vii) The Collector (Distt. Magistrate), Allahabad & Anr. Vs. Raja Ram Jaiswal – AIR 1985 SC 1622, "Where power is conferred to achieve a purpose the power must be exercised reasonably in good faith to effectuate the purpose. And in this context 'in good faith' means 'for legitimate reasons'. Where power is exercised for extraneous or irrelevant considerations or reasons, it unquestionably a colourable exercise or power or fraud on power and the exercise of power is vitiated".

23. The learned counsel for the respondents on the other hand has placed reliance on the following cases:

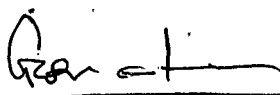
- i) 1993 (1) SCC 148 – Rajendra Roy Vs. Union of India
- ii) 1999 (6) SLR 77 – Mysore Paper Mills Limited
- iii) AIR 1993 SC 2486 – State of Punjab Vs. Joginder Singh Dhatt
- iv) (2004) 8 SCC 245 – Union of India Vs. Janardhan Debnath
- v) (2001) 8 SCC 574 – National Hydroelectric Vs. Shri Bhawan
- vi) (2004) 7 SCC 405 – State of Uttar Pradesh Vs. Siya Ram & another
- vii) AIR 1993 SC 2444 – Union of India Vs. S.L. Abbas

24. All the aforesaid cases cited by the learned counsel for the respondents are wholly distinguishable on facts and are not applicable to the present case. The present case is a glaring example of transfer on the ground of malafides. In the instant case the respondent No. 3

has not at all followed the guidelines issued by the Central Board of Direct Taxes and has acted on prejudices and bias. We observe that the respondent No. 2/3 has exercised his administrative powers with malafides. Further, the order of transfer has been passed solely at the behest of respondent No. 2/3 in the colourable exercise of power. The order of transfer ~~is~~ suffers from the malady of malafides on the grounds that despite there being a strong recommendation of the CCIT, Indore for retention of the applicant at Indore for one year only, the same was not acceded to by the respondent No. 3, even at such a crucial juncture, when the elder daughter of the applicant was undergoing serious ailment especially when the applicant was entitled to remain where she was as per the normal guidelines. The impugned order so far as it relates to the applicant is, therefore, not sustainable in the eyes of law.

25. In view of our aforesaid observations, the Original Application is allowed and the impugned transfer order dated 28.06.2006 (Annexure A-8) so far as it relates to the applicant is quashed and set aside. No order as to costs.


(A.K. Gaur)
Judicial Member


(Dr. G.C. Srivastava)
Vice Chairman

“SA”

पृष्ठांक सं ओ/न्या.....जयलपुर, दि.....

परिचालिका असेसिस्टेंट:-

- (1) सचिव, जयलपुर जयलपुर जयलपुर, जयलपुर
- (2) आलेखक श्री/श्रीमती/शु.....के कार्यालय
- (3) प्रत्यक्षी श्री/श्रीमती/शु.....के कार्यालय
- (4) मंडलपाल, रवे.प्र.जा., जयलपुर जयलपुर

सूचना एवं आवश्यक कार्रवाई हेतु
उप रजिस्ट्रार

M. S. Verma
Adv. JBR
Rohit Arora
S. A. Dharamdhar
Adv. JBR

Issued
on 3/10/06
10