

**Central Administrative Tribunal
Jabalpur Bench**

OA No.1042/05

Tuesday this the 14th day of March, 2006

C O R A M

Hon'ble Mr.G.Shanthappa, Judicial Member

Somesh Tiwari
S/o Shri Vinod Kumar Tiwari
R/o H.No.3, Type IV
Central Revenue Coloy
Bharat Nagar, Shahpura
Bhopal.

(Presently posted as Deputy Commissioner
of Central Excise, R/o Bhopal (M.P.)

Applicant

(By advocate: Shri M.K.Verma)

Versus

1. Union of India through
Secretary
Ministry of Revenue
Central Excise & Customs
North Block
New Delhi.

2. Chairman
Central Board of Excise & Customs
North Block
New Delhi.

3. Member (P&V)
Central Excise
Central Board of Excise & Customs
North Block
New Delhi.

Respondents.

(By advocate Shri S.A.Dharmadhikari)

O R D E R (oral)

By G.Shanthappa, Judicial Member



This application has been filed under Section 19 of the A.T. Act seeking the following reliefs:

- (i) Quash the punitive transfer order dated 22.8.2005 transferring the applicant from Bhopal to Tejpur in Shillong Zone in the interest of justice.
- (ii) Quash the order-dated 19.10.2005 in the interest of justice.
- (iii) Quash the order-dated 28.12.2005 in the interest of justice.
- (iv) Hold the action of punitive transfer on part of respondents as bad in the eyes of law.

2. During the pendency of the application, the applicant has amended the relief challenging the order-dated 28.12.05.

3. The brief facts of the case, according to the applicant, are that the applicant who is a Group 'A' officer is working as Deputy Commissioner of Central Excise. In the month of December 2004, the CBI raided the preventive branch of the Commissionerate and also the residential premises of two of the Superintendents related to the branch. The grievance of the applicant is that because of his honesty and integrity and being instrumental in issuance of show cause notices to the tax evaders for Rs.68 lakhs, he had been transferred from Bopal to Shillong vide impugned transfer order dated 22.8.2005. The grievance of the applicant is that he has been transferred without showing any reason; earlier the applicant had filed OA No.897/2005 and the direction of this Tribunal was not complied with; the transfer was made not in public interest but was made only on the ground of malice and on the basis of anonymous complaints; it was made without investigating into the complaints. The applicant has alleged that the impugned order has been issued during the middle of the year; that the respondents have not followed the guidelines and that he has not completed the tenure period as prescribed under the guidelines. The applicant has produced the impugned order and also the documents to show that frequently he has to go to Delhi for his medical treatment there. He has also produced the medical prescriptions. The applicant has submitted his representation-dated 29.8.2005 along with Proforma II-Transfer proforma in which he has opted for 4 places i.e. Bhopal, Indore, Jaipur and Chandigarh. The



applicant has also submitted his request on 29.8.05 (Annexure A5) requesting the Chairman, Central Board of Excise & Customs to retain him at Bhopal for at least one year. When the applicant could not get reply from the respondents, he had approached this Tribunal by filing OA No.897/2005. This Tribunal had directed the second respondent to pass a reasoned and considered order within 4 weeks. Thereafter the impugned order dated 19.10.2005 (A-7) has been passed in which the respondents have stated that a vigilance case is pending against the applicant and he belongs to Madhya Pradesh and on enquiry into complaints of working on caste biased ideology he was found to be over dependent upon a set of officers. These are the allegations on which the applicant is challenging the impugned order. Applicant had submitted his representation dated 25.10.2005 (A-11) requesting the Commissioner, Central Excise & Customs for supply of information and documents. The said representation is pending and no decision has been taken on it. Hence the impugned orders are illegal, against law and violative of the guidelines on the subject.

4. The respondents have filed a detailed reply strongly opposing the OA and rejected the reliefs of the applicant. In Para 6 of the reply statement it is stated "complaints were received in the Central Board of Excise and Customs alleging that Shri Somesh Tiwari was patronizing officers of high caste and was making notings in file on the basis of these officers' notes and that he himself was not in a position to explain these notes. The complaint was enquired into and it was found that though the allegations of practice of caste based ideology was not substantiated, the officer was found to have become over dependent on a selected few subordinates, since Shri Tiwari did not have adequate command over English. It was, therefore, decided to post him out of Madhya Pradesh, a Hindi speaking state to non-Hindi speaking area so that the officer could get used to working in English. The officer had in any case completed two years of stay in Bhopal (a Group 'C' station) which is the prescribed minimum period of stay in a Group 'C' station as per the transfer policy. Para 9.1 of



new transfer policy prescribes that Government may, if necessary in public interest, transfer and post any officer to any station or post." The respondents further contended in Para 10 of the reply statement that the applicant met officers in Central Board of Excise & Customs again and represented for reconsideration of the order transferring him to Shillong. The applicant inter-alia stated that he was under the treatment of a doctor at Delhi and his request was considered and the order of transfer was modified and he has been posted to Ahmedabad vide order dated 28.12.2005 which is annexed to the MA for amendment.

5. The respondents have strongly contended that there are no malafides alleged against any officers and no officers are impleaded and that no reasons are to be disclosed while passing an administrative order, ~~Guidelines~~ of transfer are not violated. The applicant has not reported at his place of posting either at Shillong or at Ahmedabad. He does not have any legal right to continue in the same station and, therefore, the OA is liable to be rejected. They have cited the judgment of the Apex Court in the case of **State Bank of Punjab & others Vs. Chaman Lal Goyal** –(1995) 2 SCC 570 – and contended that since the private parties are not impleaded regarding the allegations, the application shall not be entertained.

6. Applicant has filed a rejoinder clarifying the reply statement. In his clarifications, the applicant has stated that there are three affidavits of the officers belonging to SC category deposing faith in applicant. Several other officers belonging to SC/ST and other backward classes have been awarded excellent remarks in their ACRs by the applicant. Therefore, there cannot be any allegations of caste-biased ideology against the applicant. Such allegation is baseless and the respondents have admitted in the reply statement that the complaint was inquired into and it was found that the allegation of practice of caste-biased ideology was not substantiated. I find there is not much clarification to the remaining paras in the reply statement, which are repetition of O.A. The applicant has urged that since the respondents have not



complied with the directions passed in OA No.897/05 the impugned orders not sustainable in the eyes of law. Along with the rejoinder, the applicant has filed CVC circular dated 29th June 1999 on the subject – “Improving Vigilance Administration-no action to be taken on anonymous/pseudonymous petitions/complaints.”

7. I heard Shri M.K.Verma, learned counsel for the applicant and Shri S.A.Dharmadhikari, learned standing counsel for the respondents. I perused the pleadings and the documents available on record.

8. Learned counsel for the applicant argued on 6 points. These are (i) the allegation against the applicant is malice in law. There are two kinds of malice. The first is malice in law and the second is malice in fact. Applicant is stressing on malice in law. The applicant has not impleaded those the persons who are involved in making complaints as parties/^{in the o.f.f.} as he is pressing the malice in law; (ii) that the applicant has been transferred during the middle of the year which is not an annual transfer; which is punitive in nature; (iii) that the tenure post is for 3 years as per the Transfer Scheme. The applicant has been transferred within 3 years from Bhopal to Shillong and this transfer order has been modified during the pendency of the application, transferring him from Shillong to Ahmedabad; (iv) that the respondents have not complied with the directions passed in OA No.897/05; (v) that the anonymous complaints are not substantiated. When there was no allegation against the applicant there was no need to transfer him. The transfer has been made even without investigating into the complaints. Hence it is a stigma attached to the applicant. The learned counsel further submitted that the transfer order is punitive in nature and this Tribunal is bound to entertain the application and quash the impugned orders and grant the reliefs as prayed for, but he has not the citations in support of the applicant.

9. In reply to the arguments of the counsel for the applicant, learned counsel for the respondents argued on 4 grounds: (i) since the applicant is making allegation against some of the officers on the



ground that the order is malice in law yet the applicant has not impleaded any of them as parties in the OA. If there is any allegation against a particular officer, the applicant has to implead him, in view of the judgment the Apex Court in the case of **State Bank of Punjab and others Vs. Chamanlal Goyal (supra)**: (ii) the order dated 28.12.2005 has been modified transferring the applicant from Shillong to Ahmedabad but he has not reported for duty at Ahmedabad, and in that case the earlier order dated 22.8.2005 (A-1) stands automatically withdrawn and the modified order will come into force. Even then the applicant has not reported at Ahmedabad: (iii) as argued by the learned counsel for the applicant, no reasons are assigned while issuing the impugned order, for that reply is, in an administrative order, no reasons are to be disclosed while passing an administrative order. The standing counsel finally submitted that the applicant has no legal right to continue in any particular place since he belongs to Group-A post and the applicant can be transferred to any place in the country as per Transfer Policy. Para 9.1 of the Transfer Policy (Annexure A3) stipulates, "notwithstanding anything contained in this policy, Government may, if necessary, in public interest, transfer or post any officer to any station or post". The learned counsel submitted that on the above 4 grounds, the application is liable to be dismissed.

10. I carefully examined the impugned order. In A-1 dated 22.8.2005, there are 62 officers transferred to different places. The applicant is at S.No.57 and he has been transferred from Bhopal to Shillong. No doubt, no reasons are assigned in the impugned order for the transfer. The subject of the impugned order is "Promotion, Posting & Transfer in the Grade of Assistant Commissioners of Customs & Central Excise". There are various cases pending before different benches of the Tribunal and also before the Hon'ble High Courts of Mumbai and Chennai. This OA restricts to only challenging the order of transfer of the applicant from Bhopal to Shillong. As per the prayer of the applicant, 3 orders are under challenge i.e. the order-dated 22.8.2005 (A-1), the order dated 19.10.2005 (A-7) and the order dated



28.12.2005 (Annexure A in the amended OA). In the present application there was no interim order granted by the Tribunal. In the earlier OA No.897/05, a direction was issued to respondent No.2, not to disturb the applicant from his place of posting till his representation was decided by the 2nd respondent. The order-dated 19.10.2005 (A-7) was passed as per the directions of the Tribunal. The grievance of the applicant is that the impugned order A-7 has been passed not by the 2nd respondent as directed by the Tribunal and it has been passed by an incompetent authority - an Under Secretary to the Government of India. Learned counsel for the respondents has stated in the reply statement that the decision on the representation of the applicant was taken by the competent authority and it was communicated by the Under Secretary. Hence the direction was complied with. I am of the considered view, the said order has been passed in compliance of the direction in OA 897/95. As contended by the applicant, he was instrumental in issuing the show cause notices to the tax evaders for Rs.68 lakhs. He did nothing extraordinary, he discharged his duty, nothing more.

11. The impugned order dated 19.10.2005 was passed based on the allegation of complaint against the applicant that he belongs to Madhya Pradesh and on enquiry into the complaint of working on caste biased ideology he was found to be over dependent upon a set of officers, apparently giving an impression that he worked on caste biased ideology. According to the applicant he belongs to Uttar Pradesh and there was no complaint against him. The allegations in the impugned order are totally perverse. There is no basis for the allegation. Hence the impugned order is illegal.

12. I carefully examined the reply statement of the respondents and also Para 2 of the impugned order dated 19.10.2005. In the impugned order, it refers to Para 9.2 of the policy which stipulates that "an officer against whom the CVC has recommended initiation of vigilance proceedings, should not normally be posted or remain posted at the station where the cause of the vigilance preceding



originated. He shall also not be posted on a sensitive charge. This restriction will remain in operation till such time the vigilance matter is not closed." In the reply statement it is stated that complaint was inquired into and it was found that though the allegations of practice of caste based ideology was not substantiated, the officer was found to have become over dependent on a selected few subordinates since the applicant did not have adequate command over English.

13. On a perusal of the impugned order, I find that there is no allegation against the applicant. The reply statement says that the complaint against the applicant has not been substantiated.

14. In Para 3 of the impugned order it is stated that the applicant belongs to MP. This statement is wrong. The applicant belongs to UP. This statement does not give any adverse remarks to the applicant. If he belongs to UP, it is immaterial to mention the name of MP. Regarding the complaint of caste biased ideology, as stated by the respondents, that has not been substantiated. If these 2 paras are not considered, the impugned order passed by the respondents as per the direction of the Tribunal is perfect and correct. Accordingly I find there is no malice against the applicant.

15. The further contention of the applicant is that the impugned order was passed by an incompetent authority. Learned counsel for the respondents has submitted that the competent authority had decided the matter but the communicating authority was Under Secretary to the Government of India. According to the respondents, Under Secretary to the Government of India is the competent authority. The direction of the Tribunal has been complied with. Accordingly I find there is no illegality and irregularity while issuing impugned order.

16. The applicant has challenged the impugned order 28.12.2005 ^{le-2} modifying the transfer order of the applicant from Shillong to Ahmedabad on the request made by the applicant and he had approached the officers and as per the reply statement, the request of the applicant has been considered and the impugned order of



modification was issued. As per the rejoinder, the applicant has denied that he approached the officers for modification of the order. Whether the applicant requested the authorities or not which is immaterial. During the pendency of the application, the respondents had considered the difficulties and inconvenience of the applicant to go to Shillong and they have modified the order. Even then the applicant has not reported at Ahmedabad. It is for the applicant to report. That is not the question here. All the impugned orders are administrative orders. The applicant has produced the transfer policy of 2005 (A-3). As per Para 9.1 of the transfer policy it is made on administrative ground. I do not find any malafide against any of the officers. All the impugned orders are passed on administrative ground. For that no reasons are required. It is for the respondents to post the applicant wherever the service of the applicant is required. An order of transfer is administrative discretion. In those cases, normally the Courts/Tribunals should not interfere in an administrative order, unless on the ground of malice and violation of guidelines, as held by the Hon'ble Apex Court in the case of S.B.I. Vs. Anjan Samual (2001) SCC (L&S) 858 and also National Hydroelectric Corporation reported 2001 8 SCC 574 and also the latest judgment the Apex Court in the case of Union of India and others Vs. Janardhan Debanath and another 2004 SCC (L&S) 631. In the impugned order the transfer has been made in public interest. Normally the Tribunal should not interfere unless the order of transfer is shown to be an outcome of malafide exercise or stated to be in violation of statutory provisions prohibiting any such transfer. In view of the law laid down by the Apex Court in the aforesaid judgments, I do not find any malafide against any particular officer and violative of the guidelines for transfer.

17. While dictating the order, the learned counsel for the applicant has stated that there is malafide alleged against the applicant and the transfer is punitive in nature. As I have already given my opinion in the earlier paras, I find there is no punitive ^{action} against the applicant.




18. Learned counsel for the respondents has cited a judgment on this aspect. When I find that there is no malafide shown against the applicant and there is no favour shown against any particular officer, no parties are impleaded in the case and no material to show that the transfer was connected with the complaints against the applicant, then I find no illegality or violation of the guidelines and any malice shown against the applicant, hence a judicial review in the above administrative order is not called for. In this aspect, the Hon'ble Apex Court held in the case of **State of UP and another Vs. Siya Ram and another** - reported in 2004 SCC L&S 1009, para 5 is relevant which is extracted hereunder:

"5. The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provision prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this court in **National Hydroelectric Power Corpn. Ltd Vs. Shri Bhagwan**.

6. The above position was recently highlighted in **Union of India V. Janardhan Debanath**. It has to be noted that the High Court proceeded on the basis as if the transfer was connected with the departmental proceedings. There was not an iota of material to arrive at the conclusion. No malafides could be attributed as the order was purely on administrative grounds and in public interest."

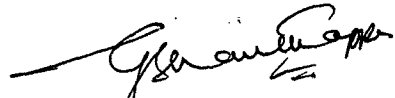


19. On perusal of the records, I find that the order of transfer is on administrative exigencies. The applicant has All India transfer liability. An order of transfer should normally be eschewed and should not be countenanced by the Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of malafide when made must be such as to inspire confidence in the court or as based on concrete materials and ought not to be entertained on the mere making of its or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

20. Since the applicant's request has been considered and he has been transferred from Shillong to Ahmedabad, even then the applicant has not reported for duty at Ahmedabad and he is still challenging the order of transfer (A-1). The applicant has been transferred under the modified order and the earlier orders merge with the present modified order. The applicant did not honor the impugned modified order of transfer. Now he is asking for recasting of the original order dated 22.8.2005 including the modified order. I find that there are no allegations against any particular officer and there is no violation of the guidelines and the impugned order of transfer is an administrative order. The authorities can extract service of the applicant wherever they want. When the action of the respondents is within their purview, I am not inclined to interfere with the impugned orders.

Ep.

21. I considered the averments made in the pleadings and also the arguments of the learned counsel for the parties. I am of the considered view that there is no illegality or irregularity committed by the respondents while passing the impugned orders. They have exercised their powers within their purview. The Tribunal need not interfere with the impugned orders. The applicant has not made out a case for grant of reliefs and accordingly the OA is dismissed. No costs.


(G. Shanthappa)
Judicial Member

22.

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....

चतुर्लिपि आम्हे मिल्य:-

- (1) सचिव, उच्च न्यायालय, जबलपुर
- (2) आवेदक (1/2/2006) के काउंसल
- (3) प्रत्यर्था (1/2/2006) के काउंसल
- (4) कोषपाल, दफ्तर, न्यायालय, जबलपुर

सूचना एवं आवश्यक कार्यवाही

उप रजिस्ट्रार

Forwarded
17.3.06

17/3/06

M. K. Verma
S. A. Sharma