

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No.113 of 2003

Jabalpur, this the 28th day of February, 2003

Hon'ble Mr.R.K.Upadhyaya-Member(Administrative)  
Hon'ble Mrs.Meera Chhibber-Member(Judicial)

Hemant Sausarkar, Aged about 55 years,  
Occupation-Service as Judicial Member,  
ITAT, Jabalpur Bench, 46 Napier Town,  
Jabalpur

- APPLICANT

(By Advocate-Shri Parag S.Chaturvedi)

Versus

1. Union of India through the Secretary,  
Ministry of Law, Justice & Co. Affairs,  
New Delhi.
2. Income Tax Appellate Tribunal Through:  
The Registrar, Central Government Officers  
Building, 4th Floor, Maharishi Karve Marg,  
Mumbai-20.
3. The President, I.T.A.T., Central Government  
Officers Building, 4th Floor, Maharishi Karve  
Marg, Mumbai-20.

- RESPONDENTS

(By Advocate - Shri B.da.Silva, Sr.Standing Counsel)

O R D E R (Oral)

By Mrs.Meera Chhibber, Member (Judicial)-

By this O.A., the applicant has challenged the order dated 17.2.2003 (Annexure-A-3) whereby an order has been issued by the President, Income-Tax Appellate Tribunal (for short 'ITAT') transferring the applicant from Jabalpur Bench to Patna Bench. The applicant's name figures at serial no.3 in the said order.

2. It is submitted by the applicant that he was appointed as Judicial Member, ITAT vide order dated 22.12.1997 and he resumed the office at ITAT, Ahmedabad Bench on 22.1.1998. Thereafter, his services were terminated on 9th October, 1998 and <sup>it was</sup> only in pursuance to the orders passed by the Hon'ble Supreme Court on 27.9.2001 that the respondents issued a fresh appointment letter,

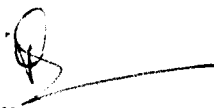
posting the applicant at Nagpur Bench (Annexure-A-1), but within a few days, the respondents further transferred him from ITAT, Nagpur Bench to Jabalpur Bench vide order dated 5.10.2001 (Annexure-A-2). Complying the said order, the applicant joined at Jabalpur on 8th October, 2001. It is submitted by the applicant that he has already disposed of 300 appeals in spite of the fact that a regular Accountant Member is not posted at Jabalpur. Otherwise, he has also been deputed to Guwahati, Chandigarh and Ahmedabad in public interest which orders have <sup>always</sup> ~~already~~ been complied with by the applicant. By the impugned order, the applicant has been transferred once again from Jabalpur to Patna Bench (Annexure-A-3). Being aggrieved, the applicant has already submitted his representation on 18.2.2003 (Annexure-A-4) to the President, ITAT stating therein that his daughter is studying in M.S. (Optical) in Medical College, Jabalpur and his son is also studying in Rani Durgavati Vishwavidyalaya, Jabalpur. Thus, if he is asked to proceed at this juncture, the whole family <sup>is</sup> would be disturbed as this transfer/in mid academic session. The applicant has further submitted that till date his representation has not been decided by the President, ITAT and since the time limit given to him is very short, he had no other option but to file this OA.

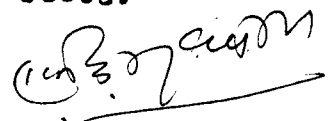
3. We have heard the applicant's counsel and perused the pleadings as well. On the last date Shri On . Namdeo had accepted notice on behalf of the respondents and had taken a short adjournment for seeking instructions. Today, Shri B. da. Silva, Senior Standing Counsel appeared on behalf of the respondents and states that he has not been able to get instructions from the respondents so far. A perusal of the impugned order shows that the applicant is transferred to Patna with effect from forenoon of 3rd March, 2003. We are fully aware that the scope of interference

by the Tribunal in case of transfer is very limited and we can only interfere if the applicant is able to show either the transfer is due to malafide reasons or is passed contrary to the instructions or rules on the subject. In the instant case, the applicant's counsel has annexed the guidelines of transfer and has submitted that as per para 2 of the said guidelines which are annexed as Annexure A-5, the transfer of Members could have been made only by the Government though on the advice of President ITAT, whereas in the instant case, the order of transfer has been passed by the President, ITAT which does not show that it had been ~~pass~~ approved by the competent authority. Therefore, according to him, the order issued by the President, ITAT is without any jurisdiction.

4. As we have already stated above, the applicant's representation is still pending with the respondents and the scope of interference by the Tribunal is very limited, we do not wish to express any opinion on the merits of the case and direct the applicant to send a copy of this order along with O.A. to the respondents within two days and in case this direction is complied with, the respondents are directed to consider this O.A. itself as the applicant's representation and to pass appropriate reasoned orders thereon within a period of four weeks and intimate the decision to the applicant. Till such time, the representation is decided, the respondents are directed not to give effect to the order dated 17.2.2003.

5. With the above directions, this O.A. is finally disposed of at admission stage itself with no order as to costs.

  
(Mrs. Meera Chhibber)  
Member (J)

  
(R.K. Upadhvaya)  
Member (A)

THE SECRETARY  
TO THE  
GOVERNMENT OF  
INDIA  
MINISTRY OF  
FINANCE  
NEW DELHI

Shri S. Parag Chakravarti  
Adm. Secy.  
Shri B. D. Singh, Adm.

Treasurer  
28/2/03

Issued  
on 28.2.03  
BY