

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 165 of 2003

Jabalpur, this the 17th day of March 2003

Hon'ble Shri R.K. Upadhyaya -- Member (Administrative).

Hemant Sausarkar, aged about
55 years, Occupation - Service
as Judicial Member ITAT,
Jabalpur Bench, 46, Napier Town,
Jabalpur (M.P.).

... Applicant

(By Advocate - Shri P.S. Chaturvedi)

V e r s u s

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, ITAT,
Central Government Officers Bul-
ding, 4th Floor, Maharishi
Karve Marg, Mumbai-20.

... Respondents

O R D E R (Oral)

The applicant is a Judicial Member of Income Tax Appellate Tribunal (for short ITAT), presently working at Jabalpur and is under order of transfer as Judicial Member of ITAT, Patna Bench as per order dated 17/02/2003 (Annexure A/3). The applicant filed representation dated 18/02/2003 (Annexure A/4) against his transfer from Jabalpur to Patna and at the same time filed an Original application in this Tribunal bearing ^{OA.} No. 113 of 2003 which was disposed of at the admission stage itself by an order dated 28th February 2003 (Annexure A/5). By the order dated

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28/02/2003 (Annexure A/5) of this Tribunal, the respondents were directed to consider the applicant's representation against order of transfer dated 17/02/2003 (Annexure A/3). The impugned order dated 5th March 2003 (Annexure A/6) has been passed in pursuance to order of this Tribunal dated 28/02/2003 (Annexure A/5). By the impugned order dated 05/03/2003 (Annexure A/6) the respondent No. 3 has stated that the applicant has furnished a copy of the note dated 14th November 2002 of the Joint Secretary & Legal Adviser marked to the Private Secretary to the Solicitor General of India, Supreme Court, New Delhi as the guidelines for transfers in respect of the Members of the Income Tax Appellate Tribunal. According to respondent No. 3 the said note is only an internal official note and does not constitute a guideline or policy decision that might have been finally taken or notified. The respondent No. 3 has further stated in the order dated 5th March 2003 that due to acute shortage of Accountant Members, no Accountant Member could be posted at Jabalpur Bench. Therefore the order dated 17/02/2003 has been passed in public interest to fully utilise the services of all the Judicial Members by constituting the maximum number of Division Benches by making combinations of Judicial Member and Accountant Members. The respondent No. 3 has taken note of the fact that large number of complaints of corruption, immoral behaviour, using abusive language and creating nuisance and also of insubordination have been given to him on account of posting of the applicant at ITAT, Jabalpur. Therefore he had deemed it proper ^{to} ~~not~~ leave him alone and put him in a Division Bench in the interest of the applicant. It has also been noted by the respondent No. 3 that the applicant has requested for a transfer to Nagpur Bench, but there is no vacancy of a Judicial Member there.

Consent

1.1. The learned counsel of the applicant has stated that the order dated 17/02/2003 and order dated 05/03/2003 (issued in pursuance to the order of this Tribunal) are malafide orders. According to the learned counsel, there was no vacancy of a Judicial Member at Patna as can be seen from the order dated 17/02/2003 (Annexure A/3) itself. The Judicial Member of Patna Shri P. Mohanarajan has been transferred to Bangalore and the applicant has been posted to Patna in his place. The learned counsel further states that the applicant could have been sent to Bangalore instead of Patna if the intention of the respondent No. 3 was to make as many as Benches of the Tribunal functioning as Division Bench. According to the learned counsel of the applicant Section 255 of the Income Tax Act prescribes only procedure of Appellate Tribunal and the President is not given the power of transferring of the applicant from one station to another. It is further urged by the learned counsel that if there were complaints, proper procedure was to start disciplinary proceeding in accordance with the rules and not make a short cut by transferring the applicant.

2. After hearing the learned counsel of the applicant and after considering the material available on record, this Tribunal is of the view that no interference is called for in the Transfer order dated 17/02/2003 (Annexure A/3) and subsequent order dated 05/03/2003 (Annexure A/6) passed by respondent No. 3 because the same are in accordance with the provisions contained in the Rules and Powers given to the President of the ITAT. It is noticed in the impugned order dated 5th March 2003, where the respondent No. 3 has stated that "the President of the ITAT, being the Head of the Department, is the

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competent authority to make orders in respect of the transfers of the Members of the Tribunal, as is clear from Section 255(1) of the Income Tax Act, 1961, which is confirmed by the Hon'ble Bombay High Court and which is also in accordance with the powers delegated by the Ministry of Law & Justice to the President, Income Tax Appellate Tribunal." It is also noticed that the alleged guidelines dated 14/11/2002 are in the form of office note issued by the Joint Secretary and Legal Adviser of Department of Legal Affairs endorsed to Private Secretary to Solicitor General of India, Supreme Court, New Delhi. The respondent No. 3 has specifically stated that these guidelines have not been notified. As such the applicant cannot rely on those guidelines which provide that a Member shall not be posted at a place for a period exceeding 5 years. Even if the argument of the learned counsel of the applicant was accepted, this does not specifically say that the respondents have no jurisdiction or power to transfer him before expiry of 5 years. The Hon'ble Supreme Court in a number of cases have held that the scope of interference by Courts/Tribunals is very limited. The applicant has raised the plea of order being malafide to the extent that one Judicial Member is shifted from Patna to Bangalore and the applicant is being posted at Patna in place of that Judicial Member. During the course of the arguments, the learned counsel has stated that the applicant could have well been transferred to Bangalore instead of Patna. However on the records, there is no such request of the applicant made to the respondents. The Hon'ble Supreme Court in the case of National Hydroelectric Power Corpn. Ltd. Vs. Shri Bhagwan and another reported at 2002(1) SLJ 86 had stated that

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transfer is incidence of service and none has right to continue at one place. The Hon'ble Supreme Court have further observed as follows :

"Unless an order of transfer is shown to be an outcome of malafide exercise of power or stated to be in violation of statutory provisions prohibiting such transfer, the Courts or the Tribunals cannot interfere with such orders as a matter of routine, as though they are the Appellate Authorities substituting their own decision for that of Management as against such orders passed in the interest of administrative exigencies of service concerned".

As has been stated earlier, the alleged guideline have not been notified as per respondents and the applicant cannot take benefit of those guidelines ^{even} if they were notified. They do not prohibit transfer of employees in administrative exigency. The applicant by his representation dated 18/02/2003 (Annexure A/4) against the transfer order dated 17/02/2003 (Annexure A/3) had made a request for being "posted at Nagpur". There is no request for any other place. The respondent No. 3 by the impugned order dated 5th March 2003 (Annexure A/6) has stated that there is no vacancy at Nagpur. The argument of the learned counsel that there was no vacancy at Patna also, but still the applicant has been transferred, therefore has to be rejected because it is for the administration to post individuals to a particular station, to get the maximum work in the interest of the administration. It is neither for the applicant nor for this Tribunal to decide as to who should be posted where. Therefore the argument of the applicant fails and is rejected. Once it is accepted that the applicant holds liability of transfer anywhere in India, he cannot successfully challenge his transfer from Jabalpur to Patna on account of administrative exigency.

11/3/2003

3. In view of the observations made in the preceding paragraph this Original Application being without any merits is rejected at the admission stage itself, without any order as to cost.

(Signature)
(R.K. UPADHYAYA)
MEMBER (A)

"SA"

पूरांकन सं ओ/न्या..... जलपुर, दि.....
पुनर्विचारित करने के लिये
(1) सचिव, जलपुर न्यायालय, जलपुर
(2) सचिव, जलपुर न्यायालय, जलपुर
(3) सचिव, जलपुर न्यायालय, जलपुर
(4) सचिव, जलपुर न्यायालय, जलपुर
सूचना एवं जनसम्पर्क कार्यालय, जलपुर

P.S. Chaturvedi A/c

(Signature)
24/3/03

Issued
on 21-3-03