

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 12th day of December, 2005

ORIGINAL APPLICATION No.386/2005

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

Om Prakash Bansal
s/o Shri Tulsi Ram Bansal,
aged about 47 years
r/o 4, Matra Kripa Shantivan,
Bedla Road, Udaipur.
At present working as
Lower Division Clerk in the
office of the Commissioner
of Income Tax, Ajmer.

... Applicant

(By Advocate: Mr. R.A.Sugangh and Mr. S.N.Sharma)

Versus

1. Union of India,
Ministry of Finance,
Department of Income Tax,
New Delhi through its
Secretary.
2. Chief Commissioner of Income Tax,
Ministry of Finance,
Department of Revenue,
Kar Bhawan, Statue Circle,
Jaipur.
3. The Commissioner of Income Tax,
Central Rajaswa Bhawan,
Near Central Bus Stand,
Jaipur Road,
Ajmer.

... Respondents

(By Advocate: Mr. Gaurav Jain)

ORDER (ORAL)

The applicant has filed this Original Application against the order dated 8th August, 2005 (Ann.A1) whereby the order of transfer of the applicant and three other persons made vide order dated 29th July, 2005 (Ann.A3) was cancelled. It may be stated that vide order dated 29th July, 2005 as many as 37 persons belonging to clerical cadre were transferred. It is this order of cancellation of transfer dated 8th August, 2005 which is under challenge in this OA and the applicant has prayed that the said order be quashed and respondents be directed to allow the applicant to join duties at Udaipur pursuant to order dated 29.7.2005.

2. Briefly stated, facts of the case are that the applicant was appointed as LDC in the Department of Income Tax in the year 1987 and at present he is working in the Office of Commissioner of Income Tax, Ajmer (respondent No.3). It is the case of the applicant that he made representation for his transfer from Ajmer to Udaipur which application was forwarded by the Jt. Commissioner of Income Tax (Headquarters) to the Chief Commissioner, Income Tax, Jaipur (respondent No.2). Pursuant to his representation/application dated 1.4.2005 he was transferred vide order dated 29th July, 2005 (Ann.A3) from Ajmer to

Udaipur. The applicant has alleged that despite issuance of transfer order dated 29th July, 2005, the applicant was not relieved and subsequently vide impugned order dated 8th August, 2005 the said order of transfer was cancelled. The grievance of the applicant is that the said order of cancellation dated 8th August, 2005 (Ann.A1) has been passed in most arbitrary and malafide manner, inasmuch as, the applicant has approached this Tribunal by filing OA No.310/2004 which OA was allowed by this Tribunal vide order dated 22.7.2005 directing the respondents therein to pay arrears of increment to the applicant. It is on this basis that the respondent No.3 is annoyed and respondent No.2 has passed the order of cancellation of his transfer. The applicant has further pleaded that vide impugned order dated 8th August, 2005, transfer of three employees alongwith the applicant were cancelled. These three employees have been adjusted and posted at the places of their choice whereas the applicant has not been posted even near to Udaipur.

3. Notices of this application were given to the respondents. Respondents have filed reply. In the reply, it has been stated that the applicant has made a request for transfer from Ajmer to Udaipur vide his application dated 1.4.2005. In this application, the applicant had inter-alia stated that he has completed

three years stay outside Udaipur (his home town), he is not keeping good health and his wife is also suffering from illness. Accordingly, the applicant was transferred from Ajmer to Udaipur vide order dated 29.7.2005. It is further stated that pursuant to the order dated 29.7.2005, the employees mentioned therein were to be relieved by 8.8.2005. However, before relieving the applicant, the order of transfer was cancelled on 8.8.2005 itself. Reason for canceling the transfer has been given out in para 4(D) of the reply, relevant portion of which is reproduced hereinbelow:-

“..... It is further submitted that the Chief Commissioner of Income Tax, Udaipur written a letter dated 1.8.2002 whereby he informed that the applicant had earlier been posted at Udaipur from 5.7.88 to 15.6.1993 and again from 15.7.97 to 17.6.2002 and there were lot of complaints received from public against the applicant during his earlier tenure at Udaipur. The CBI had also raided his residential premises at Udaipur in June, 2002 and recovered incriminating documents. It was on the suggestion of the CBI that the applicant was earlier transferred from Udaipur to Kota. The Commissioner of Income Tax, Kota too found that the performance and conduct of the applicant was not up to the mark and therefore he was transferred from Kota to Ajmer in May, 2004. The Chief Commissioner of Income Tax, Udaipur informed that his posting at Udaipur will be highly detrimental to public interest and public image of the department. He accordingly recommended that either the applicant may be transferred to any other place outside Udaipur or his transfer to Udaipur may be cancelled. It was on the basis of these facts that the transfer order of applicant to Udaipur was cancelled. The cancellation of transfer of the applicant has been made in public interest and in administrative exigency.”

The respondents have further pleaded that no Government servant has a right to be posted at a particular place or a place of his choice. The applicant was posted at Udaipur (his home town) from July, 1988 to June, 1993 and again from July, 1997 to June, 2002. Thus, out of his total service of about 18

years, the applicant was posted at his home town for a period of about 10 years. The work and conduct of the applicant was not found up to the mark and adverse remarks were given in his annual confidential reports. There were complaints against the applicant during his Udaipur tenure. The CBI has also raided his residential premises and registered a case under the Prevention of Corruption Act. The case is pending before the Special Judge, CBI cases, Jodhpur. Thus, according to the respondents, it was due to these reasons the transfer of the applicant was cancelled.

4. The applicant has filed rejoinder. In the rejoinder the applicant has not denied the factum of registration of case and receipt of complaints against him during his Udaipur tenure. However, in the rejoinder he has again reiterated that cancellation of the transfer of the applicant is malafide and it was due to the fact that the respondents did not like the judgment rendered by this Tribunal dated 22.7.2005 in favour of the applicant and this was the only reason for cancellation of transfer of the applicant which certainly is malafide. The applicant has further pleaded that departmental proceedings against the applicant for engaging himself in private business were also dropped. The applicant has further pleaded that there are certain employees against whom the CBI raid/trap was made out, but those are still working on

the same place and they were not disturbed. The applicant has also pleaded that against one Shri L.R.Tulsiyani and others FIR has been lodged and case is pending against them in the court but they are working at the same place. Thus, according to the applicant, the reason for canceling the transfer of the applicant on the ground of CBI raid at the residence of the applicant does not stand in the eyes of law.

5.  have heard the learned counsel for the parties and gone through the material place on record.

5.1 Before I proceed further in the matter, it will be useful to notice decisions of the Apex Court in transfer matters. The Apex Court has repeatedly held that the court should not interfere with the transfer order which are made in public interest and for administrative reason unless the transfer is made in violation of any mandatory or statutory rules or on the ground of malafide. The government servant holding a transferable post has no vested right to remain at one place or other, he is liable to be transferred from one place to other. Transfer order issued by the competent authority do not violate any of his legal right. Even if a transfer order is passed in violation of executive instructions or orders, the court ordinarily should not interfere with the order instead affected party should approach the higher authorities

in the department. The Apex Court has further held that the Court and Tribunal cannot go into the question whether the transfer is in the public service or public interest would be served or not and also that the Court and Tribunal should not interfere in the transfer matter as a matter of right as though they were appellate authority substituting its own decision for that of the employer because the order passed in the interest of administrative exigencies of service concerned. This is what the Apex Court had held in the case of Shilpi Bose vs. State of Bihar, AIR 1991 SC 532, Union of India vs. S.L.Abbas, AIR 1993 SC 2444, State of UP and ors. vs. Gobardhan Lal, (2004) 11 SCC 402, State of UP vs. Siya Ram (2004) 7 SCC 405 and in other cases. Further, the Apex Court in the case of K.B.Shukla vs. Union of India, AIR 1979 SC 1136 has held that the responsibility for good administration is that of the Government. The maintenance of an efficient, honest and experienced administrative service is a must for the due discharge of that responsibility. Therefore, the Government alone is best suited to judge as to the existence of exigencies of such a service requiring appointments by transfer. The term 'exigency' being understood in its widest and pragmatic sense..."

5.2 Viewing the matter on the basis of the law laid down by the Apex court as reproduced, I am of the view that the applicant has not made out a case for

interference of this Tribunal. Admittedly, the applicant was transferred from Ajmer to Udaipur on the basis of his application dated 1.4.2005 and the transfer of the applicant was not in the exigency of service or that by such transfer the public service or public interest would have been served. However, it is not in dispute that pursuant to transfer order dated 29th July, 2005 all the officials named therein were required to be relieved by 8.8.2005 and before the applicant and other three persons could be relieved, the impugned order of transfer dated 29th July, 2005 was cancelled. According to the applicant, the order of cancellation was passed solely on the basis that he has obtained favourable order from this Tribunal on 22.7.2005 whereas according to the respondents, the said order of transfer was cancelled as the Chief Commissioner of Income Tax has written a letter dated 1.8.2002 that the applicant who was earlier posted at Udaipur from 5.7.88 to 15.6.1993 and again from 15.7.97 to 17.6.2002, there were lot of complaints received from public against the applicant during his earlier tenure at Udaipur, as such, he has recommended that either the applicant may be transferred to any other place outside Udaipur or his transfer to Udaipur may be cancelled. The applicant in the rejoinder has not controverted this fact that there were number of complaints against him while he was posted at Udaipur during the aforesaid period. However, the stand taken

by the applicant, as can be seen from the rejoinder, is that there are other officials who are similarly situated and against whom corruption cases are pending before the Court are still working on the same place and they have not been disturbed. The learned counsel for the applicant argued that the letter dated 1.8.2002 written by the Chief Commissioner, Udaipur has been procured to just defeat his claim, inasmuch as, in case he was not happy with his posting at Udaipur, he should not have forwarded his application/representation dated 1.4.2005 to respondents No.2.

5.3 I have given due consideration to the submissions made by the learned counsel for the parties and I am of the firm view that the applicant has not made out any case for grant of relief. The plea taken by the applicant that since he has obtained a favourable order from this Tribunal, as such the respondents are prejudiced against him, cannot be accepted, inasmuch as, the respondents have not challenged the judgment of this Tribunal before a higher forum for which they were within their right to challenge. However, the respondents have accepted the judgment of this Tribunal and agreed to extend the benefit to the applicant in terms of the judgment rendered by this Tribunal, though they have subsequently moved an application for extension of time to implement the judgment of this Tribunal. If the matter is viewed

from this angle, it cannot be said that the impugned order whereby transfer of the applicant was cancelled was passed in most arbitrary manner or is malafide. On the contrary, the respondents have categorically pleaded that there were several complaints against the applicant during his tenure of about 10 years at Udaipur out of his total service of 18 years. The respondents have also pleaded that the CBI has raided the residential premises of the applicant and recovered incriminating documents. Thus, according to the respondents transfer of the applicant to Udaipur would be highly detrimental to public interest and public image of the department and it was due to these reasons that the transfer order of the applicant was cancelled. As already stated above, the Hon'ble Apex Court in the case of K.B.Shukla (supra) has specifically held that the responsibility for good administration is that of the Government. The maintenance of an efficient, honest and experienced administrative service is a must for the due discharge of that responsibility and the Government alone is best suited judge as to the existence of exigencies of such a service and it is not permissible for this Tribunal to go into the question whether the transfer is in public service or in public interest or public interest would be served and also that Court and Tribunal should not interfere in the transfer matter as a matter of right as though they were appellate

authority substituting its own decision for that of the employer. Simply because some of persons against whom there were complaints or cases have been registered against them have not been transferred and allowed to work at the same place will not afford any cause to the applicant and on that count the impugned order Ann.A1 whereby transfer of the applicant was cancelled, cannot be interfered with.

6. For the foregoing reasons, the present OA is bereft of merit and the same is accordingly dismissed. The interim stay order granted on 10.11.2005 and continued thereafter shall stand vacated. No costs.



(M.L.CHAUHAN)

Judicial Member



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