

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
(Reserved on 11.12.2015)**

...
**O.A No.060/00330/2014 & Date of decision : 16.12.2015
M.A No.060/01191/2015
M.A No.060/00919/2015**

CORAM: HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

...
Davinder Pal Singh s/o S. Sunder Singh, aged 48 years, presently working as Assistant Commissioner of Income Tax (TDS) in the office of Commissioner of Income Tax (TDS), C.R. Building, Himalaya Marg, Sector 17-D, Chandigarh.

...APPLICANT

BY ADVOCATE: Sh. Amit Jhanji.

VERSUS

1. Union of India through Secretary to Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. Union of India, through Secretary to Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training, North Block, New Delhi.
3. Central Board of Direct Taxes, North Block, New Delhi through its Chairman.
4. Chief Commissioner of Income Tax, North West Region, Aayakar Bhawan, Sector 17-E, Chandigarh.
5. Chief Commissioner of income Tax, (CCA) [Bihar and Jharkhand Region] Bir Chand Patel Path, Patna.
6. Commissioner of Income Tax, (TDS) C.R. Building, Himalaya Marg, Sector 17-E, Chandigarh.

...RESPONDENTS

BY ADVOCATE: Sh. Sanjay Goyal. M



ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER (A):-

This Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, was amended in January, 2015 and now the following relief has been sought:-

- i) "To quash the order No.83 of 2013 dated 13.05.2013 issued by respondents no.1 & 2 allotting the applicant Patna (CCA), Bihar & Jharkhand Commissionerate in an illegal, arbitrary and discriminatory manner in violation of the instructions issued by the Nodal Ministry, governing the postings (Annexure A/1) and order dated 24.05.2013 (Annexure A/6) to the extent the order dated 13.05.2013 qua the applicant has been stayed up to 14.04.2014 which is without proper application of mind."
- ii) Order dated 09.01.2015 (Annexure A/19) passed by the Placement Committee constituted by respondents no.1 & 2 is illegal, arbitrary and discriminatory and contrary to office orders passed by the respondents (Annexure A/16, A/17 & A/18) and is liable to be set aside.
- iii) Directions to the respondents may kindly be issued to allot the applicant the NW Region as has been allotted to other similarly situated staff like the applicant and post him within the North West Region in the same manner with all the consequential benefits.
- iv) In the alternative to reconsider the claim of the applicant for allotment of region on the basis of option exercised by the applicant in furtherance to the letter No.F.No.A.32013/02/2012/Ad VI dated 27.04.2013 (Annexure A/3) issued by the Central Board of Direct Taxes (Respondent No.3) keeping in view the instructions issued by the Nodal Ministry- Respondent no.2 dated 30.09.2009 (Annexure A/2)."

2. Interim relief was sought vide the amended O.A that the operation of the impugned order dated 09.01.2015 (Annexure A-19) be stayed and interim order dated 17.04.2014 earlier ~~was~~ passed restraining the respondents from relieving the applicant from present place of posting continues to be in operation till date.

3. It is stated in the O.A that the applicant joined as Inspector on 27.11.1990 and was promoted as Income Tax Officer Grade 'B' on 10.12.2001. Thereafter, he was inducted into Group 'A'

Indian Revenue Service on 13.05.2013 and was assigned 125DZ of 2013 in the Gradation List. Respondent no. 3 called for options from ITOs empanelled for ACITS vide letter dated 27.04.2013 (Annexure A-3). The applicant vide his letter dated 01.05.2013 (Annexure A-4) brought to the notice of the competent authority that:-

- (a) his wife is working as Lecturer at Government Senior Secondary School, Model Town, Patiala;
- (b) his son was studying in 10+2 at Patiala;
- (c) his 75 years old ailing mother requires medical treatment regularly.

In view of this, 5 options were given for 5 choice/suited places, in furtherance to Annexure A-2 in order of preference. Thereafter, posting order No. 83/2013 dated 13.05.2013 (Annexure A-1) was issued and applicant was allocated to Patna (CCA) [Bihar & Jharkhand Region] although other similarly placed persons empanelled as ACITS were assigned the new regions/CCA as per their option and hence, the applicant has been treated in discriminatory manner.

4. It is further stated that applicant submitted representation to respondent no. 3 to consider his case sympathetically on the grounds of working spouse, old ailing mother and son studying in '+2'. Meanwhile he submitted joining report to the Commissioner of Income Tax (TDS) Patna on 30.05.2013 after being relieved from the officer of CIT Patiala. The applicant ^{was} also nominated for orientation programme for newly promoted ACITs during the period June, 2013 to August, 2013 at the National Academy of Direct Taxes, Nagpur. He again requested for his adjustment on the grounds of his representations submitted earlier and vide order dated 21.06.2013, respondent no. 3 stayed the order no. 83/2013 dated 13.05.2013 qua applicant on the ground of child education with further direction to the join the new region thereafter. In pursuance of the order No.113 of 2013 dated

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21.06.2013, the applicant was posted at Shimla vide order No.38 of 2013 by respondent no.4 dated 04.07.2013 where he submitted his joining report on 27.08.2013. Thereafter again vide order No.78/2013, the respondent no.4 posted the applicant from Shimla to the office of Respondent No.6 where the applicant joined on 30.10.2013 (Annexure A-14).

5. During the pendency of this O.A, this court vide order dated 11.11.2014, directed the respondents to produce the relevant record, wherein the case of the applicant was considered for posting at Patna which was not his choice station and further option was given to the respondent to consider the case of the applicant for posting to his choice place of posting vis-a-vis similar situated persons whom choice station has been given by the respondent department. In compliance of the order passed by this Court the meeting of the Placement Committee was held on 08.01.2015 to consider the case of the applicant and the same was rejected by projecting the case of the applicant as that of transfer whereas, it is a case of posting on appointment of Group-A service and the case of the applicant reflects discrimination at the hands of the respondents for their vested interest and further the respondents authorities are in violation of the instructions issued by the nodal ministry wherein, it has been clearly stated that the said instructions are mandatory for ~~the~~ posting the person, wherein, one spouse is employed under the Central Government and other spouse is working under the State Government. It is claimed that perusal of the order dated 19.01.2015 (Annexure A-19) showed that the same had been passed for oblique motive and with malafide intention and is discriminatory. The judgments relied upon by the respondents in the order dated 09.01.2015 are distinguishable on facts and also all the said judgments state that the orders of posting cannot be discriminatory and malafide in nature. The

applicant in the present case is only seeking relief to the extent that as per the instructions of Government of India dated 30.09.2009 and also as per the TPG Guidelines of 2010, which have been uniformly made applicable for all the other officers may also be applied on the case of the applicant. The applicant had also brought to the knowledge of this Tribunal vide order dated 19.12.2014 that over 200 posting orders had been issued as per these guidelines. Orders were passed on various dates i.e. 15.11.2014, 17.11.2014, 09.12.2014, 12.12.2014 and 18.12.2014 and the same are being annexed as Annexure A-20 (colly).

6. In the written statement filed on behalf of the respondents in May, 2015, it has been stated that for the promotion of a Group 'B' officer (which the applicant was before his promotion to the grade of Assistant Commissioner of Income Tax) to being a Group 'A' Officer, the Transfer & Placement Guidelines (hereinafter "TPG-2010") clearly specifies in para 3.4 that – "Group 'B' Officers on promotion to the grade of ACIT **shall be transferred out of the region** except in those cases where the officer has less than three years of service left at the time of promotion." This ~~above~~ para has been scrupulously applied to the case of the applicant since the applicant has more than three years to retire at the time of his promotion. Further, para 7.1 of TPG-2010 states that "*notwithstanding anything contained in these guidelines, the Placement Committee may, if it considers necessary to do so in public interest and in furtherance of organizational objectives, transfer, retain or post any officer to any station / region or a specific post.*"

7. The applicant till his promotion to the grade of ACIT had worked only in NWR and on his promotion to the grade of ACIT. Para 3.4 of the TPG-2010 clearly provides that a Group 'B' officer shall be posted out of the region which was done in the instant case of the applicant vide order No.86 of 2013 dated 24th May, 2013 under

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challenge in the instant OA after giving the applicant a period of almost a year on working spouse and child education ground to arrange for his family and take care of family matters before his regular posting made vide the order dated 24th May, 2013. The transfer and / or posting of any officer is done according to the provisions of TPG-2010 after taking into consideration several factors and circumstances such as administrative requirements and exigencies, the past posting profile of the officer, his past work experience, the posting options exercised / filled by him, posting options exercised by other officers, claim of compassionate grounds by officers such as working spouse, health of self and family members & education of children etc., the vacancies in the region, deficiencies in other regions of the country, time of the year when transfer/posting is being considered/ordered etc. In the instant case transfer of the applicant out of NWR has been done on the strength of provisions contained in para 3.4, 4.3 (ii) and 7.1 of TPG-2010 keeping in view the relevant facts and circumstances.

8. Later, MA No. 060/00919/2015 was filed on the behalf of the respondents seeking vacation of interim orders whereby the applicant has been restrained from being transferred from North-West Region.

9. Additional reply to O.A was filed in August, 2015 and additional affidavit has been filed on 24.11.2015 ostensibly in compliance of interim order dated 28.10.2015. In this affidavit, it has been stated that the following criteria were taken into consideration before posting of officers to various stations/region.

- a) Officers on promotion are proposed to be transferred out of their present CCA region. However, the officers who are retiring within two years and officers with physical handicap are proposed to be retained in their present CCA region.

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- b) Lady Officers are proposed to be accommodated in the CCA Regions of their first choice to the maximum extent possible.
- c) Officers in whose case children are appearing for Board exam for class 12th are proposed to be retained in their present CCA Region till 14.04.2014.
- d) Posting of remaining Officers are proposed to be made according to seniority-cum-options as far as possible to the CCA Region which are nearby to their home state.
- e) The balance number of officers left out because of options not being available are proposed to be posted in the Region where vacancies remain.
- f) Overall, while allocating new CCA Regions efforts being made to accommodate these Officers within their choices of CCA Region or nearby Regions with a view to minimize the hardship of dislocation, distance from the home state etc.

It is also stated that name of the applicant figures at S.No. 105 of the impugned order and since shortage in the cadre of the ACIT/DCIT had to be reduced proportionately in all the CCA regions, the applicant could not be given a station of his choice as the same had already been filled by officers, who were senior to him in the civil list. Exceptions have been referred in Para 7 of the affidavit. Vacancy position in grade of AC/DCIT in Bihar & Jharkhand (CCA Patna) on various dates was as under:

Sanctioned strength as on 09.04.13	Working strength as on 09.05.13	Vacancy percentage as on 09.05.13 (before transfer orders)	Sanctioned strength as on 20.11.15	Working strength as on 20.11.15	Vacancy percentage as on 20.11.15
76	46	39%	60*	36	40%
*Post Restructuring of department					

It is also stated that there were many persons who asked for choice stations but could not be given the same. The applicant had given his choice of five regions i.e. NWR, Delhi, Jaipur, Bangalore & Guwahati. He could not have been posted to NWR as he was to be transferred out of that region on promotion as ACIT. The affidavit also gives more

details with regard to the posting of officers in the region for which the applicant had given his option and also where officers could not be given their choice location.

10. Arguments advanced by learned counsel for the parties were heard.

11. Learned counsel for the applicant narrated the background of the matter. He stated that son of the applicant was now studying in B.Tech at Patiala but other grounds regarding the applicant's spouse being in service in Patiala would remain valid and the applicant should be retained in NWR region comprising of Punjab, Harayna, H.P, J & K and Chandigarh. Learned counsel pressed that the applicant had not been adjusted in any of the regions for which he opted and others had been so adjusted. Therefore, the respondent department was adopting pick and choose policy in this regard. Learned counsel also placed reliance upon the judgment passed by the Hon'ble Supreme Court in case of Somesh Tiwari Vs. U.O.I & Ors., 2009(2)SCC 592 wherein it has been held that :

"a. Service Law - Transfer of employee - Judicial review - Scope of and grounds for = Mala fide exercise of power - Punitive transfer - Non-application of mind to relevant facts - Transfer order held invalid on these grounds - However, further held, transfer in administrative exigencies ought not be interfered with by courts."

12. Learned counsel for the respondents stated that transfer order of the applicant dated 13.05.2013 had been stayed keeping in view the fact that his son was studying in '+2'. The criteria for transfer and reasons for not adjusting the applicant in region for which he had opted had been clarified in the additional affidavit filed in Nov, 2015. Learned counsel also referred to impugned order dated 09.01.2015 (Annexure A-19) and stated that the representation of the applicant against his posting to Patna (CCA Bihar & Jharkhand) has been considered in great detail by placing the same before the Placement

Committee and all aspects had been duly addressed in this order. Learned counsel further pressed that transfer is an incidence of service and since the applicant is a member of the Central Services with transfer liability for posting in any part of the India, he cannot legitimately resist his transfer to Patna.

13. I have carefully gone through the pleadings of the parties, material on record and arguments advanced by the learned counsel for the parties.

14. TPG Guidelines of 2010 applicable in the case of the applicant make it quite clear vide para 3.4 that Group 'B' officers on promotion to the grade of ACIT shall be transferred out of the region except in those cases where the officer has less than three years of service left at the time of promotion. Date of Birth of applicant is 25.03.1966, therefore, he has many years of service left. Hence, the applicant cannot have any claim to continue in the NWR Division even if his spouse is working in this region. Moreover adjustment of employees to be posted at the station convenient to them in view of place of posting of spouse are to be considered in the light of the policy and guidelines dated 30.09.2009 (Annexure A-2) but this cannot be considered to be mandatory in view of the TPG-2010 which applies to the service of the applicant. The applicant had given his option for posting him at NWR, Delhi, Jaipur, Bangaluru & Guwahati. Persons who were having seniority above the applicant have been posted to Bangaluru/Guwahati. The applicant's posting to Patna is at a location nearer to the place of posting of his spouse at Patiala than Bangaluru/Guwahati. It appears to me that the respondent-department has adequately clarified through written statement, additional reply dated 01.09.2015, additional affidavit dated 24.11.2015, the reasons for non-adjustment of the applicant in the regions for which he had opted after his empanelment. Impugned

order dated 09.01.2015 (Annexure A-19) is a detailed one that reflects due application of mind and examination of all the points raised by the applicant while representing against his transfer to Patna and no malafide/discrimination is established on the part of the respondent-department in transferring the applicant from NWR to Patna after he has been empanelled ACIT.

15. I have also perused the judgments of the C.A.T Madras Bench dated 09.07.2015 in O.A No. 841/2015 titled **Swarnalatha. V & Ors. Vs. U.O.I & Ors.** (Annexure R-2) where similar issue has been considered when the applicant in that O.A was assailing the transfer order from Tamil Nadu region to Orissa region as Assistant Commissioner of Income Tax. While rejecting the claim of the applicant in this O.A, it has been observed as follows:-

"8. The law is well settled that normally the Tribunal will not interfere with the order of transfer which is an incidence of service unless it is shown to be clearly unjustified, arbitrary or vitiated by malafide or infraction of any professed norms or principles governing the transfer. The Supreme Court consistently held that if an order is passed in infraction of any professed norms or principles governing the transfer, which alone could be scrutinized judicially, the Tribunal or Court may interfere with such orders unless a strong case of administrative need is made out for deviation from the professed norms or policy. The Supreme Court in the case of Rajendra Roy vs. Union of India and another (1993 (1) SCC 148) has held that the Court and the Tribunal should not interfere with the order of transfer unless such order is passed malafide or in violation of the rules of service and guidelines for transfer without any justification.

9. The applicants have become Members of the Indian Revenue Service by virtue of their promotion to the post of Assistant Commissioner, Income Tax. They are holding the post with all India transfer liability. The order under which the applicants have been retained in Tamilnadu region on promotion indicates that they were liable to be transferred to some other regions during Annual General Transfers. Therefore, the contention of the applicants that their tenure in the Tamilnadu region commenced afresh from the date of their promotion cannot be sustained. No doubt, the applicants had given option places as required in the transfer and placement guidelines. In our considered view, non-accommodating the applicants in any one of their option places cannot be a ground to interfere with the transfer proceedings. If number of persons have opted for a particular region, it is the discretion of the department as