

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.2485/2018

This the 9th day of July, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)**

Vivek Batra S/o Balwant Rai Batra,
presently posted as Additional CIT TDS Range 2(2),
R/o A-2, Income Tax Colony,
Peddar Road, Mumbai-400026. ... Applicant

(By Mr. Nilansh Gaur, Advocate)

Versus

1. Union of India through Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110001.
2. Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110001. ... Respondents

(By Mr. Rajeev Kumar, Advocate)

O R D E R

Justice L. Narasimha Reddy, Chairman :

The applicant is an officer of the Indian Revenue Service (IRS) of the 1992 batch. He initially joined as Assistant Commissioner of Income Tax on 04.01.1993, and he worked in

the Delhi Region up to the year 2003. Thereafter, he is working in the Mumbai Region in various capacities.

2. The applicant was included in the list of officers identified as ready for transfer in the year 2012. Aggrieved by that, he filed OA No.3075/2012 before this Tribunal. His contention was that substantial period of his stay in the Mumbai Region is in the exempted category, and if the same is taken into account, rather excluded, he was not liable to be included in the list. The said OA was disposed of with a direction to the respondents therein to take a decision on the application submitted by the applicant, before his transfer is effected on the basis of the tentative due list of Additional/Joint Commissioner of Income Tax.

3. Thereafter, though the name of the applicant continued in the lists four consecutive years, he was not transferred. In the office order No.102 of 2018 dated 03.07.2018 issued by the Ministry of Finance, Government of India, containing the names of Joint Commissioners of Income Tax promoted on *ad hoc* basis, for the purposes of transferring them to different directorates, the name of the applicant figured, and he is proposed to be transferred to Tamil Nadu & Puducherry

Region/Directorate. The applicant challenges the same in this OA. It is urged that in the fifteen years of stay of the applicant at Mumbai Directorate, nine years are in the exempted category, and if that period is excluded, he cannot be said to have completed the minimum period of stay for transfer in that Directorate. He places reliance upon certain guidelines issued by the department from time to time.

4. Heard Shri Nilansh Gaur, learned counsel for the applicant, and Shri Rajeev Kumar, learned counsel appearing for the respondents.

5. The subject matter of the OA is the proposed transfer of the applicant from the Mumbai Directorate to the Tamil Nadu and Puducherry Directorate. No other issue is involved. Time and again, the Hon'ble Supreme Court held that – (a) transfer is an incidence of service, and (b) the guidelines issued by the department in the context of transfers are directory in nature; and unless the employee is able to establish – (i) any specific prejudice, or (ii) that the transfer was motivated on account of any extraneous reasons, the courts would be slow to interfere with the transfer.

6. By this time, the applicant has put in 25 years of service. Out of that, 10 years is in the Delhi Region and 15 years in Mumbai Region. May be, with a view to encourage officers to take up certain challenging tasks, the department has issued circulars to exempt such tenure from being reckoned towards the period of stay for the purpose of transfers. That, however, is neither part of any service rules, nor any statutory provision. Here again, there is serious dispute as to which tenure of the applicant needs to be treated as exempted category, and which not.

7. Even from the information furnished by the applicant in the form of a table, the department treated three stints of the applicants in the years 2014, 2015 and 2016 as exempted, whereas the applicant wants to count almost the entire service, except four or five years, as exempted category. The matters of that nature are not at all justiciable. The department can certainly have the last word on matters of this nature. It is not difficult to imagine how desirable it would be to continue the same officer for decades together at the same place, that too at the commercially vibrant place like Mumbai. Further, it is not as if the applicant has a clean slate to his credit. In the year 2010, he was placed under suspension.

8. Assuming that the applicant is one of the most meritorious officers, the benefit of his services needs to be made available to other parts of the country also. Similarly, other officers need to be given an opportunity to serve in important places like Mumbai. The applicant does not have any vested right to remain in Mumbai alone. No one is indispensable for any place or position. In fact, more the length of stay at a place, higher the possibility of the officer developing vested interest.

9. Viewed from any angle, we do not find any basis to interfere in the impugned order. The OA is accordingly dismissed. There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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