

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.385 of 2016
Cuttack this the 18th day of January, 2018

CORAM:

THE HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Sachipati Behera, aged about 57 years, S/o. late Dambarudhar Behera, At-Maharda Paisa, PO/PS-Jashipur, Dist-Mayurbhanj, at present working as Income Tax Officer, Ward-2 (3), Cuttack

...Applicant

By the Advocate(s)-M/s.J.M.Pattnaik
C.Panigrahi

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Finance, North Block, New Delhi-110 001.
2. Central Board of Direct Taxes, represented through its Chairman, Department of Revenue, North Block, New Delhi-110 000.
3. The Secretary, Department of Personnel & Training, North Block, New Delhi-110 001.
4. The Principal Chief Commissioner of Income Tax, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751007.
5. The Principal Commissioner of Income Tax, Aayakar Bhawan, Shelter Chhak, Cuttack.
6. The Joint Commissioner, Income Tax, Range-II, Aayakar Bhawan, Shelter Chhak, Cuttack.
7. Shri Nirmal Kumar Tripathy, ITO(Technical) Aayakar Bhawan, Shelter Chhak, Cuttack.

...Respondents

By the Advocate(s)-Mr.C.M.Singh

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant works as Income Tax Officer at Cuttack and is aggrieved by his transfer to Sambalpur. He has filed this O.A. praying for the following reliefs:

- i) To quash the order of transfer dated 03.05.2016 (in so far as applicant and Respondent No.7) is concerned, the order of rejection of representation dated 23rd May, 2016 and to direct the Respondents to allow him to continue in his place of posting;
- ii) To pass any other order/orders as deemed fit and proper.

2. The brief facts of the case are as follows:

The applicant had joined as Inspector of Income Tax in the Office of Commissioner of Income Tax, Cuttack on 23.8.2011. On 8.5.2012, he was promoted as Income Tax Officer and on 8.6.2012 he was posted as ITO (Ward-2(3). He was issued the order of transfer dated 3.5.2016 transferring him to Sambalpur, against which he submitted a representation on 6.5.2016. He filed O.A.No.311 of 2016 which was disposed of on 16.5.2016 with a direction to respondents to consider his representation. The Principal Chief Commissioner of Income Tax, Orissa (Respondent No.4) rejected his representation in his order dated 23.5.2016. Challenging this order and the order of transfer dated 3.5.2016, applicant has filed this O.A. with the prayer as mentioned in Para-1 above.

3. The applicant has based his prayer mainly on the ground that his transfer is against the transfer guidelines and policy of

the Government. He belongs to SC community and had only three years to retire from Government service at the time of filing the Original Application. The DOP&T in its O.M. No.36026/3/85-Estt.(SCT) dated 24.6.1985 had issued guidelines prohibiting general transfer of the members of SC/ST. He has cited the order of CAT, Jaipur Bench in B.S..Verma vs. Union of India & Ors. [A.T.R. 1993(1) CAT 548] and of the Hon'ble Supreme Court in Kendriya Vidyalaya Santaghan vs. Damodar Prasad & Ors. [2007(2) SCC (L&S) 586] to plead that the said O.M. is binding on the respondents and the applicant being a reserved category employee cannot be transferred to a faraway place to Sambalpur from Cuttack. He has also pleaded that he is suffering from diabetes and hypertension and his children are getting educated at Cuttack. Respondents have rejected his representation vide order dated 23.5.2016. Moreover, his transfer has not been approved by the Placement Committee. The applicant had exercised his option for a posting at Cuttack. But without considering his option, he has been transferred to Sambalpur and in his place, Respondent No.7 has been posted. His transfer is neither due to administrative exigencies nor in public interest. Therefore, the order of transfer should be quashed and set aside and the applicant should be allowed to continue at Cuttack.

4. Applicant had also prayed for an interim relief by way of stay on his order of transfer dated 3.5.2016. Records show that

this Tribunal had in its order dated 9.6.2016 directed status quo to be maintained. The applicant is still continuing at Cuttack by virtue of the stay granted by this Tribunal.

5. The Respondents in their counter filed on 29.7.2016 have challenged the claim of the applicant. It is their contention that no employee has a right to continue in one place of posting and transfer being incidental to service, the order of transfer should not be interfered with in normal circumstances unless it is vitiated by mala fide or is made in violation of any statutory provision. They have cited the judgment of the Hon'ble Supreme Court in State of M.P. vs. S.S.Kourev [(1995) 3 SCC 270] to argue that the Courts/Tribunals are not appellate forum to decide transfer of officers and no Government servant can claim right to continue in a particular place of position as long as he desires. The respondents have listed the following judgments in support of their claims.

- i) The Apex Court Judgments Gujarat Electricity Board vs. Atma Ram Sungomal Poshani, 1989 2 SCC 602, Union of India vs. S.L.Abbas (1993) 4 SCC 357 and Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey (2004) 12 SCC 299.
- ii) The judgments of the Hon'ble Andhra High Court in R.Rama Rao vs. FCI & Others 1992(6) SLR following the decision the decision of the Apex Court in UOI vs. H.N.Kirtania.
- iii) Shilpi Bose & Ors. vs. State of Bihar (1991) 2 Supp. 659.
- iv) UOI vs. S.L.Abas (1993) 4 Supreme Court cases 357
- v) R.S.Yadav vs. VSNL (SC 105 (2003) Delhi Law Times 1995.

- vi) R.N.Tiwarey vs. VSNL [Delhi HC WPC No.16802/2006]
- vii) The Apex Court in V.Ramanna vs. A.P.SRTC & Ors., 2006 SCC (LNW) 69
- viii) Om Kumar vs. Union of India
- ix) Hafizur Rahaman vs. Secretary, Department of Atomic Energy & Ors. [CAT, Mumbai Bench in O.A.No.410/2007 judgment dated 8.10.2007] and the Apex Court judgment of S.C.Saxena vs . UOI & Ors. [2006 SC (L&S) 1890]
- x) A.P.Singh vs. UOI – represented Secretary Ministry of defence [CAT,Kolkata Bench, O.A.No.423/2007, Judgement dated 11.10.2007]
- xi) Amar Veer Singh vs. UOI & Ors. [CAT, Principal Bench, O.A.No.3305/2012, Order dtd. 03.01.2013]
- xii) PCK Solomon vs. UOI & Ors.[CAT, Jabalpur Bench, O.A.No.851/2012, Order dtd. 27.09.2012].

6. The Respondents have vehemently argued that the applicant has completed more than 4 years as ITO, Ward-2(3), Cuttack and as per transfer guidelines, he is due for transfer to a non-assessment post. Therefore, he has been transferred to the O/o. the Principal Commissioner of Income Tax, Sambalpur. The town is well connected by road and rail. The applicant has rendered more than four years in the Assessment post of ITO Ward -2(3), Cuttack which is a sensitive post. There has been no harassment nor discrimination against him as a member of S.C. The plea of the applicant that he will be attaining the age of superannuation in three years is contextually irrelevant inasmuch as Para-10 of the transfer guidelines categorically stipulated that the officers left with two years or less service before retirement may be posted to their home town or nearby

place if they so opt. The Respondents have also refuted the contention of the applicant that he was not given a personal hearing before the issue of the order of transfer or before the rejection of his representation since it is not administratively possible to do so. The applicant has been working in the post of ITO at Cuttack since 8.6.2012 and therefore, his transfer to Sambalpur is not illegal. The applicant's transfer has been made on the recommendations of the Local Placement Committee consisting of the Principal CIT-I & II, Bhubaneswar, Principal CIT, Cuttack & Sambalpur and CIT (Admn. & CO), Bhubaneswar on 28.04.2016.

7. The applicant filed a rejoinder on 30.11.2016 in which he has reiterated that he belongs to SC category and has only three years to retire from service and his transfer is a violation of the DOP&T OM dated 24.6.1985. The applicant should not have been transferred to a far off place there being vacancies available at Cuttack and Bhubaneswar where he could have been adjusted.

8. The Respondents had filed Misc. Application No.450 of 2016 on 29.7.2016 for vacation of the interim stay. However, the records show that no order has been passed on the Misc. Application for vacation of interim stay.

9. The matter was argued on 12.12.2017. During the course of argument, the learned counsel for the applicant filed copy of his Service Book and also the judgment of the Hon'ble Supreme

Court in B.S.Verma vs. Union of India & Ors. reported in ATR (1993) (1) CAT 548 and the order of this Tribunal in O.A.No.449 of 2017 decided on 30.10.2017.

10. The issue to be decided in the present O.A. is whether the order of transfer of the applicant from Cuttack to Sambalpur dated 3.5.2016 can stand the scrutiny of law. From the facts of the case it is obvious that the applicant has been working at Cuttack close to five years at the time of filing of the O.A. and by virtue of the stay granted by this Tribunal has completed more than six and half years in Cuttack out of which five and half years as ITO, Ward-2(3), Cuttack. The Respondents have rightly submitted that this being an assessment post which is sensitive in nature, applicant was given posting in a non-assessment post at Sambalpur when he was to complete four years. The transfer guidelines of the officers of the Income Tax Department upto the level of Additional Commissioner of Income Tax in the CIT Region of Orissa dated 28.2.2007 lay down the tenure for an assessment post as three years and for non-assessment post two years. The transfer guidelines stipulate that officers would be due for rotation after the completion of the tenure of the post, and they will be due for transfer out of a station on completing prescribed period of stay i.e., five years maximum continuous stay at Bhubaneswar and three years for all other stations. Para-10 of the guidelines categorically stipulate that officers left with two years or less of

service before retirement may be posted to their hometown or to the nearby place, if they so opt. The relevant portion of transfer policy annexed by the applicant at A/2 reads as follows:

- “3. Tenure of an assessment post would be 3 years and tenure of a non-assessment post would be 2 years. Assessment post would mean posting in a ward or circle.
- 4. Officers would be due for rotation after the completion of the tenure of the post, and they will be due for transfer out of a station on completing the prescribed period of stay as per Col.6 below.
- 5. Rotation would be from assessment to non-assessment and vice-versa and as far as possible an officer would not be posted to the same non-assessment post repeatedly.
- 6. Maximum continuous stay at Bhubaneswar would be 5 years and at all other stations would be 3 years.
- 10. Offices left with 2 years or less of service before retirement (on superannuation) may be posted to their hometown or to the nearby place (if they so opt). But while accommodating such officers it would be ensured that the officers affected have completed their term of posting and/or they have no objection to be disturbed. When the number of claimants for such posting exceeds the number of vacancies available, persons never posted or posted for a shorter period in such stations will get preference. An officer who has been posted at the station of his choice or home town and is due to retire within one year should not be disturbed against his option”.

11. As per the above guidelines the applicant having completed four years in an assessment post has no claim to take advantage of the transfer guidelines to continue in an assessment post. Similarly, he had more than three years to retire at the time when the order of his transfer was issued and therefore, he cannot claim the benefit of Para-10 of the

transfer guidelines which states that officers left with 2 years or less of service before retirement (on superannuation) may be posted to their hometown or to the nearby place (if they so opt).

12. The applicant has relied on the DOP&T OM 24.6.2985(A/1) which reads as follows:

Subject: Harassment of and discrimination against Scheduled Castes and Scheduled Tribes employees in Central Government Services/posts.

Ministries/Departments are aware that the Government, as a part of the programme for the general welfare of the persons belonging to the SC/STs have provided reservation in Central Government Services accompanied by various other benefits, concessions and relaxations. The main objective for providing reservation for Scheduled Castes and Scheduled Tribes in appointment to civil posts and services of the Government is not just to give jobs to some persons belonging to these communities and thereby, increase their representation in services but to uplift these people socially and merge them in the mainstream of the nation.

2. It has, however, been pointed out to this Department that the Scheduled castes and Scheduled Tribes officers, after appointment, are subjected to harassment and discrimination on grounds of their social origin. It has been pointed out that SC/ST offices are sometimes transferred to far-off place and also placed at insignificant positions. It has also been stated that these officers are not accepted at their place of posting by the concerned superior officers in some cases.

3. In this connection, it is emphasized that Government servants should desist from any act of discrimination against members of SC/ST communities on grounds of their social origin. It is also requested that senior officers including the Liaison Officers of the Ministry/Department, should keep a close watch to ensure that such incidents do not occur at all. However, if any such incident comes to the notice of the authorities, action should be taken against the erring officials promptly.

13. In the present case, it is quite obvious that there has been no harassment or discrimination against the applicant nor a transfer to Sambalpur from Cuttack where he stayed for more than 5 years can be termed as 'frequent transfer'. Neither Sambalpur can be termed as a far off place nor the posting as ITO headquarters can be termed as an insignificant position. It is quite clear that the applicant has continued in an assessment post for more than five and half years by virtue of the stay granted by this Tribunal on 9.6.2016 and he is not entitled to further continuation in view of the transfer guidelines prescribed by the Department.

14. We have comprehensively considered the case law cited by the applicant and the respondents. The applicant's reliance on B.S. Verma vs. Union of India & Ors. and Kendriya Vidyalaya Sangathan vs. Damodar Prasad & Ors. (supra) is misplaced, because in the present case there does not appear to be any harassment or discrimination against the applicant as an officer belonging to reserved category. The factual position in O.A.No.449 of 2017 is quite different. In that case the applicant had less than one year left before retirement and his transfer was from Bhubaneswar in Orissa to Ranchi in Jharkhand. There was no issue of sensitive post or non-sensitive post. In the present O.A. applicant has still more than one year and 11 months left before his retirement and at the time of his transfer,

he had more than three years before his superannuation. The facts of this case are distinguishable from the facts in O..No.449 of 2017 and therefore, the order passed by this Tribunal in O.A.No.449 of 2017 will not be applicable in the present case.

15. It is the settled position of law that the Court/Tribunal should not interfere with the order of transfer unless the same arises out of bias and mala fide and the transfer has been made in violation of statutory mandatory rules(Shilpi Bose & Ors. vs. State of Bihar & Ors. in AIR 1991 SC 532).

In Union of India vs. S.L.Abas reported in (1993) 4 SCC 357, the Hon'ble Supreme Court has held as under:

“7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of retransfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the government on the subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration”.

In Rajendra Singh & Ors. vs. State of U.P. & Ors. reported in (2009) 15 SCC 178, the Hon'ble Supreme Court had clearly laid down the principle that a Government servant has no vested right to continue in his place of posting:

“8. A government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment, but

also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the Government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires".

9. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiating by violation of some statutory provisions or suffers from mala fides. In *Shilpi Bose vs. State of Bihar* this Court held:

"4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders".

In *Airports Authority of India vs. Rajeev Ratan Pandey & Ors.* (CA 5550 of 2009 decided on August, 17th 2009), the Hon'ble Supreme Court has established a similar position:

"In a matter of transfer of a Government employee, scope of judicial review is limited and High Court would not interfere with an order of transfer lightly, be it an interim

stage or final hearing. This is so because the courts do not substitute their own decision in the matters of transfer". It is also pertinent to quote the observation of the Hon'ble Supreme Court in *Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey* (2004) 12 SACC 299:

"4. Transfer which is an incidence of service is not to be interfered with by courts unless it is shown to be clearly arbitrary or visited by mala fide or infraction of any prescribed norms of principles governing the transfer (see *Abani Kanta Ray v. State of Orissa* 1995 Supp.(4) SCC 169. Unless the order of transfer is visited by mala fide or is made in violation of operative guidelines, the court cannot interfere with it (see *Union of India vs. S.L.Abbas* (1993) 4 SCC 357). Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is visited by mala fides or is made in violation of any operative guidelines or rules the courts should not ordinarily interfere with it. In *Union of India v. Janardhan Debanath* (2004) 4 SCC 245 it was observed as follows:

"No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or sated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in *National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan* (2001) 8 SCC 574".

16. Considering the factual position in this O.A. and the transfer guidelines issued by the Department and the judicial pronouncements, we find no merit in this O.A. It is accordingly dismissed. Status quo order granted on 9.6.2016 stands vacated. With the above order, Misc. Application Nos. 450 of 2016 and 82 of 2017 are disposed of. The parties to bear their respective costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

(S.K.PATTNAIK)
MEMBER(J)

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