

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.788 of 2016

Cuttack this the 16th day of February, 2018

CORAM:

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

Sarat Kumar Dash, aged about 57 +, Son of late A.P.Dash, residing at Flat No.201, Sidharth Apartment, Road No.8, Unit-9, Bhubaneswar, Dist-KHurda, Odisha, at present working as CIT (Appeals)-I, Bhubaneswar under the administrative control of the Principal Chief Commissioner of Income Tax, Odisha, Bhubaneswar

...Applicant

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

-VERSUS-

Union of India represented through:

1. The Secretary (Revenue), Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi, PIN-110 001
2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi-110 001
3. The Under Secretary to Government of India, Ministry of Finance, Department of Revenue (Central Board of Direct Taxes), North Block, New Delhi-1
4. The Principal Chief Commissioner of Income Tax, Odisha, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751 007
5. Sri K.T.Mishra, Income Tax Officer (Legal), O/o. Principal Chief Commissioner of Income Tax, Odisha, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751 007
6. The Principal Chief Commissioner of Income Tax (CCA) A.P. & Telengana, 10th Floor, 'C' Block, I.T. Towers, 102-03, A.C.Guards, Hyderabad-500 004

...Respondents

By the Advocate(s)-Mr.S.Behera

ORDER
DR.MRUTYUNJAY SARANGI, MEMBER(A)

The applicant was working as Commissioner of Income Tax (Appeals)-I at Bhubaneswar under the Principal Chief Commissioner of Income Tax, Orissa, Bhubaneswar(Respondent No.4) at the time of filing of this O.A. He was transferred to Visakhapatnam as Commissioner of Income Tax (Appeals)-I (CCA AP & Telengana) vide order dated 20.7.2016 (A/6) issued by the Central Board of Direct Taxes. On 22.7.2016 he submitted a representation which was disposed of vide order dated 2.11.2016 rejecting his request. Aggrieved by this, he has filed the present O.A. praying for the following reliefs:

- i) To quash the order No.F.No.A-22011/2/2016-Ad. VI (Order No.135 of 2016) dated 20th July, 2016 passed by the Respondent No.3 in so far as transferring the applicant from Bhubaneswar to Vishakhapatnam (CCA AP & Telegana) (A/6) and the order of rejection of representation vide order No.A-22011/2/2016-Ad-VI dated 02.11.2016 which was communicated to the applicant by Respondent No.5 vide letter No.Pr.CCIT/Legal/OA No.512/2016/2016-17/19886 dated 3rd November, 2016(A/2).
 - ii) To pass any other order/orders as deemed fit and proper.
2. Records show that applicant's prayer for interim relief was considered by this Tribunal on 8.11.2016 and an ad interim order of status quo was issued which was continued from time to time.

3. The applicant has based his prayer mainly on the ground that neither the Respondent No.3 nor the Transfer Committee has any power and authority to deal with the transfers and postings of officers in the cadre of CIT. This Tribunal in its order dated 29.7.2016 in O.A.No.512 of 2016 filed by the applicant had directed the authorities concerned to consider and dispose of the applicant's representation dated 22.7.2016 keeping in mind the various judicial pronouncements, the conditions stipulated in the Transfer Policy and the law laid down by the Hon'ble Apex Court in **Kendriya Vidyalaya Sangathan vs. Damodar Prasad & others (2004) 12 SCC 299**. However, the Respondent No.2 placed the applicant's representation before the Transfer Committee and communicated the decision of the Committee rejecting the representation dated 22.7.2016 without the specific approval of Respondent No.2. The Committee acted like an Appellate Authority over the order of this Tribunal and rewrote a fresh order over and above the order of the Tribunal. The order of rejection is not free from bias since fact that the applicant's wife is working in LIC of India at Bhubaneswar has not been considered in respect of posting of both husband and wife as per the principle laid down by the DOP&T dated 30.9.2009. The 2nd son of the applicant is prosecuting higher studies at Bhubaneswar and this aspect has not been taken into consideration while rejecting his representation. The applicant had exercised his option for

continuance at his present place of posting as per the Transfer Policy framed and issued on 16.2.2010. The applicant had less than three years of service left when his transfer order was issued and therefore, the option exercised by him should have been taken into account while ordering his transfer. Therefore, the O.A. filed by the applicant deserves to be allowed.

4. The Respondents in their counter-reply filed on 15.5.2017 have contested the claim of the applicant and submitted that the Chairman, CBDT is fully authorized to consider any representation made by an IRS officer and therefore, there is no illegality in the order passed by the CBDT dated 2.11.2016 conveying the decision of the Placement Committee which includes the Chairman, CBDT. The Respondents have also submitted that although the wife of the applicant is posted at Bhubaneswar in LIC of India and his son is prosecuting higher studies in Bhubaneswar, the fact that the applicant has been continuing in Bhubaneswar for a long period has been considered by the Placement Committee and a decision has been taken to transfer him to Vishakhapatnam in the order dated 2.11.2016. The applicant had been retained as per his choice in Bhubaneswar on promotion as Commissioner of Income Tax even though he was due for transfer in the year 2010 and this concession cannot be granted to him indefinitely. In the Annual General Transfer, 2016, the Placement Committee had decided to consider only those cases for retention in their

present place of posting where retirement was due on or before 31.5.2018. In the case of the applicant, since his retirement is beyond that date, the order for his transfer to Vishakhapatnam is legally sustainable. Clause-3.5. of TGP- 2010 states that officers who have three years or less service left shall be posted to or retained at the stations of their choice to the extent possible. In the present case since the applicant has already worked in Bhubaneswar from June, 1988 to November, 1997 (9 years) and from June, 2003 till date (13 years) at the time of filing of the O.A., he has spent more than 22 years in Bhubaneswar and therefore, his transfer to Visakhapatnam is legally valid. The Respondents have cited the judgment of the Hon'ble Supreme Court in **Union of India vs. S.L.Abas [1993 (4) SCC 357]** to argue that unless the order of transfer is vitiated by mala fide or is made in violation of statutory provisions, the Courts cannot interfere with them. Who should be transferred where is a matter for the appropriate authority to decide keeping in mind the guidelines issued by the Government on the subject. While quoting the DOP&T O.M. dated 30.2.2009, the Respondents have pointed out that the applicant's spouse being employed with a Public Sector Undertakings, she should apply for a transfer with her employers. Respondents have also cited the judgments of the Hon'ble Supreme Court in **S.C.Saxena vs. Union of India & ors. [(2006) 9 SCC 583]**, **Shilpi Bose vs. State of Bihar & Ors.**

[AIR 1991 SC 532], Major General J.K.Bansal vs. UOI & Ors. [(2005) 7 SCC 227], State of M.P. & Another vs. S.S.Kourev and Ors. [1995 (2) SLJ 109 (SC)] and State of U.P. vs. Gobardhan Lal {2004 (3) SLJ 244} to support their argument that the applicant's transfer has been done following the extant rules and guidelines and therefore, the Tribunal has a very limited power to interfere in the transfer of the applicant.

5. The applicant in his rejoinder filed on 17.4.2017 has reiterated his earlier stand that the transfer is illegal and arbitrary and therefore, should be quashed. He is going to retire on 31.1.2019 and has less than two years of service left. Therefore, his transfer to Visakhapatnam at this late stage is illegal and arbitrary. Neither the Respondent No.3 nor the Transfer Committee has any power to order transfer and posting of the applicant and the decision of the Transfer Committee rejecting the representation of the applicant has been communicated to him without the specific approval of the Chairman, CBDT (Respondent No.2). Since the transfer and the rejection of representation of the applicant has been done by an incompetent authority, the same is not sustainable in the eyes of law.

6. The matter was heard on 12.1.2018 when the learned counsels for the applicant and respondents presented their arguments. The learned counsel for the official respondents

reiterated the stand that the applicant has been serving in Bhubaneswar for the last 15 years and was transferred in a chain transfer to a place opted by him, i.e., Visakhapatnam. The learned counsel for the applicant produced during the course of argument the order of this Tribunal in O.A.No.449 of 2017 pronounced on 30.10.2017 in which a similar case was considered and since the applicant in that O.A. had less than one year to retire, it was ordered by this Tribunal to retain him at his present place of posting. The issue to be decided in the present O.A. is whether the transfer order passed by the respondents can stand the scrutiny of law and whether the applicant can be allowed to continue at his present place of posting.

7. Having heard the learned counsels from both the sides, we perused the documents submitted by them. We are aware that transfer is an incidence of service and it is for the employer to take a decision in the best interest of the organization where to post an employee. When the order of transfer was passed shifting the applicant from Bhubaneswar to Visakhapatnam on 20.7.2017, he had more than 2 and half years' service left, his date of retirement being 31.1.2019. Strictly speaking as per the existing rules and guidelines, his transfer from Bhubaneswar to Visakhapatnam after a stay of more than 22 years in two spells in Bhubaneswar cannot be questioned. Clause-3.5 of the transfer guidelines for officers at different levels adopted by the

Respondent-Organization states that officers who have three years or less service left shall be posted to the stations/regions of their choice to the extent possible. In the present case, the respondents claim that Visakhapatnam is one of the choices given by the applicant for his posting. The stand taken by the applicant that his wife is working for LIC of India and is presently posted at Bhubaneswar has obviously been considered by the CBDT while issuing the transfer order and also while rejecting his representation. The DOP&T OM dated 30.2.2009 provides as follows:

“vi) Where one spouse belongs to a Central Service and the other spouse belongs to a PSU:

The spouse employed under the PSU may apply to the competent authority and the said authority may post the officer to the station or if there is no post under the PUS in that station where the other spouse is posted. If, however, the request cannot be granted because the PUS has no post in the said station, then the spouse belonging to the Central Service may apply to the appropriate cadre controlling authority and the said authority may post the said officer to the station or if there is no post in that station, to the station nearest to the station where the spouse employed under PSU is posted”.

8. Similarly, the CAT, Principal Bench, New Delhi considered this issue in O.A.No.462 of 2012 (Sangita Kanaunia & Ors. vs. UOI) decided on 14.08.2012. It had cited the ruling of the Hon’ble Supreme Court in the case of **Bank of India vs. Jagit**

Singh Mehta wherein, it was observed that “no doubt the guidelines require the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees”.

The CAT, Principal Bench in its order had stated that “the facility of spouse being allowed to be posted at the same place therefore still remains a discretionary facility, and does not give rise to a vested right in favour of the spouse concerned, which right may be liable to be enforced de hors the Rules and Regulations and Administrative requirements and the needs of other employees, as very aptly observed by the Hon’ble Apex Court”.

9. Viewed in the above context the rules and guidelines do not strictly prohibit the posting and transfer of the applicant from Bhubaneswar to Visakhapatnam vide their order dated 20.7.2017. The scope of interference in the matter of transfer has been dealt by the Hon’ble Supreme Court in a number of cases. We have taken into account the decisions of the Hon’ble

Supreme Court in **Union of India vs. S.L.Abas** reported in **(1993) 4 SCC 357**, **Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey (2004) 12 SCC 299** and **Abani Kanta Ray vs. State of Orissa 1995 Suppl. (4) SCC 169**. We have also considered the respondents' citation of the judgments. However, in a similar case this Tribunal in O.A.No.449 of 2017 decided on 30.10.2017 had passed an order giving relief to the applicant solely on the ground that he had less than one year of service left from the date of retirement. The relevant portion of the order which was written by one of the a Members of the present Bench reads as follows:

“Although the judicial pronouncements are overwhelmingly clear that the Courts and Tribunals should not interfere with the orders of transfer unless the transfer orders have been made in violation of mandatory statutory rules or on the ground of mala fide, in the present case, we find that the applicant has only less than one year of service before he retires. The applicant has alleged certain degree of mala fide and arbitrariness regarding retention of Shri S.J.Jena at Bhubaneswar Office. We are not inclined to go into the merits of the retention of Shri Jena at this stage. It is for the respondents to arrange the posting of Office Superintendents at their different field offices. But the transfer guidelines (A/1) very clearly state that officers and staff retiring within three years may be considered for posting to the stations of their choice. The applicant being very close to his retirement, his dislocation to Ranchi will be an act of gross inhumanity. It will also create difficulties in processing the necessary documents for his pensionary benefits. Only on this ground, we allow the O.A. filed by the applicant. Transfer order dated

30.5.2017(A/5), relieving order dated 31.5.2017(A/10) are quashed. The respondents are directed to retain the applicant in his present place of posting till his superannuation”.

11. Bound by judicial precedent and considering the facts and circumstances of the present case, we therefore, allow the O.A. Consequently, order of transfer dated 20.6.2016(A/6) and the rejection order dated 3.11.2016(A/2) are quashed and set aside, as a special case since the applicant has less than one year of service left as on date. The Respondents are directed to retain him in his present place of posting, i.e., Bhubaneswar. Orders to this effect may be passed within a period of four weeks from the date of receipt of this order. No costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

(S.K.PATTNAIK)
MEMBER(A)

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