

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

**ORIGINAL APPLICATION NO. 291/469/2017
with
MISC. APPLICATION NO. 291/617/2017**

Order Reserved on: 17.07.2018

DATE OF ORDER: 24.07.2018

CORAM

**HON'BLE MR. SURESH KUMAR MONGA, JUDICIAL MEMBER
HON'BLE MR. A. MUKHOPADHAYA, ADMINISTRATIVE MEMBER**

Narendra Gour S/o Shri J.P. Gour, aged about 56 years, R/o 18-A, Guru Jambeshwar Nagar, Gandhi Path, Vaishali Nagar, Jaipur, presently working as Principal Commissioner of Income Tax (OSD), Jaipur.

....Applicant
Mr. Amit Mathur : counsel for applicant.

VERSUS

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

....Respondents
Mr. Gaurav Jain : counsel for respondents.

ORDER

Per: Suresh Kumar Monga, Judicial Member

The pleaded case of the applicant herein is that he is a member of Indian Revenue Services. He was posted as Commissioner of Income Tax at Jaipur on 01.06.2011. Vide order dated 20.02.2017, he was promoted as Principal Commissioner of Income Tax and the said promotion order was executed immediately. He was given promotion at the same place of posting. It has further been averred that the respondents sought options from the applicant and other officials

working in the department for their future place of postings on transfer basis. Consequent thereto, the applicant submitted his option form with a request for considering his case on compassionate grounds in terms of para 6.1 of Transfer/Placement Guidelines (IRS)-2010 as his wife was suffering from acute OCD, depression and anxiety for the last few months and she was under treatment of a Govt. hospital. It has further been averred that in his option form, he also opted for his posting at Kota, Ajmer and Alwar as his first choice, Delhi as second choice, Chandigarh as third choice, and Mumbai as fourth choice. It has further been averred that the applicant's daughter is pursuing her study in 11th class and it will be difficult for her to get admission at the new place of posting. Despite the fact that the posts are lying vacant at Jaipur, still he has been transferred to Kochi. The applicant submitted a representation dated 28.06.2017 narrating all the aforesaid facts and requested the respondent no. 2 to reconsider the matter with regard to his posting. Since no action was taken on his representation, therefore, he preferred S.B. Civil Writ Petition No. 10221/2017 before the Hon'ble High Court of Rajasthan at Jaipur as Central Administrative Tribunal, Jaipur Bench was not functioning at the relevant time. The said writ petition was disposed of by the Hon'ble High Court of Rajasthan vide order dated 02.08.2017 on an undertaking given by the respondents' counsel that the representation of the applicant is under active consideration and the same would be decided in accordance with the policy guidelines and in a sympathetic manner. In view of the said undertaking, the Hon'ble High Court of Rajasthan directed the respondents to decide the applicant's representation. A further

direction was also issued that in case an order detrimental to his interest is passed, the same shall not be given effect for a fortnight enabling him to avail the legal remedy in accordance with law. Thereafter, the applicant made an application before the Hon'ble High Court of Rajasthan to fix a time limit for disposal of his representation. The Hon'ble High Court of Rajasthan passed an order dated 09.08.2017 giving 10 days' time to the respondents to decide his representation. The applicant has further pleaded that on 16.08.2017, the respondents passed a fresh order of promotions and postings in the cadre of Principal Commissioner of Income Tax and all the four posts at Jaipur were filled up. The said order was in violation of the observations made by the Hon'ble High Court of Rajasthan. At that stage, the applicant made an Original Application before the Central Administrative Tribunal, Jaipur Bench wherein an order was passed on 23.08.2017 with the observations that the respondents shall decide the applicant's representation as early as possible. Thereafter, the respondents decided the applicant's representation on 28.08.2017 (Annexure A/3) and rejected the same without taking into consideration the difficulties faced by him. Aggrieved by the said order, the applicant has invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The respondents by way of filing a joint reply have joined the defence and opposed the cause of the applicant. It has been averred that considering all the relevant issues in the applicant's case and after due consideration over his representation, the

matter was considered by the Placement Committee, which gave the following observations:

- "(a) The applicant was promoted in-situ as PCIT (OSD) vide CBDT's order No. 26 of 2017 dated 20/2/2017 but the regular posting was deferred due to exigency of work on account of closing of financial year. It was decided that these newly promoted officers will be given regular posting in Annual General Transfer (AGT) – 2017.
- (b) The applicant was due for transfer on promotion as per para 3.3 of Transfer/Placement Guidelines – 2010 which reads as under:
- "Para 3.3 – On Promotions Group-A officers will normally be transferred out of the Region, except where they have come to that Region less than 2 years earlier."
- (c) The applicant was posted out of Rajasthan region to Kochi in Kerala region in the Annual General Transfer (AGT)-2017. In facts, all the officers who were promoted to the grade of PCIT vide CBDT's order No. 26/2017 dated 20/2/2017, were given regular posting in AGT-2017 vide CBDT's order No. 111 of 2017 dated 27/6/2017.
- (d) Apart from being covered under para 3.3 of the Transfer/Placement Guidelines-2010, the applicant was otherwise also due for transfer out of Jaipur since as per para 4.3 (i) (b) of the Transfer/Placement Guidelines-2010 any Group 'A' Officer on completion of 5 year's continuous stay in field posting is liable for transfer out of that station. The applicant has been posted continuously at Jaipur since 18.04.2011 and he completed his continuous tenure of 5 years in filed posting at Jaipur on 31st December, 2016."

3. It has further been averred by the respondents that the department can post any officer to any place in the best interest of the organization keeping in view the administrative requirement and public interest. No officer has a right of posting at a particular place /region. Having joined the central services of the Government of India, all the officers are required to serve anywhere in India and the postings to a particular region cannot be viewed as an order of punishment. It is practically not possible to give choice stations to all the officers since the transfers are made in the interest of organization. While issuing transfer/posting orders, choices given by the officers are considered subject to the exigencies and requirement of the organization. The applicant has been transferred from Jaipur to Kochi on promotion. He was even otherwise due for transfer since he has completed 05 years of his tenure at Jaipur. With all these assertions, the respondents have prayed for dismissal of the O.A.

4. Heard learned counsel for the parties.

5. Shri Amit Mathur, learned counsel for the applicant argued that the applicant's wife and daughter are under treatment of a Psychiatrist in a Government Hospital at Jaipur and they are required to be looked after by him. The said fact was brought to the notice of the authorities by the applicant through his representation but while taking decision on the said representation, the difficulties being faced by him are not considered. Since the respondents have failed to take into consideration the relevant facts while deciding his representation

and have also failed to record categorical findings, therefore, the order dated 28.08.2017 cannot be sustained and the same deserves to be set aside. Learned counsel further argued that the applicant while submitting his option form also gave his order of preference for his place of posting outside Jaipur. His first choice for posting was for Kota, Ajmer and Alwar. His second choice was for Delhi. He further gave his choice for Chandigarh and Mumbai. The said request of the applicant to post him at the choice stations has also not been considered while passing the impugned order. Learned counsel further submitted that in terms of clause 6.1 of the Transfer / Placement Guidelines (IRS)-2010, the applicant's case ought to have been considered by the respondents compassionately looking towards the ill-health of his wife and daughter.

6. Per contra, learned counsel for the respondents argued that the applicant was promoted in-situ as Principal Commissioner of Income Tax on 20.02.2017 but his regular posting was deferred due to exigency of work on account of closing of financial year. The posting of the applicant at Kochi vide order dated 27.06.2017 (Annexure A/1) is on promotion as Principal Commissioner of Income Tax. He while, referring paragraph 3.3 of the Transfer / Placement Guidelines (IRS) - 2010, submitted that on promotion a Group 'A' officer is normally transferred out of the Region, except where he has come to that Region less than 2 years earlier. The applicant was otherwise due for transfer out of Jaipur in terms of para 4.3 of the Transfer/Placement Guidelines (IRS)-2010 as he had already completed a tenure of more than 05 years at Jaipur.

Learned counsel, while referring to a judgment of the Hon'ble Supreme Court in the case of **Ekta Shakti Foundation vs. Govt. of NCT of Delhi** (2006) 10 Supreme Court Cases 337, argued that this Tribunal while exercising the power of judicial review cannot intervene into an administrative order passed by the respondents whereby the applicant has been transferred to Kochi on promotion as Principal Commissioner of Income Tax. Learned counsel for the respondents relied upon another judgment of the Hon'ble Supreme Court in the case of **Shilpi Bose (Mrs) and others vs. State of Bihar and others** 1991 Supp (2) Supreme Court Cases 659 and contended that this Tribunal should not interfere with the transfer order, which has been passed in public interest and for administrative reasons. He further argued that pursuant to the directions issued by the Hon'ble High Court of Rajasthan, the representation of the applicant was considered by the Placement Committee and after taking into consideration all the facts and circumstances, the same has been rightly declined. He, thus, prayed for dismissal of the O.A.

7. Considered the rival contentions of the learned counsel for the parties and perused the record.

8. Admittedly, the applicant was promoted in-situ as Principal Commissioner of Income Tax (OSD) vide order dated 20.02.2017. However, his regular posting was deferred by the respondents due to exigency of work on account of closing of financial year. It was decided by the respondents that the newly promoted officers will be given regular posting in Annual General

Transfer (AGT) 2017. Accordingly, vide order dated 27.06.2017, the applicant was posted at Kochi. A perusal of para 3.3 of the Transfer/Placement Guidelines (IRS)-2010 reveals that on promotion, a Group 'A' officer is normally transferred out of the Region, unless he has a stay less than two years at the place from where he is being transferred. It requires to be noticed here that the applicant was posted at Jaipur as Commissioner of Income Tax on 01.06.2011. He has completed a period of more than 06 years at Jaipur. As a policy matter, all Group 'A' officers are liable for transfer at the commencement of the financial year, if they have as on 31st December of the preceding year completed 5 years of continuous stay in field postings in respect of the following stations:

"Amritsar, Baroda, Bhopal, Bhubaneshwar, Chandigarh, Coimbatore, Indore, Jaipur, Kanpur, Kochi, Lucknow, Ludhiana, Nagpur, Patna, Surat, Vishakhapatnam".

Since the applicant has completed more than 06 years' tenure at Jaipur, therefore, in view of the aforesaid policy decision, he cannot be retained at Jaipur. It is the pleaded case of the applicant that he also filled up the option form wherein he gave his choice stations as Kota, Ajmer, Alwar, Delhi, Chandigarh and Mumbai. Had the said request been accepted by the respondents by giving him a choice posting, in that eventuality his wife and daughter would have been getting the medical treatment at the place other than Jaipur. In this view of the matter, it is difficult to accept the plea of the applicant that his posting at Kochi will adversely affect the medical treatment of his wife and daughter. It is not the applicant's case that equivalent medical facilities are not available at Kochi, which are

available at Kota, Ajmer, Alwar, Delhi, Chandigarh and Mumbai. Even otherwise, a period of about one year has gone by now in the garb of interim orders granted by the Hon'ble High Court of Rajasthan as well as by this Tribunal and the applicant has continued at Jaipur because of those orders.

9. On 29th May, 2018, when the matter was taken up for hearing, the applicant appeared in person and prayed for two days' time to bring on record the requisite medical record showing that his wife is still under treatment of SMS Hospital, Jaipur. The matter was again taken up on 01.06.2018 and the applicant still prayed for some time to place on record the medical prescription of his wife. On 16.07.2018, the matter was again adjourned to 17.07.2018 at the request of learned counsel for the applicant. Despite all these adjournments, the applicant failed to produce on record the medical prescriptions of his wife and daughter showing therein that still they are under treatment at SMS Hospital, Jaipur. It appears that either the applicant's wife and his daughter are not getting the treatment now from the SMS Hospital, Jaipur or the treatment is over by now which can be construed from the certificates issued by Dr. Tambi wherein he opined that they require medical treatment for an year or two.

10. We also do not find any merit in the argument of learned counsel for the applicant that the authorities are required to record a categorical finding on a representation of an employee dealing with his personal circumstances in the matter of postings and transfers. It is a matter of common parlance that the

transfers and postings are made by the authorities in the administrative exigencies. The applicant herein is a member of Indian Revenue Services and in terms of his service conditions, he is liable to serve anywhere in India. His personal circumstances cannot over-awe the administrative exigencies as have been pleaded by the respondents.

11. The Hon'ble Supreme Court in the case of **Shilpi Bose** (supra) has held that the Courts should not interfere with the transfer orders which are made in public interest and for administrative reasons unless those are made in violation of any mandatory statutory rule or on the ground of mala fide. The orders impugned herein by the applicant cannot be termed to be in violation of mandatory statutory rules. Neither the applicant has pleaded any malice against any of the authorities. The respondents have posted the applicant at Kochi on his promotion as Principal Commissioner of Income Tax. The said order of posting has been passed while keeping in view paragraph 3.3 and 4.3 of Transfer/Placement Guidelines (IRS)-2010, which is purely an administrative action and the same cannot be interfered by this Tribunal while exercising its power of judicial review in view of the law laid down by the Hon'ble Supreme Court in the case of **Ekta Shakti Foundation** (supra).

12. In the conspectus of discussions made herein above, we do not find any merit in the instant Original Application and the same deserves to be dismissed.

13. Accordingly, the instant Original Application is dismissed. However, there shall be no order as to costs.

14. Since the Original Application itself stands dismissed, therefore, nothing survives in M.A. No. 291/617/2017 and the same is rendered infructuous.

(A. MUKHOPADHAYA)
ADMINISTRATIVE MEMBER

(SURESH KUMAR MONGA)
JUDICIAL MEMBER

Kumawat