

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/00346/2016

Date of order : 8.3.2016

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member

SUBRAT MISHRA

VS

UNION OF INDIA & ORS.

For the applicant : Mr.S.Panda, counsel
Mr.T.K.Biswas, counsel
For the respondents : Mr.P.Mukherjee, counsel

O R D E R

In this OA the applicant, a PCIT posted at PCIT-10, Kolkata is aggrieved as his representation seeking respite from transfer has been rejected on 11.1.16.

2. This is the second journey of the applicant to this Tribunal and the order dated 11.1.16 was issued pursuant to the directions in the earlier OA being OA 1489/15. The applicant had sought for a respite on the ground that he had not completed a tenure of 8 years at Kolkata, his wife was working as AGM, State Bank of India and was posted at Kolkata and so he would be eligible in terms of DOPT OM dated 30.9.09 to seek a respite from transfer on spouse ground and that his child was at the mid-academic session.

3. The respondents have admitted in the impugned order that he has not completed tenure of 8 years as prescribed for Group 'A' officers. They have

further admitted that he was retained at Kolkata on promotion as PCIT and the order clarified that the same was to be reviewed at the time of AGT and upon review he was transferred out of region on promotion. It is further stated that in terms of clause 3.3 of the transfer policy on promotion Group 'A' officers are normally to be transferred out of region except where they have come to the region less than for 2 years. Therefore the applicant having spent more than 2 years in the region was not found eligible for further retention on promotion. In regard to posting on spouse ground in terms of DOPT OM dated 30.9.09, the respondents have referred to a decision rendered by Hon'ble Apex Court in **Bank of India -vs- Jagjit Singh Mehta [1992 (1) LLJ 329 SC]** rendered way back in 1992 i.e. long before promulgation of the DOPT OM dated 30.9.09.

They have further referred to a decision rendered by Principal Bench in OA 462/12 that DOPT OM/policy of posting of spouse in the same station would continue to remain subject to the observations of the Hon'ble Supreme Court in the case of **Bank of India -vs- Jagjit Singh Mehta** supra. Further reference had been made to **Kendriya Vidyalaya Sangathan -vs- Damodar Prasad Kamble [AIR 2004 SC 4850]** yet the speaking order is conspicuously silent towards the administrative exigency or the exact reason why the applicant was not allowed to complete his tenure of 8 years as para 4.3(i) of Transfer/Placement guidelines for officers of Indian Revenue Service, CBDT floated on 16.2.10, would read as under :

"All Group 'A' officers (subject to 4.4) below, shall be liable for transfer at the commencement of the Financial Year, if they have as on 31st December of the preceding year completed in field posting -

- (a) 8 years of continuous stay in field postings in the following eight metropolitan stations :

BS

New Delhi, Mumbai, Ahmedabad, Bangalore, Hyderabad,
Pune, Chennai, Kolkata,"

4. The respondents have also failed to demonstrate that the transfer of the applicant was a result of his promotion in as much as in the said transfer order dated 15.6.15 the applicant who figures at Sl. No. 201 is shown transferred as PCIT-10, Kolkata to PCIT-2, Patna.

5. Ld. Counsel for the applicant has placed reliance on the decision rendered in **Director of Scholl Education, Madras & Ors. -vs- O.Karuppa Thevan & Anr. [1994 Supp (2) SCC 666]** wherein the Hon'ble Apex Court deprecated transfer of employee during mid-academic term and in absence of urgency restrained the same from being effected till the end of that academic year.

Ld. Counsel also placed reliance on Principal Bench's decision rendered in batch cases starting with OA 1510/06 delivered on 13.10.06 wherein the Principal Bench held that transfers should be affected based on norms or guidelines of the department, in order to exclude the arbitrariness as well as to demonstrate that such decisions are taken in a transparent manner free from bias or malafides and to ensure that vast power in the modern State is not abused but properly exercised.

Ld. counsel would further place reliance on a decision rendered by this Bench in OA 86/12 wherein in the case of one Jt. Commissioner of Income Tax who was transferred from Kolkata to Patna in violation of the DOPT OM dated 30.9.09 and upon consideration of the decision rendered by Hon'ble Apex Court in State of **U.P. -vs- Gobardhan Lal [2004 (11) SCC 402]** as also para 3.3 of the guidelines (which would apply to the present

case also) and in view of the fact that several persons who made requests for their adjustment were considered, quashed the transfer order.

Ld. Counsel would also submit that Kolkata is high-deficient region and several officers under transfer order dated 15.6.15 have been accommodated at their choice places.

6. The respondents' counsel has vehemently opposed the prayer of the ld. Counsel for the applicant for stay of transfer and submitted that transfer was an incidence of service and ought not to be interfered with.

7. I have heard the ld. Counsels for the parties.

8. It is quite apparent from the impugned speaking order that the basic contentions of the respondents have been already highlighted in the said speaking order. As already stated hereinabove the speaking order being conspicuously silent in regard to consideration of the applicant on spouse ground and the child being in the mid-academic session and absence of the administrative exigency in issuing the transfer before completion of tenure of 8 years as also due to the fact that the transfer being not on promotion hence para 3.3 apparently having no manner of application, the transfer order is stayed.

9. The respondents are directed to file reply within four weeks. List on 6.4.2016.

(BIDISHA BANERJEE)
MEMBER (J)

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