

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.353/2018

Date of Decision : 8th May, 2018

CORAM: HON'BLE SHRI ARVIND J. ROHEE, MEMBER (J)

Subhash Eknath Dhargave
 Aged about 49 years & at present
 Working as a Tax Recovery Officer-I
 Thane, 6th Floor, Ashar I T Park,
 Rd. No. 16-Z, Wagle Estate,
 Thane West and residing at Flat No. 203,
 Bldg No. 2, Millennium Park,
 Hari Om Nagar, Mulund East,
 Mumbai 400081.

- Applicant

(By Advocate Shri A.A. Manwani)

Versus

1. Union of India
 Through Secretary,
 Ministry of Finance,
 North Block, New Delhi- 110001.
2. The Chairman,
 Central Board of Direct Taxes,
 Department of Revenue,
 Ministry of Finance,
 North Block, New Delhi- 110001.
3. Principal Chief Commissioner of Income Tax,
 Pune, 12, Aaykar Bhawan,
 Sadhu Vaswani Road, Pune 411001.
 Mumbai.
4. Chief Commissioner of Income-Tax,
 Thane, 6th Floor, Ashar I T Park,
 Rd. No. 16-Z, Wagle Estate,
 Thane 400601.

- Respondents.

ORDER (ORAL)

Taken up during summer vacation before Single Bench on urgent circulation.

2. Heard the applicant who is present in Court alongwith Shri A.A. Manwani, learned Advocate for him. I have carefully perused the case record.

3. The applicant is presently working as Tax Recovery Officer-I at Thane which is equivalent to Income Tax Officer. He has grievance regarding the impugned order dated 16.04.2018 (Annexure A-1) issued by respondent No.3, by which he has been transferred from the present post to Aurangabad in the same capacity, which comes under CCIT Nashik. In this OA, the main contention of the applicant is regarding spouse ground to challenge the impugned order of transfer. It is stated that his wife is working in Income Tax Office at Thane since last three years. In this behalf, reliance was placed on the DoPT OM dated 30.09.2009 (Annexure A-6) under the caption "*posting of husband and wife at the same station*". On its basis, the respondents have framed transfer policy in which similar

provision of spouse ground is specifically made in paragraph No.4(vi). Other grounds regarding education of his son who is prosecuting last year of B.E. course and daughter will be appearing for 10th standard examination in 2020 are also raised. Discrimination is also alleged since other Income Tax Officers who have longer stay than the prescribed 5 years tenure (which the applicant has completed at Thane) who are not shifted. Violation of transfer policy is also alleged.

4. In this OA, the following reliefs are sought:-

"(a) This Hon'ble Tribunal will be pleased to quash and set aside the Transfer order dated 16.04.2018 in so far as it concerns the applicant by which the applicant has been transferred from Thane to Aurangabad.

(b) This Hon'ble Tribunal may be further pleased to issue direction to the respondents to follow the Transfer Policy Guidelines in letter and spirit and retain the applicant in the present post at Thane or in the alternative post him in the nearby cities of Kalyan or Panvel.

(c) Any other or further order may be passed in the interests of justice.

(c) Costs of this Application may be provided.

5. The record shows that prior of issuance of the impugned order, the applicant submitted a representation dated 16.04.2018 to the respondent No.3 for exemption from transfer on spouse ground and education of his children. However, it is obvious that it was not favourably considered, since he has been transferred by the impugned order.

6. The record shows that after issuance of impugned order, the applicant submitted second representation dated 03.05.2018 (Anneuxre A-8) to the respondent No.3 for cancellation of the impugned transfer order raising same grounds. It appears that the ground of discrimination regarding officers having longer stay are not shifted is not raised in the representation.

7. It is specifically stated in paragraph No.3 of the impugned order of transfer as under:-

"3. The officers shall join their new place of posting on or before 27.04.2018. The officers shall be deemed to have been relieved by 04.05.2018. The respective AO/DDO at the present office of the Officers is directed not to draw the pay of the Officers after 04.05.2018. The pay of the concerned Officer after 04.05.2018 shall be drawn only by the AO/DDO of the station/posting to which the Officers have been transferred. No leave should

be granted to Officers who are under order of transfer. Such Officers are to be granted leave only by the controlling authorities of the station/posting to which the Officers have been transferred."

8. It is thus obvious that the representation to the appropriate authority who has issued the impugned order is still under consideration. Although in paragraph No.4 of the impugned order, it is stated that any representation against this order shall be made only after joining the new place of posting and the representation, if any, without joining the new posting will not be entertained and will be filed without any action as if no such representation is received. In the representation also the applicant has given option for Panvel or Kalyan which are nearby stations to Thane for his transfer there.

9. It is obvious from perusal of the impugned order that since the applicant has not joined at the new place of posting on or before 27.04.2018, he is deemed to have been relieved from the present post and strict directions are issued that after 04.05.2018, the incumbent who did not report at the new station will not get

salary from the present station, obviously for the reason that once relieved the employee will not be entitled to receive any salary from the said station.

10. In view of above, this Tribunal is of the considered view that ends of justice will be better served, in case appropriate directions are issued in the matter.

11. Learned Advocate for the applicant prayed that till the representation is decided, interim protection may be granted to the applicant against impugned order. However, considering the specific clauses mentioned in the impugned order itself which the applicant is fully aware of it and since he is deemed to have been relieved, it will not be proper and just to grant any protection to him pending decision on the representation. It is made clear that it is still open for the applicant to join the new destination, pending decision on his representation, if he so desires, since he is deemed to have been relieved.

12. Respondent No.3 - Principal Chief Commissioner of Income Tax, Pune is, therefore, directed to consider and pass a reasoned and

speaking order on the pending representation dated 03.05.2018 (Annexure A-8) of the applicant, in accordance with law within a period of two weeks from the date of receipt of a certified copy of this order.

13. In addition to the grounds raised in aforesaid representation, the other grounds raised by the applicant regarding discrimination and violation of transfer policy in the OA, shall also be considered by the respondent No.3, since those have not been raised in the representation.

14. It is needless to say that the request of the applicant giving option for his transfer be also considered by the respondent No.3, while deciding his representation.

15. The order so passed shall then be communicated to the applicant at the earliest, who will be at liberty to approach the appropriate forum, in case his grievance still persists.

16. The OA stands disposed of with the aforesaid directions at the admission stage, without issuing notice to the respondents and without making any comments on the merits of

the claim.

17. Registry is directed to forward certified copy of this order to both the parties and in addition to it, one set of OA alongwith its annexures be also forwarded to respondent No.3 for consideration of the pending representation for taking appropriate steps in the matter.

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(A.J. Rohee)
Member (J)