

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION NO.366/2018

Date Of Decision:- 16th May, 2018.

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

Shri Kripa Sagar Das

Aged 57 years.

Working as Dy. Commissioner of
Income Tax-35 (3) Mumbai (Under Transfer),
Residing at B-205, New Income Tax Colony
Dindoshi, Goregaon (East)
Mumbai 400063.

...Applicant

(Applicant by Advocate Shri. S.V. Marne)

Versus

1. Union of India,

Through The Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi 110 001.

2. The Chairman

Central Board of Direct Taxes,
North Block, New Delhi 110 001.

...Respondents

ORDER (ORAL)

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

2. Applicant is present along with Shri. S.V. Marne, learned Advocate for him. Heard learned Advocate for the applicant. I have carefully perused the case records.

3. In this OA, the applicant has grievance regarding the impugned order dated

04.05.2018 (Annexure A-1) issued by Respondent No. 1, by which the applicant has been transferred from the present post of Deputy Commissioner of Income Tax, Mumbai to Kerala State in the same capacity. The main ground for challenging the impugned order is that the applicant is more than 57 years of age and hence, he is not liable to be transferred, by virtue of the provisions of Para 3.5 of the Transfer Policy dated 16.02.2010 issued by the Central Board of Direct Taxes for Group-A Officers. According to the said Clause, the officer who have three years or less service left shall be posted to the station/region of their choice to the extent possible.

4. It is stated that the applicant is serving in Mumbai region since the year 2003 and as such, he completed more than 15 years of service. A reference to the provisions of Clause 4.2 and 4.4(ii) of Transfer Policy is also made by the learned Advocate for the applicant. It is submitted that since the applicant is serving in Mumbai region for last

more than 13 years, it may be a reason for his transfer.

5. It is, thus, obvious that the violation of the provisions of the transfer policy is alleged, beside other grounds that the applicant is facing three disciplinary proceedings and he is also involved in two Court proceedings before Hon'ble High Court and other case before CBI Special Court pertaining to possessing disproportionate assets, which are pending consideration. It is stated by the learned Advocate for the applicant that in pursuance of the impugned transfer order, he is yet to be relieved from the present post, although, the impugned order specifically states at the end that, the compliance report regarding relieving/joining of the above officers shall be forwarded by the Pr. CCIT(CCA) concerned to the Board and Database Cell, CBDT by 14th May 2018. all the relieving and joining should mandatorily be done by the officer concerned and approved by the Pr. CCIT(CCA) concerned On-line on

www.irsofficersonline.gov.in.

6. It is also stated by the learned Advocate for the applicant that the applicant immediately submitted a representation dated 06.05.2018 (Annexure A-3) to the Respondent No. 2 for cancellation of the transfer order raising the aforesaid grounds which is still pending consideration.

7. In this OA, the applicant has sought the following reliefs:-

"8(a) This Hon'ble Tribunal may be graciously pleased to call for the records of the case from the Respondents and after examining the same quash and set aside the impugned order dated 04.05.2018 qua the applicant with all consequential benefits.

(b) This Hon'ble Tribunal may further be pleased to hold and declare that the applicant is entitled to serve at Mumbai Region till he retires on superannuation on 31.01.2021.

(c) Costs of the application be provided for.

(d) Any other or further order as this Hon'ble tribunal deems fit in the nature and circumstances of the case be passed."

8. The following interim relief is also

sought:-

"9(a) Pending the hearing and final disposal of this Original Application, the operation, implementation and effect of the impugned transfer order dated 04.05.2018 qua the applicant be stayed and the applicant be permitted to work as Dy. Commissioner of Income Tax 35(3) Mumbai or on any other post in Mumbai.

(b) Ad-interim orders in terms of prayer clause (a) above may be granted."

9. After hearing the learned Advocate for the applicant and after going through the case record and considering the fact as stated by the applicant that he is yet to be relieved, this Tribunal is of the considered view that ends of justice will be better served, in case appropriate directions are issued in the matter.

10. In view of above, the competent authority from Respondent No. 1 and 2 is directed to consider and pass a reasoned and speaking order on the pending representation dated 06.05.2018 (Annexure A-3) of applicant in accordance with law and particularly

considering the relevant provisions of the transfer policy dated 16.02.2010 and other grounds stated by the applicant in his representation.

11. The above exercise shall be carried out within a period of four weeks from the date of receipt of certified copy of this order.

12. 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.

13. It is further directed that, till a decision is taken on the pending representation, the applicant shall not be relieved from the present post, and if already relieved, it will be kept in abeyance till decision on representation.

14. On the request made by the learned Advocate for the applicant, in the event, any adverse order is passed on the representation, the same shall remain in abeyance for a period

of one week from the date of its communication to the applicant facilitate him to approach the appropriate forum.

15. 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 merits of the claim, so that, there will be no impediment for respondents to take a rational decision on the pending representation.

16. Registry is directed to forward certified copy of this order to both the parties for taking appropriate steps in the matter within the prescribed time as above.

17. Dasti.

Place:- Mumbai
Date:- 16.05.2018

(A.J. Rohee)
Member (J)

srp