

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 332/2017.

Dated this the 22nd day of June, 2018.

CORAM:- HON'BLE SHRI ARVIND J. ROHEE, MEMBER (J)
HON'BLE Mrs. P. GOPINATH, MEMBER (A)

Mr. Virendra Kumar Agarwal,
S/o Brahma Nand Gupta, Aged 52 years,
Presently posted as Additional Commission (A.R.),
CESTAT-Mumbai.

And Residing at:
G O 4, Customs Colony,
'H' Adenwala Road, Five Garden,
Matunga East, Mumbai,
Maharashtra-400019.

...Applicant

(By Advocate Shri H G Dharmadhikari)

Versus

1. Union of India,
Through the Secretary to Government (Revenue),
Central Board of Excise and Customs,
Ministry of Finance, Department of Revenue,
North Block, New Delhi- 110 001.
2. The Chairman,
Central Board of Excise and Customs,
Ministry of Finance, Department of Revenue,
North Block, New Delhi- 110 001.
3. Under Secretary to the Government of India Ad II,
Ministry of Finance, Department of Revenue,
Central Bureau of Excise and Customs,
North Block, New Delhi- 110 001.
4. Director General of Human Resource Development,
Government of India, Ministry of Finance,
Department of Revenue, Central Board of Excise
and Customs, 407, Deep Shikha, Rajendra Place,
New Delhi- 110 008.
5. Chief Commissioner (Authorised Representative),
CESTAT Delhi, West Block, No.2, R.K. Puram,
New Delhi- 110 066.

6. The Commissioner(AR)/Admin.,
CESTAT, WZB, 1st Floor, Jai Centre,
Pune Street, P.D'Mello Road, Masjid East,
Mumbai, Maharashtra- 400 009.

...Respondents

(By Advocate Shri N K Rajpurohit)

Reserved on :- 20.06.2018

Pronounced on:- 22.06.2018.

O R D E R

Per:- Mrs. P. Gopinath, Member (A)

The applicant joined Indian Revenue Service(Customs & Central Excise) in 1991. He worked as Assistant Commissioner of Customs, Mumbai, Deputy Commissioner, Mumbai and Pune, Deputy Director, Enforcement Directorate, Mumbai, Joint Commissioner, Customs, Mumbai, Joint Commissioner, Excise, Salem, Joint Commissioner, Excise, Nagpur, etc. The applicant submitted a representation that he had not completed station tenure in Mumbai and his wife who was working with Central Railway, was undergoing treatment for Breast Cancer and requested for retention in Mumbai. A Transfer Order issued on 17.05.2017, transferring the applicant to Nagpur.

2. Prayer of the applicant is for a declaration that the transfer to Nagpur, is contrary to the Transfer Policy and that the said transfer be stayed till final order in this OA.

3. The respondent in the reply statement submits that the transfer of the applicant from

CC (AR)/CESTAT, Mumbai to Nagpur Central Excise was in accordance with the provision of Para 5.5 of the Transfer Placement Policy of Customs and Central Excise Officers, wherein it is stated that the tenure posting in a particular Directorate shall not exceed five years. As per Para 5.3 of the said Policy, an officer shall not serve in an area for more than a total of 14 years up to and including the rank of Commissioner, of which tenure in 'A' Station shall be for a maximum of eight years. The applicant, according to the respondent, remained posted in Mumbai an 'A' station for a period of 15 years and 7 months in different formations and history of posting of the applicant is produced as Annexure R-1. The applicant was posted in CC (AR)/CESTAT for 5 years and 9 months as on 31.03.2017, the cut-off date for the Annual General Transfer, 2017. The applicant was required to submit a representation in support of his case for non-transfer/retention in Mumbai. The applicant submitted a representation on the grounds of working spouse and health ground of spouse and requested for retention in any formation in Mumbai or CESTAT, Mumbai. The applicant in his representation, submitted the option of Mumbai only, whereas he was required to give five different stations in order of

preference. In view of the fact that he had completed eight years field posting in Mumbai and additional five years posting in a particular Directorate in Mumbai, he was required to exercise five options for transfer.

4. The respondent argues that postings are made subject to administrative feasibility and also ensuring that minimum requisite number of posts across all formations in the country are filled, in order to ensure proper administration of the respondent office.

5. Since both the applicant and his wife are working, it would not be feasible to post both of them to the same station at all times. The applicant's wife being in a department with an All-India presence, the respondent argues that she could have sought a posting commensurate with the applicant in the same station i.e. Nagpur, as the applicant had spent 15 years and 7 months in Mumbai in different formations. Transfer is an incidence of service and in order to ensure smooth functioning of offices, it would be necessary to make appropriate movements of officers to ensure the same. Applicant's argument is that as per Transfer Policy, the posting in CESTAT is not to be computed

under station tenure. Even if this period of five years is removed, the applicant has spent approximately 10 years in Mumbai. In Para 10 of the additional reply affidavit, the respondent has placed the details of the applicant's posting in Mumbai. Hence applicant's request and option for same station Mumbai would require to be ignored.

6. The only issue that remains for consideration is the medical ground of the applicant's wife. Applicant has submitted a large number of documents in support of his wife's treatment at Tata Memorial Centre as Annexure A-7 series. The treatment has started as early as 17.06.2014. Applicant's wife has undergone Lumpectomy and Chemotherapy as a part of this treatment. And the last paper in the A-8 medical treatment series is 05.10.2016, which was for follow up with the Surgical Oncologist. The above said Cancer treatment, on a perusal of the documents placed on record, appears to be in a follow up phase and can be followed up in any big city with Cancer treatment facility. Since no medical paper beyond 05.10.2016 is placed on record, it is presumed that the treatment is completed and hence the argument of the wife's treatment may not be a sound reason for

the applicant's continuance in Mumbai.

7. The applicant is an officer with All-India transfer liability and has been working in Mumbai for a sufficiently long period including the period of his wife's long treatment from 2014-16. The powers of the Tribunal to interfere or stay transfer orders are limited. Tribunal cannot put itself in respondent's position and decide the administrative exigencies or placement of officers in the respondent organization. Respondent is best placed to undertake this task. Transfer is an incidence of service and it would be difficult for the respondent to accommodate any officer for long periods in a particular or specific station either on the grounds of spouse, or medical treatment which appears to have been completed except for the follow up which could be made in any good medical facility in the country.

8. Counsel for applicant cites **Ajoy Majumder Vs. The Union of India & Ors (CDJ 2016 CAT Guwahati 215)**, **Vishal Kumar Singh Vs. The Union of India & Ors. (CDJ 2016 CAT Guwahati 260)**, **S. Bharathi Vs. Union of India & Anr. (CDJ 2013 CAT MUMBAI 014)**, **Anil Devdatta Gailwad Vs. The Union of India & Ors. (CDJ 2014 CAT MUMBAI 025)**, **Dharmendra Kumar Saxena Vs.**

State of U.P. & Ors. (CDJ 2013 All HC 290), in support of his stay in the city of Mumbai. There are any number of orders of the Hon'ble Apex Court which has held the view that normally a transfer order should not be interfered with or stayed. This is not a case where the applicant has not been accommodated in Mumbai when he was passing through the difficult phase of his wife's illness and treatment. But to expect an indefinite stay on this ground in Mumbai would be not justifiable and may also encroach on the rights of others who may be seeking a posting to the station.

9. The transfer norms enunciated by Government is for the guidance of its officers in the matter of regulating transfer, and are more for the exigencies of administration than vesting of any immunity from transfer for a Government servant. An order of transfer issued by a Competent Authority should not be generally interfered with, as essentially the right to distribute the available man power with a particular department is vested with the Competent Authority and the same has to be exercised having regard to the exigencies of administration. Normally, an order of transfer invites interference if it is passed by an incompetent authority, or in

violation of a statutory provision, or is the outcome of a malafide excess of power. No Government servant with All-India transfer liability has a right to be posted at any one particular place. The transfer of a particular employee with All-India transfer liability is not only an incident but a condition of service which would be necessary in public interest and also for efficiency of public administration. No one has an indefeasible right to continue in a particular station.

10. Tribunals cannot interfere with transfer orders as a matter of routine as though they are an Appellate Authority, substituting their own decision for that of the respondent. The Hon'ble Apex Court in **Rajendra Singh Vs. State of U.P. (2009) 15 SCC 178** had held as follows:

“A Government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the Government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. (see State of UP Vs. Gobardhan Lal)”.

The Apex Court in above judgment had also held that Courts are normally reluctant to interfere in transfer matters unless it is hit by malafide or

violates any statutory provisions. Transfer orders issued by the competent authority do not violate any of applicant's legal rights. The Apex Court made the following observations made in **N.K.Singh Vs. Union of India & others (1994) 6 SCC 98** that :

“6.the scope of judicial review in matters of transfer of a Government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides and violation of any specific provision.”

11. The Tribunal is not inclined to interfere in the transfer order of the applicant and OA is dismissed. No order as to costs.

(Smt. P. Gopinath)
Member (A)

(A.J.Rohee)
Member (J)

Ram.