

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00020/18
With
MA/050/00132/18

Reserved on: 23.03.2018
Pronounced on: 27.03.2018

C O R A M

HON'BLE MR. A.K. UPADHYAY, ADMINISTRATIVE MEMBER
HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER

Rajeev Kapoor, Son of Shri P.L. Kapoor, Superintendent, Patna-II (Adjudication), Central Goods, Service Tax & Central Excise (HQ), Office of the Commissioner of Central Goods, Service Tax & Central Excise, Ministry of Revenue, Government of India, Bir Chand Patel Path, Central Revenue Building, Patna- 800001 (Bihar).

..... Applicant.

- By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the Secretary (Revenue), Government of India, Ministry of Finance, Department of Revenue, New Delhi-110021.
2. The Chairman, Central Board of Excise & Customs, Ministry of Finance, Government of India, North Block, New Delhi-110021.
3. The Chief Commissioner, Central Goods, Service Tax & Central Excise (Ranchi Zone), Central Revenue Building, Birchand Patel Path, Patna- 800001 (Bihar).
4. The Commissioner, Central Goods, Service Tax & Central Excise, Patna-II, Ministry of Finance, Government of India, Central Revenue Building, Birchand Patel Path, Patna- 800001(Bihar).
5. The Commissioner, Central Goods, Service Tax & Central Excise Settlement Commission, Ministry of Finance, Government of India, Hotel Samrat, Chanakyapuri, New Delhi-110021.
6. The Additional Commissioner (P&V), Central Goods, Service Tax & Central Excise, Ministry of Finance, Government of India, Central Revenue Building, Birchand Patel Path, Patna-800001 (Bihar).
7. The Joint Commissioner, Central Goods, Service Tax & Central Excise, Patna-II, Ministry of Finance, Government of India, Central Revenue Building, Birchand Patel Path, Patna- 800001 (Bihar).

8. The Superintendent (ESTT), Central Goods, Service Tax & Central Excise, Ministry of Finance, Government of India, Central Revenue Building, Birchand Patel Path, Patna-800001 (Bihar).

..... Respondents.

- By Advocate(s): - Mr. H.P. Singh, Sr. SC
Mr. A.K. Mantu

ORDER

Per A.K. Upadhyay, A.M.:- The applicant has filed this OA

seeking the following reliefs:-

“(i) That your Lordships may graciously be pleased to quash and set aside the impugned orders dated 27.12.2017, 03.05.2017 and 15.12.2017 passed by the Respondents as contained in Annexure-A/1, A/2, A/5 & A/6 respectively.

(ii) That your Lordships may further be pleased to direct/command the Respondents to allow the applicant to work under the Respondent No. 5 till completion of 4th year without any disturbance and thereafter at Patna in compliance to Annexure A/6.

(iii) That your Lordships may graciously be pleased to direct/command the respondents to grant all consequential benefits for which he is legally entitled to.

(iv) Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the Applicant.”

2. Interim stay was granted in this matter on 09.01.2018.

The respondents filed written statement and also filed an MA/050/00132/2018 for vacation of stay. Both the OA and MA were heard together.

3. The applicant is an officer of the Commissionrate of the Central GST and Central Excise, Patna Commissionrate. He had been on deputation to Delhi. By order dated 03.05.2017 (Annexure A/5).

He was repatriated from Delhi to his parent department on completion of his tenure of deputation on 03.05.2017. By order dated 15.12.2017 (Annexure A/6) he was transferred from the post of UOT, Patna-II to Patna-II Headquarters (Adjudication). Subsequently, by order dated 27.12.2017 (Annexure A/1) he was transferred from Patna-II Headquarters (Adjudication) to CGST & CX, Patna-II, Purnea Division (Non-sensitive). He was relieved by order dated 27.12.2017 (Annexure A/2). The applicant has challenged all these orders in the present OA.

4. The learned counsel for the applicant Shri M.P. Dixit vehemently argued that these orders are malafide and he gave the background for substantiating the malafide.

5. The applicant and 14 others, while working as Inspector, Central Excise and Service Tax were served a major penalty charge-sheet under Rule 14 of the CCS (CCA) Rules, 1965 in which the Inquiry Officer held that allegations were not proved. The applicant alleges that this was also accepted by the Disciplinary Authority but at the dictates of Vigilance a disagreement note was issued which was replied by the applicant. The Disciplinary Authority imposed a penalty of reduction of pay by three stages for a period of three years with cumulative effect. This was challenged by the applicant before the Tribunal's Principal Bench in OA No. 3730 of 2014 which was allowed on 28.10.2014. This was challenged by the respondents before Hon'ble Patna High Court which dismissed it for want of

jurisdiction. Thereafter, the applicant filed contempt petition and the respondents implemented the order by granting him promotion.

6. The applicant had submitted an application for extension of deputation and no objection was issued by the respondent no. 4, i.e. Commissioner, GST and Central Excise, Patna-II (Annexure A/4). The respondents in the meanwhile filed Writ Petition WP(C) No. 6217 of 2017 in which the Hon'ble High Court has issued a suo motu contempt notice to the officials by order dated 08.12.2017 (Annexure A/8). The applicant alleges that because of anguish at these developments the authorities issued order dated 03.05.2017 repatriating him from New Delhi to Patna. Shri Dixit also seeks to show malice on the part of the authorities by arguing that after he reported Patna on 03.07.2017 after availing two months leave, he was posted as Superintendent, UOT, Patna-II vide order dated 25.09.2017, but subsequently he has again been transferred/posted from UOT, Patna to Patna-II Headquarters on 15.12.2017 (Annexure A/6). He assumed charge of the post on 26.12.2017 and he was transferred on 27.12.2017. The order dated 25.09.2017 is not on record.

7. Shri Dixit alleges that after the knowledge of the order of the Delhi High Court dated 08.12.2017 initiating suo motu contempt the respondents no. 3 and 4 became annoyed and issued a transfer order on 27.12.2017 together with the spare order by which the applicant has been transferred from Patna to Purnea. The

applicant has also taken personal ground for challenging the transfer order. His daughter Ms. Rishika Kapoor and Master Tejas Kapoor are studying in Class X and XI respectively at Apeejay School, Pritampura, Delhi. Thus, on this ground alone Shri Dixit contends that the applicant ought not to have been transferred from New Delhi to Patna and Patna to Purnea. Shri Dixit also submits that there is no vacancy available at Purnea.

8. The respondents have filed written statement and an MA/050/00132/2018 for vacation of stay in which they have countered all the grounds taken by the applicant. The learned Sr. Standing Counsel Shri H.P. Singh vehemently denied any malafide on the part of the authorities and said that the facts are quite otherwise and there is no illegality in the applicant's transfer.

9. As far as the facts are concerned, it was submitted that the applicant has continued on deputation to Delhi for over 14 years as stated in the letter dated 19.01.2018 (Annexure R/1) from Government of India, Ministry of Finance, Department of Revenue, Customs and Central Excise Settlement Commission, Delhi addressed to Commissioner, GST and Central Excise, Patna. It is stated that the request for NOC was only a pre-requisite to process the applicant's request. There was no formal order extending the extension beyond 03.05.2017, and considering his long deputation the applicant was repatriated on 03.05.2017. Shri Singh also argued that linking malice to the Hon'ble Delhi High Court's order dated 08.12.2017 is

untenable, because the applicant was repatriated several months before this order, on 03.05.2017. It has also been stated that the applicant has no role in the notice issued by the Hon'ble Delhi High Court on 08.12.2017. Therefore, it is an absurd contention of the applicant to say that the order of transfer to Purnea is by way of creating pressure and coercion upon the applicant.

10. Along with the written statement the Hon'ble High Court, Delhi's order dated 01.08.2017 in WP(C) 6216/2017 has been enclosed in which their Lordships have observed that it is essential that probity is maintained in the Department and responsibility of the erring officials is fixed. In pursuance of this order, after preliminary enquiry, vigilance investigation has been initiated against the applicant along with some other persons and it has been decided to transfer the applicant away from the Headquarters to minimize the chances of his influencing the enquiry as the Adjudication Branch of the Commissionerate, Patna-II is located in the same building where enquiry is being conducted.

11. Shri H.P. Singh also argued that as the applicant could not be kept at Patna because of vigilance investigation against him and there were two vacancies at Purnea, he has been transferred to Purnea in the interest of work.

12. The respondents have brought on record a comprehensive detail of the applicant's continued absence after

repatriation in a table in para 20 of the WS which is reproduced below:-

Period	Nature of Leave applied	Whether Leave sanctioned
04.05.2017 to 30.06.2017=59 days	Earned Leave	Sanctioned at the Settlement Commission
04.07.2017 to 21.07.2017 = 18 days; revised as extension up to 15.08.2017, again revised w.e.f 04.07.2017 to 04.08.2017 (suffixed with 05,06 & 07.08.2017)= 32 days	Earned Leave	Not sanctioned till 22.01.2018
14.08.2017 to 01.09.2017 (received on 18.08.2017)= 19 days	Earned Leave	
Extension up to 21.09.2017		Not sanctioned till 22.01.2018
Extension up to 20.10.2017	Earned Leave	Not sanctioned till 22.01.2018
Revised from 14.08.2017 to 22.10.2017 = 70 days	Earned Leave	Not sanctioned till 22.01.2018
23.10.2017 to 31.10.2017 = 09 days	Medical Leave (converted into Earned Leave)	Not sanctioned till 22.01.2018
06.11.2017 to 02.01.2018, but joined on 26.12.2017, revised to 06.11.2017 to 22.12.2017 = 47 days		Not sanctioned till 22.01.2018
Relieved for Purnea Division on 27.12.2017		Not joined
Submitted his joining report at Patna on 12.01.2018 with effect from 11.01.2018, pursuant to this Hon'ble Court's order dated 09.01.2018		
15.01.2018 to 30.03.2018 (Prefix with 13 & 14.01.2018 suffixed with 31.03.2018 & 01.04.2018) = 75 days	Earned Leave	Not sanctioned till 22.01.2018

13. It was submitted that the applicant has not come with clean hands and tried to mislead the Tribunal. After repatriation to Patna, the applicant has been absent from duty without permission almost for the entire period thereafter. During the period 03.07.2017

to 26.12.2017 the applicant is absent for 161 days (35 days from 04.07.2017 to 07.08.2017 + 79 days from 14.08.2017 to 31.10.2017 + 47 days from 06.11.2017 to 22.12.2017) for which separately action has been initiated against him.

14. Heard the parties and perused the documents.

15. The foundation of the applicant's case rests on alleged malafide on the part of the authorities. He has not mentioned the name of the officials who carried malice against him for some developments in Delhi High Court in a Writ filed by the Department. The names of the respondents have not been mentioned, nor do we have the names of the officials who are facing the notice from Delhi High Court. The applicant's stayed in Delhi has been for about 14 years. Therefore, the authorities were within their rights to repatriate him. The order of repatriation dated 03.05.2017 is much before any order by the Hon'ble Delhi High Court. This was on due date of completion of his tenure. Even though there was correspondence between the borrowing authority and the parent department about the NOC, it did not culminate into a final approval of extension. Therefore, a reasonable interpretation would be that though the authorities initiated the process, they would have realized that it would be improper to allow him to continue further. Therefore, we do not find any malafide in the order dated 03.05.2017.

16. The applicant reported on 03.07.2017 after availing two months leave at Delhi, but thereafter barring a few days in between he seems to have been continuously away without formal sanction of leave. We are inclined to agree with the argument of Shri H.P. Singh that upon returned from deputation, his initial posting at Patna was a temporary measure and he was finally posted to Purnea in administrative interest. At best, Patna to Purnea posting may be a personal inconvenience, but there are no sufficient reasons to convince us that this can be linked to any malice or malafide.

17. The applicant's learned counsel subsequently filed a written argument in which, besides reiterating his submissions, he has also mentioned that no post is available at Purnea. The learned Senior Standing Counsel Shri H.P. Singh had submitted during hearing that there are two posts at Purnea, and the work is getting hampered there. This is a matter of administrative detail which the courts cannot adjudicate. We also find that there is no representation on record filed by the applicant to the authorities.

18. In conclusion, the OA is dismissed and the interim say is vacated. MA/050/00132/2018 is, accordingly, allowed. However, the applicant shall be at liberty to file a representation after complying with the transfer order, for posting to Patna, if he so desires. Since the applicant has been transferred to Purnea soon after coming to Patna on repatriation, we trust that the authorities shall consider

such representation for posting to any non-sensitive post at Patna sympathetically. No order as to costs.

[Jayesh V. Bhairavia]
Judicial Member

[A.K Upadhyay]
Adminsitrative Member

Srk.