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

O.A.210/00741/2017

Dated this Thursday the 31st day of January, 2019.

**Coram: Dr.Bhagwan Sahai, Member (Administrative)
Ravinder Kaur, Member (Judicial).**

Shri D.S. Benupani,
presently posted as
Commissioner of Income Tax
(Appeals)-4, Pune having
office at B.O. Bhavan,
Pune-Satara Road,
Bibwewadi Corner, Parvati,
Pune-411 009, and
residing at C-803, Empress Court,
Tara Baug, Ghorpadi,
Pune.

..Applicant.

(By Advocate Shri R.G. Walia).

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,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110 001.
3. The Principal Chief Commissioner
of Income Tax, Pune having his
office at Aayakar Bhavan, 12,
Sadhu Vasvani Road,
Pune - 411 001. ..Respondents.

(By Advocate Shri V.B. Joshi).

Order reserved on : 31.10.2018
Order delivered on : 31.01.2019.

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O R D E R
Per : Dr.Bhagwan Sahai, Member (A).

This O.A. has been filed by Shri D.S. Benupani (IRS-1988), on 29.11.2017 when he was posted as Commissioner of Income Tax (Appeals)-4, Pune having office at B.O. Bhavan, Pune-Satara Road, Bibwewadi, Parvati, Pune for -

(a) . quashing and setting of the impugned transfer order on his promotion dated 24.10.2017 from Pune to Muzaffarpur, Bihar;

(b) . quashing and setting aside of rejection of his representation dated 27.11.2017 by the respondents; and

(c) . direction to the respondents to retain him on promotion at one of his choice stations either at Pune, Thane or Mumbai.

2. Brief facts :

2(a) . Based on his selection by Union Public Service Commission (UPSC), the applicant was allotted 1988 batch of Indian Revenue Service (IRS) Income Tax. When he filed the O.A. he had completed 29 years of service in the Department of Income Tax during which period he had been transferred nine times and the order of transfer under challenge in this O.A. is his 10th transfer.

2(b) . From 2003 to 2009 he was posted in Mumbai.

He was promoted as Commissioner of Income Tax in July, 2009 and was transferred to Valsad (a 'C' Class city), then to Vadodara and thereafter posted at Pune under Principal Chief Commissioner of Income Tax, Pune with effect from 08.07.2015. The Directorate of Income Tax, Central Board of Direct Taxes notified Transfer/Placement Guidelines for officers of the Indian Revenue Service on 16.02.2010 (Annex-A-2, page 41 to 57) with subsequent clarifications.

2(c). As per Para 4.3(i) of the Transfer Guidelines, the applicant claims that he is allowed to be posted for 8 years continuously in Pune Region. The applicant has challenged his transfer on promotion to the post of Principal Commissioner of Income Tax with posting to Muzaffarpur, Bihar claiming that it has been done in gross violation of the Transfer Policy. He also claims protection of the Policy which stipulates retention on educational ground of children. He has only one daughter. When he was transferred to Pune in July, 2015, she could get admission only in CBSE affiliated Delhi Public School, Navi Mumbai. In view of the transfer order dated 24.10.2017, he would have to shift himself to Muzaffarpur, Bihar before CBSE Examinations of his daughter get completed in April, 2018. This would

result in injustice to his daughter and to him.

2(d). He also claims that he occasionally visits his daughter in Navi Mumbai to guide her for the Board Examinations. But after shifting to Muzaffarpur, it will not be possible for him to guide his daughter which would result in travesty of justice.

2(e). As per the Policy, for counting period of service at one station, the starting date is the date of joining and the end date is 31st December of preceding year. Since the applicant had joined at Pune in July, 2015, by December, 2016 he had completed only 17 months at that Station and thus less than two years.

2(f). The applicant further claims that he has been seriously discriminated by virtue of he being a Scheduled Caste (SC) officer inspite of his sterling performance throughout his career. In his representation submitted to Chairman, CBDT dated 11.08.2017, the applicant claimed that he had completed the task of implementing the Apex Court decision in N.R. Parmar by conducting 168 review DPC meetings as Commissioner of Income Tax and met the performance targets.

2(g). In that representation of 11.08.2017 he had also highlighted that he is required to be retained

at Pune or be posted either in Vashi or Thane because of his daughter's education and because of 2 $\frac{1}{2}$ years left in his service before superannuation. After issuance of his transfer order, he made another representation on 26.10.2017 but it had not been replied by the respondents. Hence this O.A.

2(h). The applicant had earlier filed OA 650/2017 challenging the transfer order on promotion which was decided on 31.10.2017 directing the Chairman, Central Board of Direct Taxes to sympathetically consider his representation and decide it within one month and to maintain status quo (Annex A-5).

2(i). The respondents have decided his representation by order of 27.11.2017 (Annex AA-1) which has also been challenged in this OA claiming that it has not dealt with beneficial provisions in the Transfer Policy to which the applicant is entitled to.

3. Contentions of the parties:

The applicant has contended that -

3(a). in the promotion order reserved category candidates have been arrayed at Sr.No.33 to 50 and out of them 70% candidates have been posted to 'C' Class stations whereas the candidates of general category junior to him at Sr.No.51 to 88 (1989 batch) have been posted to 'A' Class stations;

3(b). the applicant claims that administration in his department has discriminated against him. Several other officers those at Sr.No.10, 39, 52, 53 and 80 have been retained at Stations of present postings either on the ground of having two years or less of service left or have been retained until next AGT of 2018 for other reasons such as health grounds or educational grounds;

3(c). the contents of Para 3.3, 3.5 and 6.1 of the Transfer Policy have to be implemented liberally to extend the concessions but the respondents have failed to read the policy harmoniously in respect of the applicant. The respondents may claim that they have right to transfer any officer on administrative grounds or in public interest but the transfer of the applicant on promotion has not been made on any administrative ground or because of finding him inappropriate to retain him either in Pune Region or to post him to the Stations of his choice. Because of the transfer order, he was to be struck off from the strength latest by 01.11.2017, though he had not been relieved till filing of the O.A. and, therefore, interim relief should also be granted by staying the transfer order of 24.10.2017;

3(d). for his transfer from Pune to Muzaffarpur, no approval has been obtained from the Union Finance

Minister required under the Transfer Policy/Guidelines, 2010 para 2(ii)(b) in the event there being deviation from the guidelines, 2010, "approval of less than the Finance Minister has to be obtained (page 6)" of O.A.

Para 3.3 of the Transfer Policy stipulates that Group 'A' officers shall not be transferred on promotion in the event they have come to that region less than two years earlier. He claims that protection is available to him under the Transfer Policy as he has less than 3 years of service left before superannuation and he ought to have been posted to the Station / Region of his choice. The applicant had given his choices of stations for posting as Pune, Nagpur, Mumbai, Surat and Thane but these choices have been ignored by the respondents thereby disregarding para 3.5 of the Transfer Policy/Guidelines;

3(e) . there are sufficient number of vacancies of Principal Commissioner of Income Tax in Pune, Thane, Navi Mumbai and Mumbai but he has not been accommodated against them;

3(f) . in various Supreme Court judgments it has been held that transfer is an incident of service and cannot be interfered with even if in violation of guidelines. But subsequent judgments have also

exhorted various Government authorities that there should be Transfer Policy so that there cannot be discrimination of pick and choose in transfers and postings. The Transfer Policy has already been held to be sacrosanct by the Tribunal as well as Bombay and Delhi High Courts;

3(g). whenever there is a beneficial legislation or provision in a policy, it has to be interpreted liberally in order to grant the benefit. The Transfer Policy of the respondent IT department is also meant to align the Human Resource Management with its organizational goals, more particularly better career management of the Officers;

3(h). although some of his batchmates have been accommodated for having less than two years of service left such as Ms. Mridula Bajpayee at Bhopal, Shri Sanjay Mishra at Lucknow, Shri Jayant Mishra at New Delhi, and Shri K.Venkata Narasimha Chari at Hyderabad, the department has seriously discriminated against him. Hence his transfer order should be set aside;

3(i). the impugned order is in deviation of Paragraphs 3.3, 3.6 and 6 of the Transfer Policy. But specific approval to that deviation has not been obtained from the Hon'ble Union Finance Minister as required under per Para 2(ii)(ib) of the Transfer

Policy. While several other officers junior to him have been retained at the stations of their present postings or have been posted at stations of their choices, the applicant has been sent to Muzaffarpur in Bihar at the fag end of his career;

3(j). no exercise has been conducted by the Competent Authority to ascertain as to why the applicant cannot be granted benefit of the beneficial provisions of Para 3.3, 3.5 and 6 of the Transfer Guidelines. Exercise of administrative power in arbitrary and perfunctory manner violates the law laid down by the Apex Court in the case of Wednesbury and, therefore, interference by the Tribunal is necessary in this case;

3(k). this Bench of the Tribunal as well as the Bombay High Court have held in many cases that Transfer Policy issued by the Department is clearly sacrosanct and it could not be deviated without following a procedure laid down in Para 2(ii)(b) of the Policy. The transfer order and rejection of his representations are clearly a case of arbitrary use of discriminatory power, which entitles the affected party to invoke the jurisdiction of the Court;

3(l). in view of his daughter being in 10th Class during the academic session of 2017-18, his transfer order at the most should have been issued after

March, 2018. How the period of stay at a particular station has to be counted is as per clarification no.3 on page 52 of the O.A. i.e. for Group 'A' officers who have come to a particular Region less than two years earlier then the starting date is the date of joining and the end date would be 31st December of the preceding year as this is the standard cut off date for all period computations.

But it has not been done in his case;

3(m). as per clarification at Sr.No.6, Para 3.5 of the Transfer Policy (page 53), for calculating the period it has been clarified that 1st of January of the year in which the transfer is due is the relevant date. In view of this, the applicant was not due for transfer in October, 2017;

3(n). In the reply the respondents have disobeyed the directions of the Tribunal without dealing with the contentions in his representation that his transfer had violated the provisions under Para 2.1(ii), 3.3, 3.5, 6.1 of the Transfer Policy. Para 4.3(i) of the Transfer Policy states that all the officers are eligible for transfer at commencement of the financial year if they have completed the period of their field posting as on 31st December of the preceding year. This means while considering a candidate for transfer in a financial year, the

period of stay of the officer has to be counted upto 31.12.2016 of the preceding year and hence the period of the applicant has to be counted only upto 31.12.2016 and, therefore, as the applicant had joined at Pune only in July, 2015, till 31.12.2016 he had completed less than two years before the transfer, but even then he has been transferred. His transfer is not on administrative grounds as clause 7.1 of the policy has to be read with clause 2.1(ii);

3(o). in his rejoinder (page 130), the applicant has claimed that there is atleast one vacancy available in Pune and 17 vacancies are available in Mumbai, but even then he has been transferred and posted at Muzaffarpur, Bihar. There was vacancy in the rank of Principal Commissioner of Income Tax, at all five choices given by the applicant i.e. Pune, Naqpur, Mumbai, Thane and Surat (page 132). His daughter has got admission in 11th Class at Cathedral High School in Mumbai and Dhirubhai Ambani School, Bandra, Mumbai;

3(p). in the additional reply filed by the applicant on 09.03.2018, details of conversation between him and Shri Avadesh Kumar, who took over the charge on 29.11.2017 of the post held by the present applicant have been mentioned contending

mainly that although Shri Avadhe Kumar on orders of the Principal Chief Commissioner of Income Tax, Pune wanted to take over the charge from him on 29.11.2017, he had not handed it over and had indicated to do so only on 30.11.2017. But Shri Avadhe Kumar assumed the charge without being handed over by the applicant.

The so called assumption of charge by Shri Avadhe Kumar in absence of the applicant when the applicant himself was actually available, is another attempt at practising deceit and somehow defeat the intent of this Tribunal of protecting the applicant at his present place of posting.

3(q). the applicant has also submitted a list of following 8 caselaws claiming to benefit from them:-

(i). Santosh Kumar Jangre, K.P. Nigam & S.P. Haridasan Vs. Union of India & others in O.A.271-272/2007.

(ii). Union of India Vs. Santosh Kumar Jangre & Ors., W.P.No.509/2008.

(iii). Radhaballabh A. Dhyani & Ors. Vs. Union of India, O.A.519-522, 537-542 & 642/2007.

(iv). Alok Johari & Ors. Vs. Union of India, O.A.1510/2006.

(v). Ashok Mittal & Ors. Vs. Union of India, O.A.44/2007.

(vi). Union of India Vs. Ashok Mittal & Ors.,

W.P.No.478/2008.

(vii). Rajesh Ranjan Prasad Vs. Union of India,

O.A.1275/2008.

(viii). Subrata Kumar Dash Vs. Union of India,

O.A.1567/2008.

In **Santosh Kumar Jangre, K.P. Nigam and**

Shri S.P. Haridasan Vs. Union of India and others,

this Bench of the Tribunal in O.A.271-273/2007

decided on 20.08.2007, after referring to the

transfer policy in a number of caselaws, the

prescribed norms and principles governing the

transfer, held that the operative guidelines have to

be respected. In the present case which is also

related to officers of Income Tax Department, there

is no statute or act, the transfer policy is only

instructions or guidelines. The view taken by the

Apex Court was also cited to the effect that if the

Department has formulated and adopted a transfer

policy, it is sacrosanct and must be honoured in

letter and spirit. The respondents have to uphold

the guidelines and norms by which they profess their

actions to be judged.

That decision of the Tribunal was challenged in the Bombay High Court through **Writ**

Petition No.509/2008 in Union of India & Ors. Vs.

Santosh Kumar Jangre & Ors. The High Court upheld the decision of the Tribunal but by restricting that order of the Tribunal only to the applicants in those OAs.

In a number of other 11 OAs, this Bench of the Tribunal on 17.04.2008 held that the Transfer Policy of 2005 had been formulated for having transparency in transfers of Group 'A' officers. This was a professed and clear policy of transfers to give certainty to the officers who are governed. By citing another decision of the Principal Bench of the Tribunal in Alok Johri Vs. Union of India & Others decided on 13.10.2006, it was stated that the transfer should be effected based on the said norms and guidelines. The 11 OAs were allowed directing the respondents for passing suitable orders by considering their cases during the ensuing annual general transfers as per the policy.

In a number of cases filed by the **Additional Commissioner of Income Tax in O.A.1510/2006 & others**, the Principal Bench of the Tribunal on 13.10.2006 set aside transfer orders of the then applicants directing the respondents to post them in the same region on non-assessment/non-sensitive posts. Citing other caselaws in the order, the Tribunal observed that the reasons for

following such policy formulated after due exercise is to exclude arbitrariness and to demonstrate that such decisions are taken in a manner free from bias or malafide and as far as possible, the policy should be followed.

In **Ashok Mittal, Additional Commissioner of Income Tax Vs. Chairman, CBDT & another (O.A.44/2007)** decided by the Principal Bench on 31.07.2007, a view similar to one in the preceding caselaw was taken. Since the then applicant had not completed 8 years at Group 'A' station and was outside the purview of the transfer policy, the transfer order was set aside.

In **Union of India, through Ministry of Finance Vs. Ashok Mittal in Writ Petition No.4781/2008** decided on 25.07.2008, the preceding order of the Tribunal was upheld.

In **Rajesh Ranjan Prasad, Nirupama Kotru and Jagannath B. Mohapatra Vs. Union of India & Others in O.A.1275/2008, 1276/2008 and 1485/2008**, the Principal Bench of the Tribunal on 17.11.2008 held that the transfer of the applicants was dehors the transfer policy.

In **Subrata Kumar Dash Vs. Union of India in O.A.1567/2008**, the Principal Bench of the Tribunal on 23.12.2008 allowed the O.A. and the transfer

order was set aside but the respondents were given liberty to reconsider the matter if the transfer is covered by some clause of the transfer policy and pass a detailed speaking order.

In the reply and additional affidavit, the respondents have contended that -

3(r). in his representation dated 26.10.2017, the applicant himself mentioned in Point No.9 that he had been posted in this Region i.e. Pune for just little over two years and, therefore, now in the O.A. he cannot claim that he had not completed even two years in Pune before his transfer;

3(s). the applicant was promoted vide CBDT Order dated 24.10.2017 to the grade of Principal Commissioner of Income Tax. As per Para 3.3 of the Transfer & Posting Guidelines, 2010, on promotion Group - 'A' officers will normally be transferred out of the Region, except when they have come to that Region less than 2 years earlier. Since the applicant had been posted in Pune on 08.07.2015, was promoted on 24.10.2017 and on promotion was transferred to Muzaffarpur, Bihar, he had already been in Pune for more than two years;

3(t). Clause 7.1 of Transfer Policy/Guidelines is as follows:

"Clause 7.1 : Notwithstanding

anything contained in these Guidelines, the Placement Committee may, if it considers necessary to do so in public interest and in furtherance of organizational objectives, transfer retain or post any officer to any Station / Region or a specific post."

As per this provision, the Department has right to post any officer to any place in the best interest of the organization, keeping in view the administrative requirements and in public interest. No officer has any right to be posted to a particular Region/Station and the applicant being a member of the Central Service of the Government of India, his transfer to any Region in the country cannot be viewed as punitive. The transfers are done in the interest of Department and as per the administrative requirements and practically it is not possible to give all the officers Regions/Stations of their choices;

3(u) . the promotion as well as transfer/posting orders issued by the CBDT Order No.181/2017 dated 24.10.2017 had been approved by the Hon'ble Finance Minister of India;

3(v) . transfer is an incidence of Government service. Fundamental Rule 11 states that the whole time of a Government servant is at the disposal of

the Government which pays him and he may be employed in any manner required by proper authority. Fundamental Rule 15 also stipulates that the President may transfer a Government servant from one post to another. In view of these provisions, the applicant is liable to be transferred to anywhere in the country and this provision of the law has not been disputed by him. It is also not case of the applicant that the order of his transfer is vitiating by malafides on the part of the authority which has issued the order;

3(w). the representation of the applicant dated 25/26.10.2017 was decided by the CBDT by a reasoned and speaking order dated 27.11.2017 as per the directions of the Tribunal in O.A.650/2017. This order was sent to the applicant on 28.11.2017 from the office of Principal Chief Commissioner of Income Tax, Pune and was served on him on the same day i.e. on 28.11.2017. This has also been confirmed by the applicant vide letter of 30.11.2017 (Annex-R-1, page 91), the first line of Para 2 of which states that the order was served on him in the evening on 28.11.2017. Therefore, the submission of the applicant that his representation of 26.10.2017 had not been acted upon is false and baseless;

3(x). the allegation of the applicant that he has

been discriminated on being a member of Scheduled Caste is baseless as the Policy has been implemented uniformly for all the officers and no discrimination has been done against him while issuing the orders of promotions and transfer/postings. Except the present applicant, all other officers covered in the transfer/posting order of 24.10.2017 had already accepted the transfer orders and accordingly joined at their new postings;

3(y). the contention of the applicant about some of other officers is wrong because officer at Sr.No.3 in that order suffers from a life threatening disease, whereas those at Sr.No.39, 52 and 80 had not completed 2 years in their respective Regions/Stations as on 30.09.2017. The officer at Sr.No.53 is an office bearer of IRS association stationed at the national headquarters. Since the applicant had completed more than 2 years in Pune Region before the order of transfer was issued, the transfer has been made as per the norms laid down in Transfer and Posting Guidelines of 2010;

3(z). the applicant had already been relieved from the post of Commissioner of Income Tax (Appeals)-4, Pune on 29.11.2017 by Shri Avadhesh

Kumar, Commissioner of Income Tax (Appeals)-3, Pune as per the orders of the Principal Commissioner of Income Tax dated 29.11.2017 (Annex-R-2);

3(z1). claim of the applicant in the additional affidavit that the order was passed on this O.A. by the Tribunal on 30.11.2017 at about 11.30 am and by that time he had not been relieved is factually incorrect. Shri Avadhesh Kumar, Commissioner of Income Tax (Appeals)-3 was directed by the Principal Chief Commissioner of Income, Pune on 29.11.2017 to take over charge of the office of Commissioner of Income Tax (Appeals)-4, Pune with immediate effect and till Smt.Kesang Yangzom Sherpa joins her new charge. After receiving the order of the Principal Chief Commissioner of Income Tax, Pune on 29.11.2017, Shri Avadhesh Kumar tried to contact the applicant. Since he was not available in the office, he sent a SMS to him (copy at Annex-AF-R-1, Page 167);

3(z2). subsequently this was also confirmed by Shri Avadhesh Kumar in telephonic conversation with the applicant that he was required to take charge from immediately. But the applicant did not handover the charge to Shri Avadhesh Kumar, indicating that he would be available in the office only on 30.11.2017. When this fact was brought to

the notice of office of Principal Chief Commissioner of Income Tax, Pune, Shri Avadhesh Kumar was directed to assume the charge of Commissioner of Income Tax (Appeals)-4, Pune, immediately and send compliance report. Then he did so accordingly and as per the report sent by him at 4 PM on 29.11.2017 (Annex-R-5, Certificate of assumption of Charge). On 30.11.2017, Shri Avadhesh Kumar also informed the applicant that he had assumed the charge of the office of Commissioner of Income Tax (Appeals)-4, Pune on 29.11.2017. In view of this, the claim of the applicant that Shri Avadhesh Kumar assumed the charge of the post of the applicant without it being handed over by him has no meaning;

3(z3) . on 30.11.2017, after the applicant arrived in the office of Commissioner of Income Tax (Appeals)-4 at 12.20 - 12.25 pm, Shri Avadhesh Kumar visited the applicant in his room and informed him verbally about the orders of the Principal Chief Commissioner of Income Tax, Pune dated 29.11.2017 and assumption of the charge by him on 29.11.2017;

3(z4) . by considering the transfer of newly promoted officers of 1988 and 1989 batches and left over batches, the Placement Committee had adopted 30.09.2017 as the cut off date instead of 31st December of the preceding year for calculating the

period of two years of stay and only those officers who had not completed two years as on 30.09.2017 had been retained in the particular Regions;

3(z5). daughter of the applicant is studying in Mumbai and not in Pune from where he has been transferred out. Also the applicant has been transferred on promotion as per the Guidelines and not as part of the annual general transfers;

3(z6). to justify the applicant's transfer, the respondents have relied on the views taken in the following caselaws:

(i). In the case of **Union of India Vs. S.L. Abbas**, **AIR 1993 SC 444** and **Bank of India Vs. Jagjit Singh Mehta (1992) ILLJ 329 SC**, it has been held that guidelines or instructions do not confer any right on the employee to challenge the transfer order on the ground of their violation. Merely because the guidelines are violated is not sufficient to quash the order of transfer as malafide. Order of transfer on administrative ground can still be passed even if it is in violation of such guidelines which have no statutory force.

(ii). In **Union of India & Ors. Vs. V. Swarnalatha V & Ors, Chennai Bench** of the Tribunal observed on 09.07.2015 that non-accommodation of applicants on

one of their opted places cannot be a ground to interfere with the transfer proceedings. If a number of persons have opted for a particular region, it is discretion of the Department as to who should be accommodated and who is not to be accommodated.

(iii). **In Shilpi Bose (Mrs.) and others Vs. State of Bihar and others, (1991) 2 Supp. 659,** the Apex Court observed that -

"In our opinion the Court should not interfere with the transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or other, he is liable to be transferred from one place to the other. Transfer orders issued by the Competent Authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order and instead affected party should approach the higher authorities in the department. If the Courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

(iv) . In case of **State of M.P. and others Vs. S.S. Kourav and others**, 1993(3) SCC 270, it was held

that -

"The Courts or tribunals are not appellate forums to decide on transfer of officers on administrative grounds. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous considerations without any factual background foundation. In this case transfer orders having been issued on administrative grounds, expediency of those orders cannot be examined by the court."

(v) . In case of **Ekta Shakti Foundation Vs. Govt. of NCT of Delhi**, AIR 2006 SC 2609, it has been held

that -

"While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. (See Ashif Hamid v. State of J. & K. (AIR 1989 SC 1899), Shri Sitaram Sugar Co. v. Union of India (AIR 1990 SC 1277)). The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the

position is that even if the decision taken by the Government does not appear to be agreeable to the Court, it cannot interfere."

(vi). In **G.J. Fernandez Vs. State of Mysore**

(1967) 3 SCR 636, it was held that administrative instructions issued under the executive power have no statutory force and they do not confer any right on anybody and nobody can claim any rights on the basis of such administrative instructions.

3(z7). The respondents filed M.P.22/2018 on 04.01.2018 for vacating the stay on transfer of the applicant submitting that granting of interim relief was disturbing the transfer of officers and thereby restraining the respondent department from giving effect to the transfer orders. They also cited certain caselaws in their support and requested for vacating the stay.

By order dated 30.11.2017 in this O.A., Tribunal after admitting it directed that by way of interim relief the respondent No.1 to 3 (i.e. Union of India, through Secretary, Ministry of Finance, the Chairman, CBDT, New Delhi and the Principal Chief Commissioner of Income Tax, Pune) were not to relieve the applicant from the present post or station, if not relieved earlier. That direction was subsequently also continued till next dates of

hearing.

On 03.05.2018, it was brought to the notice of the Tribunal that before passing of the order of status-quo on 30.11.2017, the applicant had already been relieved and, therefore, the order of status-quo had become infructuous. Hence it cannot be contended by the applicant now that the interim relief has continued and cannot allege that the respondents have not followed the interim order.

4. Analysis and conclusions:

We have perused the O.A. memo and its annexes, additional affidavit, reply to additional affidavit and rejoinder of the applicant, reply filed by the respondents, additional affidavit and reply to rejoinder with annexes, various caselaws cited by the parties and considered the arguments advanced by both of them. For our perusal, the respondents were directed to make available record of meeting of the Placement Committee to recommend the promotions and postings to the grade of Principal Commissioners of Income Tax and their approval by the Union Finance Minister. Accordingly they have made the record available and we have perused it.

4(a). After carefully considering the submissions contained as above, we find the following

stipulations under the Transfer/Placement Guidelines for officers of Indian Revenue Service issued by the Central Board of Direct Taxes on 16.02.2010 along with their clarifications (copy as Annex-A-2, page 41-57 of the OA) are relevant to the present case.

Para 1.2. All transfers and postings of Group 'A' officers shall be effected by the Placement Committee of the Board, or on its recommendation, or by a local Placement Committee, as the case may be as far as practicable in accordance with the following guidelines.

Para2.1(i). The Placement Committee of the Board shall consist of-

- (a) Chairman of the Board,
- (b) Member (Personnel and Vigilance) and
- (c) The senior-most Member of the Board.
- (d) Joint Secretary (Admn.) as Secretary.

Para2.1(ii). The Placement Committee of the Board will (a) recommend proposals for posting of Chief Commissioners/Directors General and Commissioners/Directors for approval of the Finance Minister through the Revenue Secretary and Minister of State for Finance (Revenue).

Para3.1. For Officers of the rank of Chief Commissioners/Directors General and Commissioners/Directors the Placement Committee of

the Board will recommend the Region and Station for approval.

Para3.3. On promotion, Group-'A' officers will normally be transferred out of the Region, except where they have come to that Region less than two years earlier. However, they may be retained for the balance period of tenure at the place of their posting, subject to the availability of vacancies.

Para3.5. Officers who have 3 years or less service left shall be posted to the station/Region of their choice to the extent possible.

Para4.3(ii). The officers may, however, be transferred out before the completion of their tenures on their own request or on administrative grounds/in public interest.

Para4.10. Exceptions on compassionate/administrative grounds may be made by the Placement Committee.

Para4.12. The tenure at any post shall ordinarily be two to three years.

Para4.15. In case of shortage of officers in a particular Region, the Board may relax the stay / tenure limits prescribed in respect of transfer in a particular year.

Para6.1. Cases of postings on medical / compassionate / educational grounds will be

sympathetically considered by the Placement Committee.

Para6.3. Grievance petitions from Officers against transfer orders should be sent to the Placement Committee within seven days of the communication of the transfer orders on the official website. The Placement Committee shall as far as feasible, dispose the concerned petition within 15 days of its receipt.

7.1. Transfer on administrative grounds/public interest

Notwithstanding anything contained in these Guidelines, the Placement Committee may, if it considers necessary to do so in public interest and in furtherance of organizational objectives, transfer, retain or post any officer to any station/Region or a specific post.

Para7.2. In between two Annual General Transfer exercises, on administrative exigencies, the Placement Committee may shift any officer from one place/post to another.

Clarifications on Transfer/Placement Guidelines for officers of IRS, CBDT, 2010 issued by the CBDT

Para1.8. Types of regions -

at the end of this sub-para it has been stated that the above classification in terms of

Regions of Delhi or Mumbai and other Regions is only for conceptual clarity. No hierarchy of regions or stations is envisaged in the revised policy.

3. Filling up vacancies in different stations

The Placement Committee can relax the limitation of tenure for stations with manpower deficiencies for any year to ensure that enough officers are available to man the posts. (related to para 4.15).

Para 7 (6). For calculating the period of service left, the cut off date is 1st January of the year in which the transfer is due is to be taken into account.

When considered in terms of the stipulations mentioned above, the claims/submissions of the applicant lead to these conclusions:-

4 (b). The claim of the applicant that in the promotion order 70% of reserved category candidates have been posted to 'C' Class stations whereas the candidates of General Category junior to him have been posted to 'A' Class stations does not have substance.

4 (c). The claim of the applicant that administration in his Department has discriminated against him by transferring him to Muzaffarpur while retaining several other officers at the stations of

present posting for having less than 2 years or less period of service left, etc is baseless and unfounded. A perusal of the Minutes of the Meeting of the Placement Committee held on 17.10.2017 and 18.10.2017 reveals that the Committee considered officers of 1988, 1989 and left over batches for promotion to Principal Commissioner of Income Tax. The Committee also considered the posting profiles of the officers. The Committee made recommendations for postings considering their tenures/posting profiles and administrative requirements / exigencies by adopting these norms-

"a. Officers who have not completed two years as on 30.09.2017 have been retained at that Station/Region (except in the case of Sh.Naveen Chandra (89030), which has been discussed in para 4).

b. Since this is not an Annual General Transfer (AGT) but posting on regular promotion which is taking place in the month of October, there appears to be no justification for retaining officers at the same station at their current place of posting merely on the ground that their children are taking Xth/XIIth standard Exams in Academic year 2017-18.

c. For Delhi/Mumbai, those officers who have never worked earlier or have done short tenure earlier have been given preference for posting.

d. Efforts have been made to ensure that an officer works in atleast three Regions before being promoted to the grade of CCIT.

e. Vacancy position in the grade of Pr.CsIT in different regions/stations has

been taken into consideration.

f. Administrative requirements and other exigencies."

4(d). The main ground pleaded by the applicant for not posting him to Muzaffarpur as 10th standard Examination of his daughter are in March/April, 2018. The Placement Committee has very categorically adopted the norm (b) above for all the officers. This shows that such cases have not been considered for any of the officers while issuing the placement/posting orders. Therefore, we discern no discrimination at all against the present applicant in the placement recommended by the Committee and thereafter with due approval of the Finance Minister issued by the CBDT on 24.10.2017.

4(e). The claim of the applicant that for his transfer from Pune to Muzaffarpur approval of the Union Finance Minister has not been obtained is totally false and unfounded (of course, on page 6 of the O.A. he has stated that approval of less than the Finance Minister has to be obtained). In the minutes of the meeting of the Placement Committee very clearly recommended the posting proposals of newly promoted Principal Commissioners of Income Tax stating that those recommendations are subject to approval of Hon'ble Finance Minister.

After obtaining approval of the Appointments Committee of the Cabinet to the empanelment of the IRS Officers for promotion to the grade of Principal Commissioner of Income Tax for the panel year 2016-2017 (in which the name of the present applicant was also included) the recommendations of the Placement Committee for postings of 84 newly promoted Principal Commissioner of Income Tax and 2 existing Principal Commissioner of Income Tax (on representation/request) were placed for approval of the Hon'ble Finance Minister and thus they were duly approved on 23.10.2017.

The applicant also seems to be confused about the stipulations under Para 2.1(ii)(b). He has claimed that his transfer is in deviation of the Transfer/Placement Guidelines and for this approval of the Hon'ble Finance Minister is necessary. In fact this stipulation is for officers below the rank of Commissioners, as per Para 2, 2.1(ii). Since he was already working as Commissioner of Income Tax and on promotion as Principal Commissioner of Income Tax, he has been posted as per order of 24.10.2017, the proposal recommended by the Placement Committee of the Board for posting of Chief Commissioners /Director General and Commissioners/Directors, approval of the Finance Minister is required. So in

any case the transfer proposal involving the applicant required the approval of the Union Finance Minister which has been duly obtained.

4(f). The next contention of the applicant that he has been transferred on promotion before completing 2 years in his posting at Pune is also totally baseless and deliberately misleading. The Placement Committee has specifically applied the norm that the officers who have not completed 2 years as on 30.09.2017 have to be retained. Since the applicant had joined as Commissioner of Income Tax (Appeals)-4, at Pune in July, 2015, by 30.09.2017 he had completed more than 2 years. Therefore, the submission of the respondents in this regard is correct. Also the claim, that the respondents have not liberally interpreted the provisions of Para 3.3, 3.5 and 6.1 of the Transfer and Posting Guidelines to extend concession to him by retaining him at Pune is also baseless.

Para 4.12 of the Guidelines also specifically stipulates that the tenure at any post shall ordinarily be 2-3 years. Since the applicant had already completed more than 2 years by 30.09.2017, he cannot pleaded any grievance on this ground as he had already completed posting/tenure at Pune.

4(g). About schooling of his daughter, the applicant has claimed that after his posting in Pune, 2015, she could get admission in CBSE affiliated Delhi Public School, Navi Mumbai. While he has pleaded main ground for his retention in Pune, he has also himself mentioned that in 11th Class his daughter has got admission in Cathedral High School, Mumbai and Dhirubhai Ambani School, Bandra, Mumbai which are affiliated not with CBSE but with ICSE Board. When he himself has stated that his daughter got admission in CBSE affiliated Delhi Public School, Navi Mumbai, why she has got admission elsewhere in 11th Class inspite the Class 11th and 12th also being available with the same School is not clear.

4(h). The Placement Committee has uniformly applied the norm to all the officers involved in the order of 24.10.2017 that the ground of children appearing in 10th and 12th standard Examination during academic year 2017-18 is not to be considered.

4(i). With regard to the period of service of the applicant left, the clarification issued by the CBDT in Para 7.6 is relevant which mentions cut off date as 1st January of the year in which the transfer is due. Since the transfers on promotion had to be

effected in October, 2017, the period of service left of the applicant will have to be counted from the applicant is 01.01.2017 to 31.03.2010 (when he will retire) which works out to 3 years and 3 months. Hence this ground of the applicant that he had less service period left is false.

4(j). The applicant claims that he should have been retained on promotion at Pune or should have been accommodated in Mumbai, Thane, etc. In this regard the case record reveals inconsistency in the preference of stations mentioned by the applicant e.g. on page 20 of O.A. Para 8(c), the stations mentioned are Thane, Navi Mumbai, Mumbai and Surat. In para 4 of his representation dated 25.10.2017 addressed to the Chairman, CBDT, the choices of stations mentioned by him are Pune, Vashi (Navi Mumbai), Thane, Nagpur and Surat (there is no mention of Mumbai). In Para 5 on page 132 of the rejoinder submitted by the applicant on 09.03.2018, the stations mentioned are Pune, Nagpur, Mumbai, Thane and Surat (no mention of Navi Mumbai). This shows that the applicant is a confused person about the exact choices/preferences of stations.

4(k). As regards the claim of the applicant that there were vacancies of Principal Commissioner of Income Tax at Pune, Nagpur, Mumbai, Thane and Surat,

this factor was also considered by the Placement Committee while finalizing the recommendations. In this regard the Placement Committee has applied its mind in recommending as to who should be posted to which station. Hence we cannot question their assessment of administrative requirement and public interest.

4(1). The respondents have countered the contention of the applicant about non-transfer of some of the officers and have explained that the officers at Sr.No.3 in the placement order suffers from a life threatening disease, officers at Sr.No.39, 52, and 80 had not completed 2 years in their respective Regions/Stations as on 30.09.2017 and the officer at Sr.No.53 is an office bearer of the IRS Association stationed at national headquarters. After submission of these details by the respondents in their reply to the O.A. dated 04.01.2018, they have not been contested by the applicant in his subsequently filed rejoinder. Hence this issue does not require further analysis.

4(m). The claim of the applicant in the O.A. that his representation dated 11.08.2017 and 26.10.2017 were not considered by the respondents is baseless and utterly false, because he himself has challenged in this O.A. the placement order as well as the

order of 27.11.2017 issued by the respondents on his representation dated 25/26.10.2017. Hence making of this claim is unbecoming of an officer.

4(n). The claim of the applicant that issuance of his placement order and rejection of his representations amounts to arbitrary use of discriminatory power is also totally false and unreliable. The order of 27.11.2017, reveals that the representation of the applicant was duly considered by the Placement Committee and it is a reasoned order along with citing of various caselaws. In view of the above analysis of claims/contentions of the applicant, we find that reply of the respondents dated 27.11.2017 as proper and fully justified.

4(o). The applicant has further claimed that his charge of Commissioner, Income Tax (Appeals)-4, Pune; the charge was assumed by Shri Avadhesh Kumar, Commissioner of Income Tax (Appeals)-3, Pune on 29.11.2017 without being handed over as he had also sought interim relief in this O.A. filed on 29.11.2017. With reference to this on 30.11.2017 after hearing the counsel for the applicant and considering various aspects of submissions of the applicant, the O.A. was admitted and notices were ordered to issue to Respondent No.1 to 4 and as an

ad-interim relief, the Respondent No.1 to 3 were directed not to relieve the applicant the present post or the station if not relieved earlier. The interim relief was also subsequently continued. However, through M.P.22/2018 filed on 04.01.2018, the respondents explained the sequential details about relieving of the applicant from the charge of Commissioner of Income Tax (Appeals), Pune on 29.11.2017 and sought vacation of the stay granted earlier. On 03.05.2018 when the counsel for both the parties i.e. Shri R.G. Walia, for the applicant and Shri V.B. Joshi, for the respondents were heard, it was pointed out that before the order of status-quo was passed by the Tribunal on 30.11.2017, the applicant had already been relieved on 29.11.2017. Hence the order of the status-quo had become infructuous.

4(p). In this regard we have very carefully gone through the claims of the applicant that so called assumption of charge by Shri Avadhesh Kumar on 29.11.2017 in his absence when he was actually available is another attempt of practising deceit and somehow defeat the intent of this Tribunal of protecting the applicant at his present place of posting. This is a highly specious argument of the applicant. The sequence of events on 29th and 30th

November, 2017 submitted by the respondents in their additional affidavit very clearly bring out that after receipt of the order of rejection of his representation by the applicant on 28.11.2017, he deliberately evaded handing over of the charge of the post of Commissioner of Income Tax (Appeals)-4, Pune to Shri Avadhesh Kumar who had been directed by the Principal Chief Commissioner of Income Tax, Pune to take over the charge from the applicant. In fact it is revealing that instead of sincerely complying with the promotion and placement order even after rejection of his representation, instead of remaining available to readily hand over the charge on 29.11.2017, the applicant filed this O.A. on that date. So he remained absent from his office and was busy with filing of this O.A. In that situation, Shri Avadhesh Kumar had to unilaterally take over the charge of the post of Commissioner of Income Tax (Appeals)-4, Pune and thereafter accordingly submitted his compliance report on the same day i.e. 29.11.2017 to the Chief Commissioner of Income Tax, Pune as well as informed the present applicant about this fact on the same date and also on the next date by personally visiting him. The conduct of the applicant in this regard is not only highly disappointing and disgraceful, it was a clear case

of defiance of authority of the respondents and it was unbecoming of him as a public servant, that too of such a senior position on promotion as Principal Commissioner of Income Tax.

4(q). Here we find proper to cite Apex Court view taken in **S.C. Saxena Vs. Union of India and others, Civil Appeal No.280/2003 decided on 21.02.2006.** It is held that-

"....In the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed...."

4(r). The minimum expectation from the applicant in those circumstances i.e. after having received his promotion-cum-placement order on 24.10.2017 as well as the decision of the CBDT dated 27.11.2017 on his representation was to sincerely comply with the orders and hand over the charge of his earlier post of Commissioner of Income Tax (Appeals)-4, Pune. The applicant not only defied the orders of the Government, he tried to anyhow cling on to the post of Commissioner of Income Tax (Appeals)-4, Pune. Inspite of having conducted in this manner, in the O.A. the applicant alleges discrimination by the

respondents against him and for not having extended sympathy to him in retaining him at Pune or at other stations of his choice.

4(s). In view of the above analysis and observations, we are fully convinced that the present O.A. filed by the applicant is totally devoid of merits, in it the applicant has indulged in unnecessary litigation and made baseless allegations against the respondents. He seems to be cultivating an imaginary, false and unfounded sense of victim-hood thereby claiming discrimination against him, just because he belongs to Scheduled Caste community. We also note that the applicant is not clear about his priorities. While he is seeking every possible relaxation in the Transfer/Placement Guidelines of the Department and all possible sympathy for him from the respondents, he has made baseless allegations against them of discrimination and bias and practising deceit. If because of reason claimed by him such as education of his daughter (as submitted by the respondents she has been studying in Mumbai while he was posted in Pune) and insisted to be kept there) his priority was to stay at Pune, then in all fairness and sincerity he could have forgone his promotion for a year or specified period, alternatively he should have first

joined on promotion at Muzaffarpur and thereafter for the period of examinations of his daughter he could have availed of leave. Still another option he could have explored was, after willingly handing over the charge at Pune and taking over his new charge on promotion at Muzaffarpur, he could have made another representation to the respondents for reconsideration of his request. Such a course of action would have helped him in avoiding the defiance of authority and instructions of the respondents, his image in the Department would have been of a sincere and disciplined officer and that would have earned him a ground for extra sympathetic consideration of his request by the respondents. Unfortunately he failed to do so and instead has resorted to a confrontational approach indulging in avoidable litigation by making misleading averments and false allegations.

4(t). Why is he opposed to his transfer to Muzaffarpur is not clear. It is a middle level city with population of around 4 lakhs having several educational institutions, it is only 63 kms. from Patna, which is well connected to Mumbai and Delhi by railways and air.

4(u). Since the order of transfer was issued on 24.10.2017, instead of complying with it, he rushed

to the Tribunal and filed O.A. on 30.10.2017 claiming that his representation had not been considered. After this O.A. was disposed of on 31.10.2017 directing the respondents to decide his representation, on receiving the decision on 28.11.2017, instead of complying with the order of placement on promotion and handing over the charge, he again rushed to the Tribunal and filed the present O.A. on 29.11.2017 seeking further interim relief for not relieving him. When he did not handover the charge, the respondents had no option left and were compelled to order unilateral assumption of the charge by Shri Avadhesh Kumar, he alleges practising of deceit by the respondents. This litigation-minded approach of the applicant reveals his utter disregard for organizational discipline and sense of responsibility.

5. Decision :

The O.A. is dismissed, with a cost of Rs.10,000/- to be paid by the applicant to the respondents within a month of receipt of this order.

(Ravinder Kaur)
Member (J)

(Dr. Bhagwan Sahai) 3/10/17
Member (A).