

Reserve

Central Administrative Tribunal, Allahabad Bench, Allahabad

Original Application No. 330/00964/2019

Pronounced on 10th day of October, 2019**Hon'ble Mr. Justice Bharat Bhushan, Member (J)**

Sachin Kumar Kushwaha aged about 37 years son of Sri Rajendra Prasad Kushwaha resident of K-490, Yashoda Nagar, Kanpur-U.P. was working on the post of Inspector (Circle I, Gr. I) at the CGST Audit Commissionerate, Kanpur, U.P. Now, under orders of transfer to the CGST Audit Circle, Varanasi, U.P.

Applicant

By Advocates: Sri Shyamal Narain

Versus

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, Government of India, New Delhi.
2. The Principal Chief Commissioner (Cadre Controlling Authority), Central Goods and Services Tax and Central Excise, Lucknow Zone, 7 A, Ashok Marg, Lucknow-U.P.
3. The Commissioner, CGST & Central Excise (Audit) Commissionerate, 1117/7, Sarvodaya Nagar, Kanpur-208005, U.P.
4. The Commissioner, CGST & Central Excise, Audit Circle, Varanasi, U.P.

Respondents

By Advocate: Sri L.P.Tiwari

ORDER**By Hon'ble Mr. Justice Bharat Bhushan, Member (J)**

Applicant, Sachin Kumar Kushwaha has filed this Original Application (O.A.) challenging the impugned Establishment Order No.I/A/Estt/13/2019 dated 16.7.2019 issued by the Office of the Commissioner, CGST & CEX (Audit) Commissionerate, 1117/7, Sarvodaya Nagar, Kanpur, whereby he has been transferred from CGST (Audit) Commissionerate, Kanpur to CGST & Central Excise Audit Circle, Varanasi, U.P.

2. It is stated that applicant is working in CGST (Audit) Commissionerate, Kanpur from where he has been transferred by the aforesaid order dated 16.7.2019 to the CGST and Central Excise Audit Circle, Varanasi, which is less than two years of

normal period of posting. He has further submitted that applicant's wife is an employee of the Uttar Pradesh State Govt. and presently posted as Assistant Teacher at Government High School, Koratha, District- Kanpur Nagar. Counsel for applicant has further submitted that impugned transfer order has been issued in violation of various DOP&T circulars and new transfer policy dated 20.5.2019.

3. Heard Sri Shyamal Narayan, advocate for applicant and Sri L.P. Tiwari advocate for respondents.

4. Sri Shyamal Narayan has drawn the attention of this Tribunal towards the Tenure Transfer Policy 2019 wherein it has been mentioned that for any CGST and Central Excise Commissionerate, the minimum tenure will be two years. The counsel for applicant has also placed reliance on DOP&T O.M. No. 11013/10/2013-Estt.A dated 2nd July, 2015, whereby the transfer policy has been further clarified. Learned counsel for applicant has also drawn the attention of this Tribunal towards the DOP&T O.M. No. 28034/9/2009-Estt (A) dated 30th September, 2009, whereby the instructions have been issued to Cadre Controlling Authorities to try and make every efforts to keep spouses together or nearby stations. Submission is that request of applicant for retention at Kanpur has been declined without any lawful reasons despite the fact that applicant's case falls within the instructions and guidelines framed by the Government.

5. Sri L.P. Tiwari advocate for respondents has vehemently oppose to grant any interim relief. He has also pointed out that subsequent to the transfer order dated 16.7.2019, applicant has been relieved on 22.7.2019 and now the applicant has no option but to join at the new place of posting.

6. It is pertinent to point out that applicant has mostly been working at Kanpur for last nine years in his career. The applicant himself has placed before this Tribunal a chart indicating the posting of applicant for last almost 10 years. This chart is available on record at Annexure A-7. This chart indicates that applicant was posted at Kanpur on 5.7.2010 and he continued there till 21.11.2014. During this period, he held various charges. Subsequently, he was transferred to Lucknow which is almost 80-90 kms. away from Kanpur and continued at Lucknow till December 2015. He again came back to Kanpur on 28.12.2015 and continued till 30.6.2017. On 3.7.2017, he again joined at Lucknow and within three months, he came back to Kanpur and joined Kanpur on 30.10.2017 and since then he is continuously working at Kanpur till he was relieved on 22.7.2019. This chart indicates that applicant has been consistently seeking and getting his posting at Kanpur. In last 9 years, barring 16 months, the applicant has been working at Kanpur indicating the department has been very generous and considerate with him. Now, he has just been transferred to Varanasi which is a very important place of posting and not at a great distance from Kanpur.

7. The claim of the applicant is that he has yet not completed two years of tenure at Kanpur. The applicant joined at Kanpur on 30.10.2017 and was relieved from his position on 22.7.2019. Meaning thereby that he was transferred to Varanasi merely 3-4 months prior to the normal tenure at Kanpur. Surprisingly, he did not raise objection when he was transferred back from Lucknow to Kanpur within 3 months. It is pertinent to point out that Zonal Transfer Policy 2019 itself says that Principal Chief Commissioner has a discretion to deviate from the policy as per DGHRD (HRM)F.No. 08/B/42/HRD (HRD) 2011 dated 7.7.2011.

8. Transfer is an incidence of service and ordinarily Courts or Tribunals do not interfere in the transfer unless vitiated by malafides or issued in violation of statutory provisions. There is no allegation of malafides in this case.

9. DOP&T O.M. No. 28034/9/2009-Estt (A) dated 30th September, 2009 indicates that department has to make an effort to keep the husband and wife at the same station or nearby places. As stated earlier, Varanasi is not at a great distance from Kanpur. Both stations are within the State of U.P. Therefore, it cannot be said that the transfer order would create unreasonable problems to the applicant or his wife.

10. In the case of **Union of India Vs. S. L. Abbas reported in AIR 1993 SC 2444**, the Hon'ble Apex Court has been pleased to observe as under:-

"The said guideline, however, does not confer upon the Government employee a legally enforceable right."

11. In view of the aforesaid law laid down by the Apex Court, it is clear that guidelines issued by the Department for transferring employee are in fact merely guidelines while it is expected that department would try to follow the same to the extent possible but it is not always possible to strictly transfer each employee in accordance with the said guidelines.

12. In another matter of transfer which came up before the Hon'ble Apex Court i.e. the case of **Rajendra Singh & Others v. State of U.P & Others** reported in (2009)15 SCC-178, it has been observed that the scope of judicial review in transfer matters is very limited and the courts are always reluctant to interfere with transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from malafide.

The Hon'ble Apex Court further observed as under:-

"9. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In *Shilpi Bose v. State of Bihar* this Court held:

"4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory 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 the 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 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.

10. In *N.K. Singh v. Union of India* this Court reiterated 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....."

13. The Hon'ble Apex Court in the case of **S.C. Saxena Vs. Union of India and others** reported in (2006) 9 Supreme Court Cases 583 has held that tendency of not reporting at the new place and instead indulging in litigation to ventilate grievances needs to be curbed. The Hon'ble Apex Court has further held that it is the duty of the Government servant to first report for work where he is transferred and thereafter, make a representation as to what may be his personal problems." The relevant portion of this judgment is reproduced as below:-

"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 problem. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed."

14. In view of the aforesaid discussion, this Tribunal believe that no interference is warranted in the impugned transfer order.

15. List this case before Division Bench for further proceedings on

(JUSTICE BHARAT BHUSHAN)
MEMBER (J)

HLS/-

