

**Central Administrative Tribunal
Principal Bench**

OA No.1203/2017

New Delhi, this the 30th day of July, 2019

**Hon'ble Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Baldip Singh Sandhu
S/o Late Shri D.S. Sandhu
Aged about 61 years
R/o 522, Sector-18B
Chandigarh. ...Applicant

(By Advocate: Shri A.K. Behera)

Vs

1. Secretary, Ministry of Finance
Government of India
Department of Revenue
North Block, New Delhi-110001.
2. Chairman, Income Tax Settlement Commission
4th Floor, Lok Nayak Bhawan
Khan Market, New Delhi-110003.
3. Secretary, Income Tax Settlement Commission
4th Floor, Lok Nayak Bhawan
Khan Market, New Delhi-110003. ...Respondents

(By Advocate: Shri Manish Mohan)

ORDER(ORAL)

Justice L. Narasimha Reddy:

The applicant is an IRS Officer of 1981 batch. When he was functioning as Chief Commissioner of Income Tax, Kolkata in the year 2015, the Government

issued an advertisement on 09.09.2015 inviting applications for appointment to the post of Member, Income Tax Settlement Commission. Four vacancies referable to the Benches at New Delhi, Mumbai, Chennai and Kolkata were notified. The applicant responded to the same and was selected and appointed vide Office Order dated 10.03.2016 and posted at Delhi.

2. On 19.07.2016, the applicant was transferred to the Bench at Chennai. Challenging the same, he filed Writ Petition(C) No.9937/2016, in the Delhi High Court. A learned Single judge who heard the case on 27.10.2016, stayed the operation of the order of transfer. The department filed LPA No.624/2016. A Division Bench of the Delhi High Court, which heard the case and passed order dated 30.11.2016, vacating the interim order dated 27.10.2016, mainly on the ground that the Writ Petition itself was filed at a belated stage and that the interim order would have the effect on deciding the Writ Petition itself. Thereafter, the Writ Petition was transferred to the Tribunal through an

order dated 17.03.2017 and accordingly, it was numbered as OA No.1203/2017.

3. The applicant contends that the advertisement made it amply clear that on being selected, a Member would be posted to a particular Bench and there is no provision for transferring him to any other Bench. He contends that one of the factors that weigh with an officer to apply for the post of Member, is the place of the Bench where the vacancy exist and different clauses of the advertisement add much importance to the place to be mentioned in the application.

4. The respondents filed a counter affidavit opposing the OA. It is stated that the applicant was transferred on the basis of a decision taken by the ACC and that the plea raised by the applicant that the post is not transferable, is not correct. The various developments that have taken place, such as filing of Writ Petition in the High Court, filing of LPA by the Department, applying for medical leave by the applicant, are also mentioned in detail.

5. Shri A.K. Behera, learned counsel for the applicant submits that his client was tempted to apply only because a vacancy was available at New Delhi and if one goes by the scheme contained in the entire advertisement or the rules framed for this purpose, the transfer of a Member from one Bench to another is impermissible. He submits that though two members were transferred in the past, that was on their own request and there was no instance of a Member being transferred without his consent. He has taken us to the various clauses of the advertisement.

6. Shri Manish Mohan learned counsel for the respondents on the other hand submits that transfer is always an incidence of service and that the plea of the applicant is not supported by any provision. He submits that the Writ Petition itself was filed long after the transfer and that the applicant has since retired from service.

7. The applicant was selected and appointed as a Member of the Income Tax Settlement Commission. The order of appointment reads as under:-

"The President of India is pleased to appoint Shri Baldip Singh Sandhu, Retd. IRS (IT:81020) as Member, Income Tax Settlement Commission at New Delhi Bench against the vacancy occur on 18.10.2015, with effect from the date of assumption of charge of the post and until he attains the age of 62 years or until further orders, whichever is earlier.

2. Shri Baldip Singh Sandhu is required to take charge of the post of Member, Settlement Commission within 30 days from the date of issue of this order.

3. Upon joining the Income Tax Settlement Commission, the salary, allowances and other condition of service of Shri Baldip Singh Sandhu will be governed by the Settlement Commission (Income Tax/Wealth Tax) (Recruitment and Conditions of Service of Chairman, Vice-Chairman and Members) Rules, 2015.

8. Much emphasis is laid on indication of the place of posting in the order of appointment itself. To certain extent, the clauses contained in the advertisement have made the applicant to gain that impression. For example Clauses 2 and 3 of the advertisement read as under:-

"2. As per the Settlement Commission (Income Tax/Wealth Tax) (Recruitment and Conditions of Service of Chairman, Vice-Chairman and Members) Rules, 2015, Chief Commissioners or Principal Chief Commissioners or Principal Commissioners of Income-tax or officers of equivalent rank who are in service on the date of

occurrence of the respective vacancy shall be considered qualified for appointment as Member. It Settlement Commission against the respective vacancy. Once appointed, the Members fo the Commission shall serve the Commission at least for two years before they are appointed to any new assignment. The existing Recruitment Rules may be accessed from the website of the Department of Revenue (dor.gov.in-Acts and Rules).

3. The applicant shall not be allowed to change his/her preferences/options of posting after the closing date of inviting the applications or withdraw his/her candidature after the meeting of the Selection Committee."

9. If these clauses are read in isolation, there may be some strength in the argument advanced on behalf of the applicant. However, in Clause 6, the respondents have reserved to themselves, the right to post a Member, notwithstanding, the place indicated in the application. Clause 6 reads as under:-

"6. Applicants are advised to indicate their preferences for paces of posting, if any, in descending order of preference. If, preference for a particular location has not been indicated but preference for other locations have been shown, it will be presumed that the applicant does not wish to be appointed there. If any location has not been indicated at all, it will be presumed that the applicant has equal preference or all locations. The

place of posting of a Member of the Commission shall not be determined only on the basis of his/her prior preference. Applications received after the closing date shall not be entertained."

10. Rules are framed through notification dated 27.03.2015. A perusal of the same discloses that as in the case of any other Tribunal or Commission, appointments are to the 'Commission' as such and not to any particular 'Bench' or 'post'. It may be true that having regard to the fact that the tenure is approximately two years, a Member appointed at a particular Bench is not disturbed till he retires. However, if a request is made or the exigencies of service demand, nothing prevents the Government from effecting transfer. In fact, two such transfers have taken place on request. It is fairly well settled that transfer is an incidence of service and no member of service can insist that he must be continued at the same place throughout his service.

11. The challenge in the Writ Petition was to the order of transfer and it was not on the grounds of want of jurisdiction. If the applicant was of the view that the respondents did not have the power or jurisdiction to

transfer him, either a declaration ought to have been sought or in the comprehensive relief, the challenge to the order of transfer was required to be on the grounds of want of jurisdiction. A subtle distinction between the Writ of Certiorari on the one hand, and writ of Mandamus on the other, needs to be maintained. The prayer for quashing of the transfer order can fit to that of Certiorari. There the endeavour would be to see whether the order of transfer violates any specific provision of law. On the other hand, the relief of Mandamus becomes necessary where the writ petitioner intends the court to declare a particular state of affairs or legal framework. It is only when a declaration as to lack of jurisdiction is made, that the interference with the order of transfer would follow as a consequence. The prayer in the Writ Petition and thereby the OA did not maintain such distinction. The order of transfer is challenged without raising the ground of jurisdiction.

12. Secondly, the Writ Petition was filed nearly three months after the order of transfer. That, in fact, was the reason which weighed with the Division Bench, to

set aside the Interim order passed by the learned Single Judge. At any rate, since the applicant has retired from service, the discussion virtually becomes academic.

13. We do not find any ground to grant the relief to the applicant. The OA is accordingly dismissed. We, however, make it clear that the retirement benefits of the applicant shall be processed in accordance with law. There shall be no order as to costs.

(Aradhana Johri)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

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