

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 412/2019

Reserved on: 07.08.2019
Pronounced on: 21.08.2019

**Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhyaya, Member (A)**

Suresh Choudhary S/o Shri K.R.Choudhary, aged about 39 years, resident of B-53, Govind Nagar, Jhotwara, Jaipur (Rajasthan) presently posted as Assistant Commissioner C.G.S.T. Division-F Bharatpur (Rajasthan). 9928610584.

...Applicant.

(By Advocate: Shri Anupam Agarwal)

Versus

1. The Union of India, through Secretary, Ministry of Finance, Government of India, Department of Revenue, North Block, New Delhi. 110001.
2. The Chairman, Central Board of Indirect Taxes and Customs, North Block, New Delhi. 110001.
3. The Chief Commissioner, CGST and Central Excise & Service Tax Jaipur (Jaipur Zone) NCR Building, Statue Circle, Jaipur Zone, Jaipur (Raj.) 302005.
4. Additional Commissioner, (P&V) Office of Commissioner of Central Goods & Service Tax, Surya Nagar, Alwar (301001).

...Respondents.

(By Advocate: Shri Kinshuk Jain)

ORDER

Per: A.Mukhopadhyaya, Member (A):

As per the applicant, this Original Application, (OA), arises from the modification/cancellation of his transfer order dated

(2)

30.04.2019, (Annexure A/3), vide respondents' order dated 17.07.2019, (Annexure A/1 – the impugned order), as a punitive measure following upon complaints made against him by his wife dated 10.06.2019; (Annexure A/8). The applicant states that consequent upon an FIR No.0251/2018 dated 12.11.2018 filed by his wife against him with the Womens' Police Station, Jaipur, (West), the police filed a charge sheet under IPC Sections 498A and 406 and Dowry Prohibition Act, 1961 Sections 3 and 4 in the Metropolitan Magistrate Court No.20 Jaipur; (Charge sheet Number 42/19 dated 27.05.2019). He states that although the case is being heard presently, the respondents served him a notice in this matter dated 03.07.2019, (Annexure A/7). He states that while he responded to this notice vide letter dated 10.07.2019, (Annexure A/9), explaining fully the facts and circumstances of the case, he was nevertheless summarily transferred from the station of Bharatpur where he was serving in compliance of the order dated 30.04.2019, (Annexure A/3), to Alwar vide impugned order dated 17.07.2019; (Annexure A/1). The applicant contends that the impugned order of transfer is at variance with the transfer guidelines issued by the respondents themselves, (Annexure A/10), as these guidelines, (para 7.3.2), specify a tenure which shall not be less than two years for it to be considered as complete. Aggrieved by the alleged punitive action taken by the respondents in violation of their own transfer policy,

the applicant has approached this Tribunal seeking the following relief:-

- (i) By an appropriate writ order or direction the impugned transfer/modification order dated 17.07.2019 qua the applicant and further proceedings in pursuance thereof be quashed and set aside and applicant be allowed to work on the post of Assistant Commissioner C.G.S.T. Division-F, Bharatpur.
- (ii) During pendency of the original application no adverse action be taken against the applicant.
- (ii) Any other appropriate order of direction which is considered just and proper in the facts and circumstances of the case be also passed in favour of the applicant.

2. In reply, the respondents contend that the transfer order in question dated 17.07.2019, (Annexure A/1), has been correctly issued by the Chief Commissioner of the Zone in which the applicant was serving, (para 4(xi) of reply refers), and that the order was issued “**....in accordance with the para 7.6 of the guidelines ibid on administrative grounds, considering the fact that the officer working on the post, where the applicant has been posted vide order dated 17.07.19, is superannuating on 31.07.2019 and the said post is required to be filled up considering the importance of Review & Adjudication work.**” Rejecting the contention of the applicant that since the earlier order of his transfer dated 30.04.2019, (Annexure A/3), had been executed, a fresh transfer

(4)

order was required to be issued, (if at all), as not tenable “**in view of the fact that it should not have altered the situation**”, (para 5D of reply refers), they reiterate that the order dated 17.07.2019 specifically states that it has been made due to “**due to administrative exigency**”, (Annexure A/1 refers), “**considering the fact that the officer working on the post, where the applicant has been posted vide order dated 17.07.19, is superannuating on 31.07.2019 and the said post is required to be filled up considering the importance of Review & Adjudication work**”, (para 4(xi) of reply refers), and that this consideration finds mention in the starred note below the transfer order dated 17.07.2019, (Annexure A/1), itself. Citing the case of **Syndicate Bank vs. Ramchandran Pillai & Ors.** (2011) 15 SCC 398, the respondents contend that even if there has been any violation or breach of such non-statutory transfer guidelines, (Annexure A/10), cited by the applicant, it will not confer any right to seek a direction in a court of law for compliance with such guidelines; [preliminary submissions (i) of reply refers]. In the preliminary submissions of the reply at items (ii) to (iv) the respondents have also cited the judgments of the Hon’ble Apex Court in **Rajendra Singh vs. State of U.P. & Ors.** (2009) INSC 1351, **Union of India vs. S.L. Abbas** 1994 SCC (L&S) 230 and **Shilpi Bose (Mrs.) and Others vs. State of Bihar and Others** 1991 Supp.(2) SCC 659 to argue that the applicant, who is a

(5)

Government servant, has no vested right to remain posted at a place of his choice and that the order of transfer is an incidence of government service for the appropriate authority to decide unless it is vitiated by malafides or is made in violation of any statutory provisions. The respondents aver that such is not the case here. Therefore, they aver that in keeping with the ruling of the Hon'ble Supreme Court in the case *Shipi Bose*, (supra), this court should not interfere with the impugned transfer order issued in the public interest for administrative reasons.

3. Learned counsels for the applicant and the respondents were heard and the material available on record was perused. Apart from perusing the material available on record, the office record of the respondents regarding this case was also perused. Apart from reiterating the submissions made in the OA, learned counsel for the applicant cited the judgment of the Hon'ble Rajasthan High Court in the matter of **Gangaram Bishnoi vs. State & Others** WLR 1994 Raj 537 decided on 10th September 1993 to argue that "**once the transfer order has been executed and implemented then it could not be cancelled and the respondents could have passed fresh transfer order transferring the petitioner if in the exigency of administration it was so required**"; (para 4 of judgment refers). Learned counsel for the applicant argued that in the present case, the impugned order has very clearly

modified/cancelled the transfer order dated 30.04.2019, (Annexure A/3), within a few months of its execution, thus violating the respondents' avowed own transfer policy and also in contravention of the ruling of the Hon'ble Rajasthan High Court in the cited case of Ganga Ram, (supra). He further argued that the office record produced by the respondents in response to the court's direction in this regard clearly demonstrates that the transfer was indeed a punitive measure occasioned by the complaint of the applicant's wife against him in a private matter and therefore that this should not have formed a basis for such transfer in terms of the ruling against such punitive transfer in the case of **Somesh Tiwary vs. Union of India & Others**, (2009) 2 SCC 592.

4. Per contra, learned counsel for the respondents argued that the impugned order itself and the related office record shows that the transfer in question was made as a matter of administrative exigency and was therefore not punitive in nature. He further argued that the complaint of the applicant's wife had been duly referred by the respondent department to its Vigilance Unit and that the transfer in question had nothing to do with this.

5. At this, the office record submitted by the respondents was examined. This shows that on 16.07.2019, i.e. one day prior to issue of the impugned transfer order, a note was submitted by

(7)

the Assistant Commissioner in the Department through the Additional Commissioner to the Chief Commissioner giving reference of a letter No.39(61)SEC/CCO/JZ/2019/864 dated 07.2019 from the Office of the Chief Commissioner GST & Central Excise, Jaipur Zone, Jaipur directing/recommending the assignment of a non-sensitive charge to the applicant. A perusal of this letter shows that it is on the following subject:-

Forwarding of request for disciplinary action and transfer to non-field posting against Shri Suresh Choudhary, IRS-Regarding.

6. The letter thereafter makes the following recommendation in para 2:-

2. In this context, I am directed to request you to assign non-sensitive charge to Shri Suresh, Assistant Commissioner. An action taken report may be sent to this office at the earliest.

7. A plain reading of this letter makes it clear that the subject matter of the same is essentially identical in substance to the subject matter of the letter of complaint preferred by the applicant's wife against the applicant; (Annexure A/8). The aforementioned note of 16.07.2019 is reproduced in full below as this is material to the adjudication of this case:-

Sub: Rotation and transfer in the grade of Assistant Commissioner.

1. Please peruse CC(JZ) letter No. 39(61)SEC/CCO/JZ/2019/864 dt. 07/2019 directing to assign non-sensitive charge of Shri Suresh Choudhary, Assistant Commissioner.

2. The Board's AGT 2019 in respect of AC/DCs is not yet out and is awaited. Normally, the transfers are effected after AGT. Even DGHRD in their mail dt.15.07.2019 have indicated that station change may not resorted to at this stage. However, in view of CC(JZ) letter, they have agreed and assigned the Centralised Order NO.
3. Shri Suresh Choudhary, AC was posted at CGST Division F, Bharatpur vide EO No.6/2019 dt. 30.4.2019, which is a sensitive post.
4. Shri KR Verma, DC (Adj & Review) is superannuating at month end on 31.7.2019. and we will have to assign his charge to another officer. Another officer Shri RS Meena, AC is holding charge of Technical.
5. In view to compliance of Chief Commissioner's directions, it is proposed to post Shri Suresh Choudhary, Assistant Commissioner to Hqrs (Adj. & Review) with immediate effect. Till superannuation of Shri KR Verma (2 weeks), the incumbent officer can work in parallel with him to understand the charge and work.
6. Prior to posting of Shri Suresh Choudhary, AC to Bharatpur Division - Shri KC Meena, AC - CGST Div A, Alwar was holding additional charge of Bharatpur. He may again be assigned additional charge of Bharatpur at this stage. The postings of ACs can be reviewed after their AGT 2019.
7. Proposals in paras 5 & 6 above and draft Order are for approval please.
8. A plain reading of the above note, (particularly para 5), makes it clear that the transfer of the applicant was proposed to be effected in compliance of the Chief Commissioner's direction; (as referred to at para 1 of the note), to post the applicant in a

(9)

non-sensitive charge in view of the subject matter of that letter, (i.e. the complaint of his wife). Thus, while it may also have been made for administrative reasons, there is no getting away from the inference that the transfer was primarily a consequence of the complaint against the applicant made by his wife. This being so, the transfer order in question, (Annexure A/1), becomes punitive in nature and is thus proscribed in terms of the ruling of the Hon'ble Supreme Court in the case of Somesh Tiwary (supra). Not only this, the argument of administrative exigency also does not appear to hold water as learned counsel for the respondents, in response to a query by this Bench, was unable to explain how both the applicant and Shri K.R.Verma, the officer, he would work in parallel with, (impugned order Annexure A/1 refers), could be expected to function against the same post, i.e. AC, Adjudication & Review, Headquarters, Alwar till the latter's superannuation. In particular when asked specifically, he confirmed that to his knowledge no additional post had been created at Alwar to allow such adjustment. Learned counsel for the respondents was also unable to make a case distinguishing and differentiating the case of the applicant from that cited in Ganga Ram, (supra), in terms of the principle involved.

9. In view of the position as detailed in the preceding paras, we find that the impugned order of the respondents dated 17.07.2019, (Annexure A/1), is in the nature of a punitive order

(10)

within the meaning of the same as laid down by the Hon'ble Supreme Court in the case of Somesh Tiwary, (supra), and is therefore unsustainable in law. We further find that the impugned order dated 17.07.2019, (Annexure A/1), which is admittedly a modification/cancellation of an executed order of 30.04.2019, (Annexure A/3), is also unsustainable in terms of the principle laid down by the Hon'ble Rajasthan High Court in the case of Ganga Ram, (supra), in that, the said modification/cancellation of the earlier order has been done after the admitted execution of the same. For this reason, the impugned order dated 17.07.2019, (Annexure A/1), is found to be unsustainable in law and is quashed and set aside. We make it clear however, that this will not debar the respondents from making any fresh order qua the applicant keeping in view the rules and policy on the subject.

10. There will be no order on costs.

(A.Mukhopadhyaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

/kdr/