

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.434/2019

Dated : 19.07.2019

CORAM: HON'BLE R.VIJAYKUMAR, MEMBER (A),
HON'BLE RAVINDER KAUR, MEMBER (J).

Anilkumar S/o Sarwankumar Mehmi, Aged 56 years,
Occu:Service, serving as Assistant Commissioner
Income Tax, Wardha under the charge of Jt.
Commissioner of Income Tax, Wardha Range, Wardha-
442001. Res: Plot No.9, Vrundavan Colony, Katol
Road, Nagpur-440028. ...Applicants

(By Advocate Kunal Nalamwar)

vs.

1. Union of India, through Secretary, Ministry of
Finance, Central Board Direct Taxes, North Block,
New Delhi-110001.

2. Central Board Direct Taxes, through its
Chairman, North Block, New Delhi-110001.

3. Pr.Chief Commissioner, Income Tax, Aaykar
Bhawan, Civil Lines, Nagpur-1 ...Respondents
(By Advocates Shri R.R.Shetty along with Shri Aman
Malik)

Reserved on :- 08/07/2019

Pronounced on:- 19/07/2019

O R D E R

R.Vijaykumar, Member(A)

This application has been filed on
01.07.2019 seeking urgent circulation in regard to
the orders issued by respondents transferring the
applicant from Nagpur in Pune Region to West

Bengal and Sikkim Region in orders of respondent No.2 in Office Order No.142 of 2019 dt. 26.06.2019. At the request of applicant and after briefly hearing the learned counsel for respondents with regard to the plea of personal hardship of the applicant and since he had not been relieved, interim relief was granted until the next hearing. The applicant has sought the following reliefs:

"8.1) Quash and set aside the impugned transfer order dated 26.6.2019 (Anx-A1) issued by Respondent No.2;

8.2) Allow the present Original Application with heavy costs;

8.3) grant any other relief that this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the present case".

2. The applicant contends that he had served for three years after appointment in 1995 at Panaji, Goa, for 1 1/2 years at Bangalore and then on transfer on request to Pune Region. Has served at Nagpur for a total period of 25 years, at Akola for 2 years and after promotion as Assistant Commissioner of Income Tax in a Group 'A' post, has served for the last 3 years at Wardha, where he was also confirmed in service as Assistant

Commissioner of Income Tax against the vacancy year 2014-15 in Office Order No.114/2019. dt. 16.5.2019 (Annexure-A-14). While acknowledging that he has spent a considerable period of time in and around Nagpur, he has submitted that his wife is a Central Government employee with the Postal Department and is posted at Nagpur. Further, that he has a severely mentally retarded child who is 29 years of age and requires constant care and monitoring, in that he cannot even do his own ablutions, wets his bed every night and has to be dressed up for school every day. He states that he had earlier been retained at Nagpur on compassionate grounds since respondents were aware of his above mentioned personal hardship.

3. The applicant goes further and argues that he had filed an application viz. OA No.18/2014 challenging the wrong seniority given to the applicant by the respondents and in the course of the proceedings, he had also filed Contempt Petition for enforcement of the orders of this Tribunal passed on 28.7.2015. While rejecting the compliance report filed by the Respondents, this Tribunal had in orders dt.

29.11.2018 ordered personal appearance of the respondent No.2 and for this reason, the respondents had taken exception and had passed this punishment order with ulterior motives in a mala fide manner. He has also stated that he had filed an explanation on 18.3.2019 to various false and fabricated charges made against him through his JCIT, Wardha.

4. The respondents have filed their reply denying the allegations of mala fides on account of the Contempt Proceedings and state that their SLP in the matter is pending before the Hon'ble Apex Court. In their reply, they have given lengthy details of the case as to their analysis and urge that this matter is now before the Hon'ble Apex Court. In relation to the transfer orders, they state that the Placement Committee of CBDT recommended the transfer of the applicant from Nagpur Region to West Bengal and Sikkim Region on administrative grounds considering the letter F.No.Pr.CCIT/NGP/ Estt.I/ AC-DCIT/T&P/71/ 2018 -19 dt. 15.3.2019 which is reproduced in their reply as under:

"Shri Anilkumar S. Mehmi (Civil Code 145 EN) is presently posted as ACIT, Wardha

Circle, Wardha (Nagpur Region). He was promoted as ACIT in April 2016 and has not been transferred out of Nagpur Region. Before promotion as ACIT he was always posted in Nagpur Region as ITI & ITO.

2. It is reported in writing by the Pr. Commissioner of Income Tax-2, Nagpur, the supervisory officer that Shri Anilkumar S. Mehama (Civil Code: 145EN), ACIT, Wardha Circle, Wardha is casual and irresponsible towards his work. Shri Anilkumar S. Mehama joined as ACIT, Wardha on 25/05/2018 and for about 6 months he did not do any work. He is not punctual in attending office. He is habitually absent from office on the pretext of illness. The Pr. CIT-2, Nagpur has further reported that Shri Anilkumar S. Mehama is not following the directions of his supervisory officer and has not performed his work sincerely, resulting in accumulation of official and statutory work. He has further stated that Shri Anilkumar S. Mehama is discourteous towards his seniors, colleagues and staff. It has also been reported by the Pr. CIT-2, Nagpur that there are a large number of complaints of harassment and corruption in the name of Shri Anilkumar S. Mehama. He allowed one search case to time bar. He also accepted returned income in survey cases without proper verification.

3. The Pr. CIT-2, Nagpur has further requested to transfer Shri Anilkumar S. Mehama to a non-sensitive post in interest of the revenue, justice and fairness. It is also mentioned that at this crucial juncture of financial year end, Shri Mehama remained absent by availing frequent leaves which suggest that the officer does not have a sense of responsibility and commitment toward his work.

Therefore, considering the facts and circumstances and recommendations of Pr. CIT-2, Nagpur, Shri Anilkumar S.

Mehami may be transferred outside Nagpur Region."

5. In support of their Inter-Regional transfer, they refer to para 4.3(ii) and para 7.1 of the Transfer Placement Guidelines, 2010 and reserve the discretion for such transfers to the Placement Committee formed for this purpose at the central level and to similar committees in each region. They state that applicant has been posted in Nagpur Region all through his career after transfer to Nagpur and as an IRS Officer, he should be prepared for transfer any where in the country. They cite various judgments in support of the view that it is not mandatory that the husband and wife should be posted together at the same station and those who are dependent upon the availability of the vacancies and administrative exigencies unless such a transfer order is vitiated by mala fide or is in violation of the transfer guidelines, both of which they deny. They also refer to the rulings of the Hon'ble Apex Court on the limits of the power of judicial review of administrative actions by Courts and Tribunals and that the employer is the best judge about requirement and posting of its employees in

a bona fide manner. In relation to the pleadings of the applicant that his son is differently abled, they state that exemption from transfer posting in such cases is not a matter of absolute right but is subject to administrative constraints which may be seen from para 3 of OM dt. 66..2014 of the DOPT which has been referred by the applicant.

6. Further, citing the rulings in **S.S. Rathore vs State Of Madhya Pradesh, 1989(4) scc 582**, they state that the applicant has not exhausted his remedy by filing a representation before the Competent Authority and for which there is relevant Rule 6.3 in the Transfer Guidelines which could have been adopted by the applicant. They state that the applicant was promoted as ACIT in orders dt. 16.5.2016 and was due for transfer on promotion. He was also asked to give his options and has filled the proforma on 13.4.2016 giving the five options of Madhya Pradesh, Chattisgarh, Mumbai, Orissa and Uttar Pradesh (East). He also cited and gave full details of his working spouse and his child's medical grounds and therefore, requested exemptions from routine

transfer or rotational transfer. They cite this for the purpose of explaining how the applicant was willing to accept inter-regional transfers.

7. In his rejoinder, the applicant has denied all the allegations made by the respondents on his attitude to work, diligence in attending to work, not doing any work for six months and on the aspect of frequent leave, he states that he had applied for leave on medical grounds and had submitted certificates from the CGHS Doctor. He also states that the respondents have not been able to place on record even a single document to substantiate their allegations. He argues that the transfer is being made to prevent him from pursuing his legal remedies on seniority. Further, he contends that he was appointed on the regular post of ACIT at Wardha barely a month ago in orders of respondent No.1 dt. 16.5.2019 and that if the allegations had been true, his confirmation would have been denied for movement from the earlier adhoc post of ACIT to the regular post. He has now also submitted a certificate from the private Rehabilitation Centre at Nagpur which is treating his son.

8. We have heard the learned counsel for applicant and the learned counsel for the respondents and carefully considered the facts and circumstances, law points and rival contentions in the case.

9. The respondents have produced a Confidential File containing 154 pages of the Nagpur Office which also contains two notings. The first noting is made on 1.3.2019 which refers to a letter from the Principal Commissioner of Income Tax (PCIT) dt. 27.2.2019 which is described as a request for order for vigilance inspection of Wardha Circle held by the applicant. The second note refers another letter which is described as forwarding of complaints against the applicant. Both letters of the PCIT-2 of Nagpur are on the same date viz. 27.2.2019 and have been forwarded by the PCIT on the same date on 1.3.2019 at the same time by Speed Post to the Principal DGIT (Vigilance), New Delhi. The two letters are identical both in respect of their contents, para numbering and the annexures except for the

conclusion in each, which is as under:

"PCIT-2/NGP/Confidential/2018-19/02 Dt.27.02.2019

9.1 In view of facts as emerged from the contents of the complaint against Shri Anil Mehami, ACIT, Wardha and the cases reviewed so far it can safely be concluded that the officer has worked in Wardha Circle with the sole motive of earning money in completion of assessments. He has not shown any interest in any area of work as an Assessing Officer. His approach is very casual while discharging official duties, which is a serious concern and need to be curbed in the interest of the revenue. The officer is holding a sensitive charge and adopting casual approach in all areas of work assigned to him resulted into huge revenue loss.

9.2 Looking into the sensitivity of the charge and casual approach of the officer in all the areas of work assigned to him and the grave allegations of corruption against the officer, I have simultaneously requested **the Pr. CCIT, Nagpur to transfer the officer from a sensitive post to a non-sensitive post** immediately in the interest of revenue, justice and fairness.

9.3 In view of the above facts, it is crystal clear that all the assessments completed by Sh. Anil Mehami, ACIT-Wardha Circle, Wardha have not been properly framed. He has not followed the Standard Operating Procedure as established by Law and Procedure, Instructions and Rules resulted into a huge revenue loss. All the assessments framed by the officer needs revision and review. It is, therefore, requested that **Vigilance Inspection in all 91 cases may be ordered** in the interest of revenue, justice and fairness.

PCIT-2/NGP/Confidential/2018-19/03 Dt.27.02.2019

9.1 In view of facts as emerged from the contents of the complaint against Shri Anil Mehami, ACIT, Wardha and the cases reviewed so far, it can safely be concluded that the officer has worked in Wardha Circle with the sole motive of earning money in completion of assessments. I am **forwarding herewith copies of complaints and other relevant correspondence** in this regard as mentioned above for further necessary action at your end.

9.2 Since, matter is related to corruption charges on completion of assessments, I have simultaneously written to the Hon'ble **Principal Director General of Income-Tax (Vigilance), New Delhi** for orders for Vigilance Inspection of Wardha Circle-Wardha being held by Sh Anil Mehami, ACIT, Warda in the interest of revenue, justice and fairness.

9.3 The officer is holding a sensitive charge and adopting casual approach in all areas of work assigned to him resulted into huge revenue loss. Further, the allegations of corruption leveled against the officer are of grave nature needs through probe and inspection, it is, therefore, requested that the officer may be **transferred from a sensitive post to a non-sensitive post** immediately in the interest of revenue, justice and fairness".

The letters analyse some selected number of cases allegedly decided in assessment by the applicant and also recommend that he should be transferred to a non-sensitive post. They enclose a letter dt. 18.2.2019 to the PCIT-II Nagpur from one

Akshay Tapdiya, DDI Investigation (I&B), Nagpur on how he had taken over charge from the predecessor of the applicant on 18.5.2018 and then handed over charge to the applicant on 25.5.2018. This letter has been denied as entirely untrue by the applicant in his explanation submitted through JCIT, Wardha dt. 18.3.2019 in response to the letter of the DGCIT dt. 28.2.2019, but this explanation does not find place as an annexure in the above said reference. However, the objective of these references appear to be to initiate a detailed Vigilance Investigation into the alleged delinquencies of the applicant. No details have been provided on what transpired thereafter in terms of this Vigilance Investigation considering that there are more serious complaints that have been made against the applicant who was serving in an office headed by a Joint Commissioner at Wardha. As pointed out by the applicant even at the time of his regularisation in orders dt. 16.5.2019, no bar was found to deny regularisation. It is also noticed in the same order that two ACITs had been promoted from ITO to ACIT and in their cases, the concerned PCCIT was

directed to ensure that vigilance clearance had been granted to them prior to promotion. Therefore, it is evident that as on 15.5.2019, 2 1/2 months after the above communication to the DGI there was no bar for vigilance clearance in regard to the applicant and he became a regular ACIT. Further, the strong recommendations alleged to have been made by the Principal CCIT, Nagpur and his colleagues on transferring the applicant to a non-sensitive post also does not seem to have been acted upon and even at the time of filing this OA, the applicant continues to be serving in the same sensitive post under the supervision of Joint Commissioner of Income Tax. It also appears from the papers made available by the respondents that the vigilance inspection is a work-in-progress and no conclusion has been reached on identifying the persons responsible. For this purpose, the respondents would have also come to know about the explanation given by the applicant on the manner in which he is alleged to have been handed over charge of that post both in terms of the main contents of the handing-over note and its alleged annexures.

10. Further, reference to the transfer orders of the respondents does not reveal any substantial remarks made against the applicant and shows that two categories have been listed in the said office order dt. 26.6.2019, the first category are promotion cases and the second category are review cases within which, applicant is found at Sl.No.148. No remarks have been made against these persons especially the applicant on whether the transfer has been ordered on administrative grounds or whether this is only a routine and rotational transfers. In the absence of any explanation, we might only presume that this is only a rotational transfer that has been subsequently elaborated and described in the reply of the respondents as being the result of careful consideration by the Central Placement Committee of the alleged delinquencies of the applicant.

11. Once we consider the aspect of whether the applicant has only been transferred in a routine transfer order, the present circumstances of the applicant become relevant for consideration by the Placement Committee and there is no evidence placed on record or pleadings to that effect to

show that the circumstance of the applicant specially in terms of his mentally retarded child were placed before and considered by the Central Placement Committee. The respondents have, therefore, contended in their reply that the applicant never made any representation seeking consideration of his personal hardship within the time required and in seven days as prescribed in the transfer guidelines. Instead, he has rushed to this Tribunal within a period of five days seeking relief. Therefore, the applicant is at liberty to file a detailed representation by email before respondents within three days of receipt of this order and for the respondents to consider and place his representation before the Placement Committee in accordance with the rules within a period of six weeks and communicate their orders within two weeks thereafter.

12. The respondents have also urged the fact of certain allegations under inquiry by the Vigilance team. These are weighty reasons and in the case of a Group 'A' officer there is no doubt that such matters will also receive the attention

of the Central Vigilance Commission. Therefore, in the context of the self-evident gaps and inadequacies and the manner in which the PCCIT too framed his recommendation without consideration of the explanation to the letter of DDI that has been placed in support of the PCIT-II recommendation, it would be appropriate that a fair and unbiased view of the matter is taken before placing any such recommendations along with the facts before the Placement Committee for its consideration on the aspect of administrative exigencies.

13. Considering the above circumstances and directions set out in previous paragraphs, the interim orders granted to the applicant shall continue with a direction to respondents to not shift the applicant from Nagpur region until orders are communicated to him but respondents shall be at liberty to post him at an alternate non-sensitive post in the same region until orders are communicated. This OA is accordingly disposed of as above without any order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar) / 13
Member (A)

B.