

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**CWP No.26624 of 2015
Date of decision: 19.12.2015**

Davinder Pal Singh

.....Petitioner

Versus

**Central Administrative Tribunal, Chandigarh Bench, Chandigarh
and others**

.....Respondents

**CORAM:- HON'BLE MR. JUSTICE M. JEYAPPAUL
HON'BLE MR. JUSTICE DARSHAN SINGH**

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. Vivek Sharma, Advocate for petitioner.

DARSHAN SINGH J.

The present civil writ petition has been preferred under Articles 226/227 of the Constitution of India in the nature of certiorari for setting aside the judgment dated 16.12.2015 (Annexure P-12) passed by the Single Bench of the learned Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter called the 'Tribunal') vide which the Original Application filed by the petitioner has been dismissed. The petitioner has also sought for setting aside the orders dated 13.05.2013 and 09.01.2015 passed by the respondents. The writ in the

nature of mandamus has also been sought directing the respondents to allot the petitioner the station of posting as has been done in the case of other similarly situated persons.

2. As per the averments in the writ petition, the petitioner was appointed as Inspector Income Tax on 27.11.1990. Subsequently, vide order dated 13.05.2013, he was inducted into Group-'A' i.e. Indian Revenue Service as Assistant Commissioner of Income Tax. As per the instructions of Government of India dated 13.09.2009, guidelines have been issued for posting of the officers specifically taking into consideration the family circumstances particularly that of the spouse, if the spouse is employed under Centre Government or the State Government. The wife of the petitioner is working as a Lecturer in Government Senior Secondary School, Model Town, Patiala. The options were invited by the respondents for the posting of the Assistant Commissioners of Income Tax. They were required to give five options, out of which two options were to be from North East Region and South. The petitioner vide letter dated 01.05.2013 gave the options as under:-

- (1) North West Region,
- (2) Delhi,
- (3) Jaipur.
- (4) Benguluru.
- (5) Guwahati.

3. Instead of being posted at the station of his choice, the petitioner vide impugned order dated 13.05.2013 was posted at Patna

(CCA Bihar and Jharkhand). The petitioner joined at Patna. Subsequently, vide officer order dated 21.06.2013, the order dated 13.05.2013 was partially modified and was stayed till 14.04.2014 on the grounds of the child education. Subsequently, vide order dated 04.07.2013, the petitioner was posted to Shimla, where he gave his joining on 27.08.2013 and, thereafter, vide order dated 17.10.2013, the petitioner was again posted at Chandigarh. He was again posted back to Patna. The petitioner moved a representation, to the respondents but without considering the representation in view of the instructions of Government of India dated 30.09.2009, he was posted back to Patna (CCA). Being aggrieved, the petitioner filed the Original Application No.330 of 2014 before learned Tribunal, challenging the order posting the petitioner back to Patna. Keeping in view the observations of the Tribunal vide order dated 11.11.2014, the respondents vide impugned order dated 09.01.2015 rejected the claim of the petitioner. The petitioner filed the amended Original Application being O.A. No.127 of 2005 challenging orders dated 13.05.2013 and 09.01.2015 passed by the respondents. The Original Application filed by the petitioner was dismissed by the learned Tribunal vide order dated 16.12.2015. The said order has been challenged in the writ petition on various grounds. Hence, this petition.

4. The claim of the petitioner was contested before learned Tribunal by the respondents on the grounds *inter alia* that the posting order had been passed by the respondents as per the Transfer &

Placement Guidelines, 2010 (for short 'TPG-2010'). It was further pleaded that the substantial period was given to the petitioner to arrange for his family before his eventual regular posting which was ordered vide order dated 24.05.2013. It was further pleaded that while recommending the transfer of the petitioner all the provisions of TPG-2010 as well as DOPT Circulations have been considered with host of other relevant and important factors. The representation of the petitioner was considered by the Placement Committee. The allegations with respect to discrimination were also controverted and it was pleaded that petitioner is not the only one who could not get posting at the station opted by him. The respondents also denied that the order dated 09.01.2015 has been passed with any oblique motive or *mala fide* intention. It was further pleaded that the said order is speaking and detailed one, wherein all facts and judicial pronouncement have been discussed in detail and no interference was called for. It was further pleaded that the Original Application is liable to be dismissed.

5. We have heard Mr. Vivek Sharma, Advocate, learned counsel for the petitioner and have carefully gone through the paper-book.

6. Initiating the arguments, learned counsel for the petitioner contended that the impugned order dated 16.12.2015 has been passed by the Single Bench of the Tribunal. He contended that earlier the case was dealt by the Division Bench of the CAT. On 18.11.2015 the case was put up before the Single Bench. He contended that from the tenor of the order

it is evident that the petitioner has raised the objection that matter should be heard by the Division Bench. He contended that as per the Central Administrative Tribunal Rules of Practice Appendix-I Rule 2 where a party raises the objection the Single Bench shall direct the case to be placed before the Division Bench but this Rule has been violated in this case. So, the impugned order is without jurisdiction.

7. He further contended that the transfer/posting order dated 13.05.2013 is illegal, discriminatory and *mala fide*. He contended that the petitioner has not been granted the station of his choice. He has opted for North West Region, Delhi, Jaipur, Bengaluru and Guwahati. Out of his five options, he has not been given any option but has been posted at Patna. He further contended that the wife of the petitioner was serving as a Lecturer in Senior Secondary School, Model Town, Patiala. As per the Office Memorandum dated 30.09.2009 issued by the DOPT where one spouse is employed with Centre Government and the other spouse is employed with the State Government the spouse employed under Centre Government may apply to the competent authority and the competent authority may post said officer to the station or if there is no post to that station to the State where the other spouse is posted. He contended that this office Memorandum has been violated. He further contended that the orders passed by the respondents have been passed with oblique motive and *mala fide* intention. Various other similarly situated officers have been given the stations of their choice whereas the petitioner has been discriminated against. He further contended that the impugned order

dated 16.12.2015 passed by learned Tribunal is also illegal as the learned Tribunal has not taken into consideration the guidelines issued from time to time governing the transfer/posting of the employees.

8. We have duly considered the aforesaid contentions.

9. It is not disputed that initially the Original Application filed by the petitioner was dealt with by the Division Bench of the CAT. On 18.11.2015 the matter was put up before the Single Bench. Rule 2 of Appendix-I of the Central Administrative Tribunal Rules of Practice, 1993 reads as under:-

“(2) that it is open to either party to submit to the Single Member before the matter is taken up for admission or for final hearing, that it may be placed before a Bench of two Members. If such a request is made at the outset, the Single Member shall direct that the case be placed before an appropriate Bench of two Members. Once the case is taken up, no such request shall be entertained at any subsequent stage of the proceedings for admission or final hearing, as the case may be.

Explanation:

(i) The party not making the request at the stage of admission shall not be precluded from making such a request when the case is taken up for final hearing.

(ii) The stage of admission would also cover cases which may be finally disposed of with the consent of parties at the admission stage.”

10. As per the aforesaid Rule, either of the party can submit to the Single Member before whom the matter is taken up for admission or final hearing that it may be placed before the Bench of two Members. If such a request is made at the outset, the Single Member shall direct the case be placed before an appropriate Bench of two Members. There is no

material on record to show that petitioner had moved any application before the Single Bench on 18.11.2015 or thereafter for putting put the matter before the Division Bench. Even the order dated 18.11.2015 does not indicate that any such request was made to the Single Bench by the learned counsel for the petitioner. The learned Single Member of the Tribunal has simply mentioned that though the matters relating to transfer are cognizable by a Single Bench as per the spirit of Administrative Tribunal Act, 1985, yet this case was taken up by a Division Bench. Nothing more has been mentioned in this order. So, there is nothing on record to show that any request was made by the petitioner to the Single Member of the learned Tribunal as per Rule 2 of the above Rules of Practice for placing the matter before the Bench of two Members. It is not disputed that as per the Schedule, the cases relating to transfer/posting are triable by the Single Member of the learned Tribunal. Thus, the plea raised by learned counsel for the petitioner that the Single Member of the learned Tribunal has no jurisdiction to entertain the Original Application and the impugned order is without jurisdiction is totally devoid of merit.

11. It is not disputed that the petitioner has joined the services as an Inspector on 27.11.1990. He was promoted to Group-A i.e. Indian Revenue Service on 13.05.2013 and was posted as Assistant Commissioner of Income Tax. It is also not disputed that during this entire period of about 23 years the petitioner has remained posted in North-West Region (CCA) Chandigarh though he was liable to be posted

in any part of the country. Clause 3.4 of TPG-2010 is reproduce hereunder for ready reference :-

“3.4 Group-'B' Officers on promotion to the grade of ACIT shall be transferred out of the Region except in those cases where the officer has less than three years of service left at the time of promotion.”

12. The aforesaid clause clearly provides that a Group-'B' Officer on promotion to the grade of Assistant Commissioner of Income Tax shall be transferred out of the Region except in those cases where the officer has less than three years of service left at the time of promotion whereas in the instant case the superannuation of the petitioner is in the month of August 2026 and he was left with many years of service on the date of his promotion. Thus, as per the aforesaid clause of TPG-2010 it was mandatory to transfer him out of the Region where he was earlier serving at the time of promotion.

13. The Office Memorandum dated 30.09.2009 (Annexure A-2) no doubt provides that where an employ is employed with the Centre Government and his/her spouse is employed with the State Government the spouse employed under Centre Government may apply to the competent authority and the competent authority may post the said officer to the station or if there is no post in that station to the State where the other spouse is posted but this Office Memorandum is only a guideline, which does not confer any legal or enforceable right to the petitioner to challenge the transfer order. To support this view reference can be made to cases ***Union of India Vs. S.L. Abbas AIR 1993 SC 2444*** and ***Anil***

Dhall Vs. Union of India 1999 (5)SLR 687. In case ***Bank of India Vs. Jagjit Singh Mehta AIR 1992 SC 519*** the respondent on his promotion to the officers grade was posted to Bihar. He challenged the transfer order on the ground that his wife was employed as a Senior Accountant at Chandigarh. The Hon'ble Apex Court laid down as under:-

“In the case of All-India Services, the hardship resulting from the two being posted at different stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of the other's posting. While choosing the career and a particular service, the couple have to bear in mind this factor and be prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case the couple have to make their choice at the threshold between career prospects and family life. After giving preference to the career prospects by accepting such a promotion or any appointment in an All-India Service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, they cannot as of right claim to be relieved of the ordinary incidents of All-India Service and avoid transfer to a different place on the ground that the spouses thereby would be posted at different places.”

14. Moreover, this Office Memorandum dated 30.09.2009 cannot override the TPG-2010 as the Office Memorandum dated 30.09.2009 is of general nature whereas Clause 3.4 has been specifically inserted in TPG-2010 dealing with Group-'B' Officers on promotion to the Grade of Assistant Commissioner of Income Tax. Hence the provisions of TPG-2010 shall prevail. Thus, the petitioner cannot assail the impugned transfer order on the ground that his wife is posted at

Patiala.

15. The other ground taken up by the petitioner to assail the impugned orders is that he has not been given any station out of his five options and has been posted to Patna (CCA Bihar and Jharkhand) which was never opted by him. He has also alleged that he has been discriminated against as other similarly situated persons have been given the posting of their chose. The Hon'ble Supreme Court in case ***Rajendra Roy Vs. Union of India 1993 (2) S.C.T. 65*** has laid down as under:-

“It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department.”

16. The Hon'ble Supreme Court in case ***National Hydroelectric Power Corporation Ltd. Vs. (i) Shri Bhagwan (ii) Shiv Parkash, AIR 2001 SC 3309*** has laid down as under:-

“It is by now well-settled and often reiterated by this Court that no Government servant or employee of public Undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals cannot interfere with such orders as a matter

of routine, as though they are the Appellate Authorities substituting their own decision for that of the Management, as against such orders passed in the interest of administrative exigencies of the service concerned.”

17. The same ratio of law has been laid down by the Hon'ble Apex Court in case ***B. Varadha Rao Vs. State of Karnatka, AIR 1986 SC 1955.***

18. The Hon'ble Supreme Court in case ***Union of India and others Vs. Sri Janardhan Debanath and Anr., AIR 2004 SC 1632*** has laid down that it is the prerogative of competent authority alone to make posting and transfer of its employees at the appropriate place to maintain discipline, decency and decorum of the public service in the public interest and administrative exigencies. The Court/Tribunals cannot interfere unless a strong case of clear *mala fide* and arbitrariness is made out.

19. As per the ratio of law laid down in the cases above by the Hon'ble Apex Court, no Government servant has any legal right to be posted forever at any one particular place. The transfer from one place to other is not only an incident but a condition of service attached to the transferable post, which is also necessary in the public interest and efficiency in the public administration. It is the prerogative of the competent authority to post and transfer its employees at the appropriate place in the public interest and administrative exigencies. The Court/Tribunals should not interfere with the transfer orders as a matter of routine substituting their own decision for that of the administrative

authorities. The Court should refrain from interfering unless an order of transfer shown to be outcome of *mala fide* exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer or discriminatory and arbitrary.

20. In the instant case, we do not find the impugned transfer order to be *mala fide*, discriminatory, arbitrary or against any statutory provisions. The impugned order dated 09.01.2015 shows that there were 12 other officers who were also not given the stations of their chose. So, the transfer order cannot be stated to be discriminatory or arbitrary. There was shortage of officers at Patna as there were 30 vacancies. Thus, it appears that the petitioner was posted at Patna due to administrative exigencies. It is not always possible to accommodate the officer at the station of his chose. Mere this fact that the petitioner could not accommodated at the place of his choice is no ground to render the impugned order as *mala fide*. There is no material on record to show that the competent authority had any oblique motive to pass the impugned transfer order or was having any ill-will against the petitioner. As already mentioned the petitioner had remained posted in the North West Region Chandigarh (CCA) for about 23 years i.e. since the date of his joining the service till the date of his promotion which negate the *mala fide* intention on the part of the authorities/respondents.

21. Perusal of the impugned order dated 09.01.2015 (Annexure A-19) shows that the representation moved by the petitioner has been duly considered by the respondents and a well reasoned order

has been passed wherein the entire factual and legal position has been dealt with in detail on the basis of the relevant rules and judicial pronouncements.

22. It is very surprising that petitioner has opted for his transfer/posting to Bengaluru and Guwahati, but he is aggrieved with his transfer to Patna, which is much nearer to Patiala.

23. Keeping in view our aforesaid discussion we do not find that the impugned orders dated 13.05.2013 and 09.01.2015 passed by the official respondents are discriminatory, arbitrary, *mala fide* or against any statutory provision which can warrant any interference by this Court while exercising the powers of the judicial review. The impugned order dated 16.12.2015 passed by the learned Tribunal also does not suffer from any legal infirmity.

24. Resultantly, the present writ petition, being devoid of merits, is hereby dismissed.

(M. JEYAPPAUL)
JUDGE

(DARSHAN SINGH)
JUDGE

19.12.2015
sunil yadav