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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 15.03.2024

\+ W.P.(C) 3925/2024

SUNIL KUMAR RAJWANSHI ..... Petitioner

Through: Mr. Umesh Sharma and Ms. Shivani Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Farman Ali, Sr. Panel Counsel with Mr. Adil Hussain Taqvi (GP), Ms. Usha Jamnal and Mr. Krishan Kumar, Advocates for R-1 to R-3.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

REKHA PALLI, J (ORAL)

CM APPL. 16196/2024 -Ex.

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

W.P.(C) 3925/2024 & CM APPL. 16195/2024 -Stay.

3. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 04.03.2024 passed by the learned Central Administrative Tribunal in O.A.599/2024. Vide the impugned order, the learned Tribunal has rejected the original application filed by the petitioner, and has consequently, rejected his challenge to the order dated 06.02.2024, vide which he was

transferred from Gorakhpur to Lucknow.

4. In support of the petition, Mr. Umesh Sharma, learned counsel for the petitioner submits that the impugned order is wholly perverse as the learned Tribunal has failed to appreciate that the order vide which the petitioner was transferred from Gorakhpur to Lucknow was *malafide* and against the own transfer policy of the respondent. He submits that as per the transfer policy, the period of stay at a particular station/place of posting was to be three years and thus the petitioner, who was earlier transferred from Lucknow to Gorakhpur on 01.11.2023 could not have been transferred back again to Lucknow within such a short span of four months. This transfer, he contends is an attempt to harass the petitioner who belongs to the Schedule Caste (SC) category.

5. He further submits that though on 03.03.2024, the matter was listed before the learned Tribunal only for consideration of the interim application, the learned Tribunal has proceeded to dispose of the OA itself even though notice in the OA had earlier been issued for 05.04.2024. He, therefore, prays that the impugned order be set aside and the matter be remanded back to the learned Tribunal for adjudication of the O.A on merits.

6. On the other hand, Mr. Farman Ali, who appears on advance notice on behalf of the respondents supports the impugned order. By drawing our attention to the letter dated 30.01.2024, he submits that the petitioner is habitual in remaining absent from duty on his own

without any prior information. Furthermore, due to the petitioner's failure to regularly attend the office at Gorakhpur in terms of the transfer order dated 01.11.2023, a request was received from the Principal Commissioner, Income Tax, Gorakhpur to provide a suitable substitute who would, unlike the petitioner, attend office regularly. Infact, it is after this letter that the petitioner was transferred out of Gorakhpur and was posted to Lucknow, where he again did not report and therefore, he was issued a notice dated 28.02.2024 informing him that if he did not report, disciplinary action would be taken against him. The petitioner's plea that he was justified in not joining the place where he was posted on 06.02.2024 as his representation against the said transfer order was pending consideration before the respondent, is wholly misconceived. He submits that there is no such provision in the policy which entitles an employee to not join the place of posting till his representation is decided. He, therefore, prays that the writ petition be dismissed.

7. Having considered the submissions of learned counsel for the parties, and perused the record, we are of the view that the present petition is a gross abuse of the process of law. Officers like the petitioner, who belong to the prestigious Indian Revenue Service are not expected to behave in an irresponsible manner by refusing to attend office as and when they so desire. The record shows that not only has the petitioner been most irregular in attending office at Gorakhpur, where he was transferred on 01.11.2023 but also failed to join at Lucknow despite the transfer order dated 06.02.2024 having

not been stayed by the learned Tribunal. We find that the learned Tribunal has also noted this factual position that the respondent was compelled to issue notices to the petitioner clearly informing him that if he did not immediately join duty, disciplinary action would be initiated against him.

8. We have also considered the petitioner's plea that, without completing three years of posting at Gorakhpur, the petitioner could not have been transferred to Lucknow as the said transfer was in violation of the respondents' own transfer policy. Having given our thoughtful consideration to this plea, we find that the respondents have given due explanation both before the learned Tribunal and before us as to why the petitioner was within three months transferred back to Lucknow from where he had earlier in November, 2023 been transferred to Gorakhpur. Since this explanation arises out of a confidential communication dated 30.01.2024, we are refraining from making any reference to the same but are in agreement with the learned Tribunal that the transfer of the petitioner to Lucknow on 06.02.2024 was on administrative grounds and therefore fell within the ambit of para 7.3 of the transfer policy, which permits transfer even before the prescribed period of three years.

9. In fact, even today, learned counsel for the petitioner simply reiterates that the petitioner is being harassed by his superior officers. He, however, has no explanation as to why the petitioner was absenting from duty from Gorakhpur, where he had been posted pursuant to the order dated 01.11.2023. There is also no explanation as to why the petitioner has till date not joined duty at Lucknow

despite the transfer order dated 06.02.2024 not having been stayed by any Court. We, therefore, dismiss the petition with costs of Rs.1,00,000/- to be paid by the petitioner within two weeks to the Green Delhi Account (Office of Conservator of Forests, UCO Bank, Delhi High Court, A/C No. 15530110156933, IFSC Code: UCBA0001553).

REKHA PALLI, J

RAJNISH BHATNAGAR, J

MARCH 15, 2024/ib