Union of India and Ors. Vs. Satpal

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Court : Delhi

Decided On : Nov-21-2014

Judge : S.Ravindra Bhat

Appellant : Union of India and Ors.

Respondent : Satpal

Advocate for Pet/Ap. : Mr. R.V. Sinha, Mr. R.N. Singh, Mr. A.S. Singh, Mr. K.R. Chawla

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + Date of Decision:

21. 11.2014 % W.P. (C) 5686/2014 C.M. Nos.14056-14057/2014 UNION OF INDIA & ORS. Through: ..... Petitioners Mr. R.V. Sinha, Mr. R.N. Singh and Mr. A.S. Singh, Advocates versus SATPAL Through: ..... Respondent Mr. K.R. Chawla, Advocate AND % W.P.(C) 5762/2014 C.M. Nos.14205-14206/2014 UNION OF INDIA & ORS. Through: ..... Petitioners Mr. R.V. Sinha, Mr. R.N. Singh and Mr. A.S. Singh, Advocates versus SATPAL SINGH Through: ..... Respondent Mr. K.R. Chawla, Advocate CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE VIPIN SANGHI S. RAVINDRA BHAT, J.

(OPEN COURT) 1. With the consent of the parties, both the petitions have been heard together. The respondent/applicant had challenged his order of transfer before the Central Administrative Tribunal (hereafter referred to as the CAT) and sought appropriate directions from the Central Government.

2. By the order dated 22nd November, 2013, which is impugned in the present writ petitions, the CAT accepted his challenge and quashed the order transferring the applicant to U.P. (East) region on 24 th May, 2013. The brief facts giving rise to the petitions are as follows. The applicant/respondent joined the Income Tax Department as an Inspector on 1.2.1993. Subsequently, he was promoted as Assistant Commissioner on 5.12.2003. Thereafter, he was promoted as Joint Commissioner of Income Tax on 27.10.2011 on adhoc basis. Soon thereafter, on 11.11.2011, all those who were promoted were asked to furnish their options as to the place of posting. The petitioner too furnished his options. These included Delhi CCA; Chandigarh CCA and Kanpur (UP West) CCA. In these circumstances, the Central Government on 17.1.2012 issued a memorandum transferring the applicant to West Bengal. The respondent first represented against and, thereafter, challenged his transfer in an application before the CAT which was allowed on 10 th February, 2012; the Department was directed to consider the representation and pass a fresh orders. In compliance, the Central Government passed a fresh order on 26.6.2012 modifying the place of posting from West Bengal to Odisha. This too was challenged by an original application moved on 4th July, 2012. After hearing the counsel for the parties and considering the submissions, the CAT once again directed the Government to re-consider the matter by its order dated 12.12.2012 passed in OA. No.2165/2012. This time the Department, after re-considering, rejected the request on 31.1.2013. This rejection was again impugned in O.A. No.750/2013 before the CAT, which stayed the transfer order by its order dated 4 th March, 2013. Then, on 25th February, 2013, the Central Government issued another order modifying the place of posting from Odisha to U.P. (East). This order, again, became the subject matter of challenge in O.A. No.2076/2013. The CAT vide impugned order dated 22.11.2013 has quashed the transfer order of the respondent. The net result is that the petitioner continues to be in Delhi.

3. It is urged on behalf of the Central Government that the CAT over- reached itself in quashing the impugned transfers and the applicant has been successful in his attempts to remain in Delhi, and not to get posting outside Delhi, whereas he

has never been posted outside Delhi for over 20 years.

4. When the first transfer order of the respondent was passed, the remaining service of the respondent was about 3 years 8 months and that in terms of the Guidelines, the Central Government was perfectly competent to transfer him, since the respondent still had over three years services left before superannuation. Learned counsel highlighted that the successive waves of litigations lodged by the applicant/respondent have, in fact, reduced his period of service now left, and that the respondent/applicant is now to attain superannuation on 30th September, 2015. It was, consequently, urged that scope of judicial review in regard to orders of transfer is extremely limited, barring cases of established malafides, illegalities i.e. conflict with the statutory provisions, and blatant disregard to binding norms. It was lastly argued that the applicants successive efforts have led to a situation where the administration is left with little, or no option, and the CAT has repeatedly interfered in each posting order. W.P.(C.) No.5686/2014 & 5762/2014 emphasized that the only ground made out is that the place of posting is in violation of the guidelines existing in that regard. However, those guidelines are not in violate and cannot override the administrative exigencies in every case. In these circumstances, learned counsel submitted that this Court should set aside the impugned order.

5. Counsel for the applicant submits that this Court should not interfere with the finding and orders of CAT, arguing that the Central Government was prejudiced against the applicant. It was submitted that there were several individuals who were retained in Delhi on the pretext of their spouses being employed in the city, whereas that benefit was repeatedly denied to the applicant - despite the CATs positive directions to re-consider the matter time and again. It was submitted that both the applicant and his wife are now advanced in age, and have various ailments and it would be a futile exercise in executing the transfer order and requiring the applicants presence elsewhere, more so in East U.P. It was stated that if the posting had, in fact, been made in accordance with the options - to somewhere in West U.P., the applicant could not have raised any objection.

6. The above narrated position would disclose that when the first transfer order was made on 17th January, 2012, under the period of service left for the applicant was more than three and a half years. Likewise, when the second transfer order was made on 26th June, 2012 - posting the applicant to Odisha, the situation remained unchanged, in that, still three years period of service remained for the employee. However, the applicants successive attempts thereafter by filing OA No.750/2013 and later on, OA No.2076/2013, in effect, resulted in the three years period shrinking to what is now left to be less than a year.

7. The main ground on which the CAT chose to interfere with the last transfer order dated 24th May, 2013, was that the Central Government did not adhere to the guidelines and departed from them in an arbitrary manner. Learned counsel for the applicant/respondent relies upon certain other instances where Officers have been retained on the ground that their spouses were working in Delhi. Besides producing tabular statements, the CAT could not have gone into the circumstances of each case, given the limited nature of enquiry - as to the decision of the Government in the case of the applicant, as the same was not a matter before the CAT. What was apparent to CAT, and is apparent to us is that the applicant has remained in Delhi throughout his entire career. It is only upon his promotion as adhoc Joint Commissioner of Income Tax that he has been posted outside Delhi. The Central Government, as is apparent from the record, tried to accommodate the respondent/applicant by repeatedly modifying the transfer order as regards to place of posting - at least twice. The last one is to U.P. (East) and it is not too far from Delhi.

8. Having regard to these circumstances and in the absence of any averments or proof of malafides or illegalities, the interpretation placed upon the guidelines - as if they were carved in stone, by the CAT cannot be sustained; it is regretful that the CAT chose to quash the transfer orders. Such interference cannot be justified. The guidelines which the Central Government set for itself while deciding to post the employees were set out in the impugned order. It would be useful to extract the relevant part, which is as follows:

4. The consolidated guidelines will now be as follows:(i) where the spouses belong to the same All India Service or two of the All India Services, namely l AS, IPS and Indian Forest Service (Group'A'); The spouse may be transferred to the same cadre by providing for a cadre transfer of one spouse to the Cadre of the other spouse, on the request of the member of service subject to the member of service not being posted under this process to his/her home cadre. Postings within the Cadre will, of course, fall within the purview of the State Govt. (ii) Where one spouse belongs to one of the All India Services and the other spouse belongs' to one of the Central Services:The cadre controlling authority of the Central Service may post the officer to the station or if there is no post in that station, to the State where the other spouse belonging to the All India service is posted. (iii) Where the spouses belong to the same Central Service: The Cadre controlling authority may post the spouses to the same station. (iv) Where the spouse belongs to one Central Service and the other spouse belongs to another Central Service:The spouse with the longer service at a station may apply to his/her appropriate cadre controlling authority and the said authority may post the said officer to the station or if there is no post in that station to the nearest station where the post exists. In case that authority, after consideration of the request, is not in a position to accede to the request, on the basis of non-availability of vacant post, the spouse with lesser service may apply to the appropriate cadre authority accordingly, and that authority will consider such requests for posting the said officer to the station or if there is no post in that station to the nearest station where the post exists.

9. The Central Government had relied upon the Guidelines issued by the DOPT - which is dated 30th September, 2009, and the Circular/Guidelines of the Central Board of Direct Taxes dated 16th February, 2010. Whilst these guidelines, no doubt, have to be followed, and they do contain a provision that Officers whose spouses are in a particular place should be accommodated to the maximum extent possible, but at the same time, in para 7.1, the guidelines give primacy to transfer/posting made in public interest. Interestingly, this provision starts with a non obstante clause.

10. In view of the above, this Court has no doubt that the impugned orders of the CAT were not warranted at all. The respondent/applicant was entitled to give his

options for posting, but ultimately it was for the Central Government to transfer him. The applicant has, in fact, succeeded - through his attempts in litigations, in thwarting his transfers. His attempts can be put, very mildly, as abuse of the process of law.

11. In view of the foregoing, the writ petitions are allowed with costs quantified at Rs. 25,000/- to be paid to the petitioner within four weeks.

12. The impugned order dated 22nd November, 2013 is set aside. S. RAVINDRA BHAT, J.

VIPIN SANGHI, J.

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