

OA No. 3677/2024

**Central Administrative Tribunal
Principal Bench****OA No. 3677/2024**

Reserved on: 11.02.2025.

Pronounced on: 20.02.2025.

**Hon'ble Mr. Justice Ranjit More, Chairman
Hon'ble Mr. Rajinder Kashyap, Member (A)****SAMEER DNYANDEV WANKHEDE**

Aged 44 years, S/o Sh. Dnyandev Kachruji Wankhede R/o
204, A-Wing, Royal Classic, New Link Road, Andheri (W),
Mumbai 400053.

.....Applicant

(By Advocate: Mr. Ajesh Luthra with Mr. Jatin
Parashar)

VERSUS

1. Union of India Through its Secretary Department
of Revenue Ministry of Finance North Block, New
Delhi-110011
2. Central Board of Indirect Taxes and Customs
Through its Chairman, North Block, Central
Secretariat, Delhi-110001

-Respondents

(By Advocate: Mr. Hanu Bhaskar)

ORDER**By Hon'ble Mr. Rajinder Kashyap, Member (A):**

By way of the present O.A., the applicant seeks the following relief: -

i) Quash and set aside the transfer policy dated 12/04/2018 (placed at Annexure A/1) and further direct the respondents to incorporate the clause related transfer of an employee on the ground of threat to life of an employee or to his family.

ii) quash and set aside the impugned order dated 30/05/2022 (placed at Annexure A/2), alongwith rejection the representation placed at Annexure A/3 dated 18/07/2024 and

iii) Accord all consequential benefits

iv) Award costs of the proceedings; and

v) Pass any order/relief /direction(s) as this Hon'ble Tribunal may deem fit and proper in the interest of justice in favour of the applicant."

BRIEF FACTS:

2. The applicant is an Indian Revenue Service (IRS) Officer of 2008 batch, currently working as Additional Commissioner, under the Department of Revenue, Ministry of Finance (Respondent No. 1). Prior to his present posting, he was Zonal Director Narcotics Control Bureau, Mumbai, Maharashtra. It is stated that throughout tenure of his service, the applicant has been instrumental in curbing the menace of illegal activities and exposing and catching hold of criminals involved in smuggling and illegal use, procurement and sale of narcotic drugs and psychotropic substances. He has served in various National agencies like IB, NIA, DRI, Customs and NCB on loan basis. In the month of February,

2021, Narcotics Control Bureau (NCB) Mumbai arrested one Shri Sameer Khan with 189 kg Ganja. The said Sameer Khan was the son-in-law of an ex-Cabinet Minister of Maharashtra and was released on Bail in September, 2021. In the case of Notorious Cordelia Cruise, son of a prominent film actor was arrested along with 19 others on 02.10.2021.

3. An enquiry was initiated against the applicant through a Special Enquiry Team (SET in short) allegedly on false and baseless allegations on 16.06.2022. The report of the SET was challenged by the applicant before this Tribunal in OA No. 3722/2022 and the Tribunal vide its order dated 20.12.2022 granted interim relief to the Applicant which was made absolute vide order dated 21.08.2023. The said order was upheld by Hon'ble High Court with the observations that there is no infirmity in the directions issued by the Tribunal insofar as it directed that the applicant be granted an opportunity of personal hearing by respondents before initiating any action against him.

4. It is stated by the applicant that after completing his tenure, he was detached from NCB and directed to report to office of DG, ARM Mumbai. Accordingly, he joined on 04.01.2022 as Additional Director, DG ARM Mumbai. By the impugned order dated 30.05.2022, he was transferred from DG ARM Mumbai to DGTS Chennai. It was stated that the said impugned transfer order of the applicant was an off

shoot of the incident occurred in NCB and against which he submitted a representation dated 06.06.2022 citing various personal and professional reasons including the death threats received by him and his family from the underworld, however, the respondents did not pay any heed towards these genuine contentions.

5. The applicant further contends that as a responsible and law-abiding officer, he joined the services in Chennai. It is stated that the applicant received death threat from an unidentified person to which he immediately made complaint to Mumbai Police and the Mumbai Police registered a complaint on 17.08.2022. He also submitted a representation to the respondents requesting them to transfer him from Chennai to Mumbai due to threats to him and his family. The Annual General Transfers (AGT) for the year 2024 of IRS officers have been effected by the respondents on 27.12.2023. It was stated that the representations for transfer/postings were to be submitted online through the dedicated DGHRD website and for this purpose the AGT online Module will be open from 01/01/2024 to 25/01/2024. The applicant submitted his representation for transfer through AGT module and further submitted his preferred place of posting taking all his grounds for transfer including the death threats received by him. Applicant again received a death threat via social media

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on 10.10.2023 from a Bangladeshi National by name Shishir Showmic. He states that he immediately filed a complaint through e-mail with Goregaon, Mumbai Police Station vide NCR No. 3547/2023 dated 11.10.2023 and requested that he may be considered for transfer in AGT 2024 for IRS officers. The applicant again submitted representation on 15.03.2024 to the respondents informing them about the threats which his wife had received on 06.03.2024. In his representation, the applicant stated that his family is permanently residing in Mumbai and had received serious death threats from some unknown international numbers on 6th and 8th of March, 2024 threatening to eliminate him and his family. This incident was immediately reported to Mumbai Police, who has now lodged an FIR and investigating the matter. However, the respondents without considering, their own transfer policy dated 12.04.2018 (Annexure A-1), issued impugned order dated 30.05.2022 (Annexure A-2) transferring him from DGRAM Mumbai to DG TS Chennai.

6. Being aggrieved by the aforesaid impugned orders, the applicant filed present Original Application seeking aforementioned relief (s).

7. On admission of the OA, notices were issued to the respondents and they have filed their counter affidavit to which the applicant has also filed rejoinder.

REPLY BY THE RESPONDENTS:

8. In Rebuttal to the claim of the applicant, the respondents have filed their counter affidavit stating that the applicant (Emp ID 3632), is an IRS (C&IT) and had first joined Mumbai Customs Zone as Assistant Commissioner on 13.05.2010 and ever since remained posted at Mumbai station in different formations like Customs, Central Excise, NIA, DRI and NCB till 08.06.2022. The applicant had remained posted only in Mumbai Station ever since his first posting in the Department i.e. from 13.05.2010 to 08.06.2022 (12 years approx.) and had never worked outside Mumbai station in his entire career.

9. The applicant was posted on loan basis to NCB, Mumbai from 31.08.2020 to 31.12.2021 (earlier from DRI, Mumbai and then from DGARM, Mumbai). On completion of loan period, he joined back DGARM, Mumbai on 04.01.2022. Subsequently, he was posted to Directorate General of Taxpayer Service (DGTS), Chennai vide CBIC Office Order No. 59/2022 dated 30.05.2022. The applicant joined DGTS, Chennai on 21.06.2022 and is posted there till date. After posting to DGTS, Chennai, he submitted his representations vide letter dated 06.06.2022 (Annexure-B), 31.08.2022 (Annexure-C), 12.06.2023 (Annexure-D), 12.10.2023 (Annexure-E). The applicant had also submitted his representations during Annual General Transfer-2023

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and Annual General Transfer-2024 through online module for transfer to Mumbai on 03.01.2023 and 10.01.2024, respectively. However, in the Annual General Transfer Order No. 115/2024 dated 18.07.2024, his name was not included and his representation was disposed of accordingly.

10. The applicant had again submitted his representation vide letter dated 06.08.2024. The said representation dated 06.08.2024 of the applicant along with copy of instant OA were placed before the Placement Committee. The Placement Committee noted that the transfer of applicant to DGT, Chennai was not a routine exercise of transfer/rotational transfer but an administrative transfer as per para 14.3 of the Transfer/Placement Guidelines, 2018. The Committee also noted that the applicant had submitted his representation in past on various occasions viz. Post AGT-2022, AGT-2023 & Post AGT-2023, but such representations were not acceded to, as the officer was transferred on administrative ground and had not completed 3 years at his present post. Further, the Committee also noted that the applicant is in Agreed List for the years 2022-23 & 2023-24 and the complaints & investigations against him are pending. After due deliberations, the Placement Committee did not recommend the representation of the applicant. The Competent Authority accorded its approval for the same.

11. The respondents submit that applicant agitated a cause

of action before this Tribunal and this Tribunal vide order dated 09.12.2024 had directed the him to submit his representation to the respondents and in turn directed respondents to consider the representation and pass a reasoned and speaking order within two weeks. In compliance with that order of this Hon'ble Tribunal, the respondents have considered the representation dated 08.12.2024 and 11.12.2024 and disposed of these representations vide speaking order dated 25.12.2024.

12. The respondents further submit that the issue of transfer and posting has been considered time and again by the Hon'ble Apex Court and entire law has been settled by a catena of decisions. The Hon'ble Supreme Court of India has ruled that a government servant is always at the disposal of the Government and he may be deployed in any manner required by the appropriate authority and also the Courts or Tribunals are not Appellate Fora to decide transfer of officers on administrative grounds. Transfer is not only an incident but an essential condition of service. It does not affect the conditions of service in any manner. The employee does not have any vested right to be posted at a particular place definitely.

13. In support of their contentions and buttress their stand, the respondents place reliance on the following judgements: -

(i) ***Union of India and others vs. S.L. Abbas*** (1993

AIR 2444. SCR (3) 427), it was held: -

"An order of transfer is an incident of Government Service. Fundamental Rule 11 says that the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority". Fundamental Rule 15 says that "the President may transfer a government servant from one post to another. That the respondent is liable to transfer anywhere in India is not in dispute."

(ii) In case of ***State of M.P. and Others v. S.S.***

Kourav and Others, (1995 AIR 1056 SCC (3) 270),

it was held: -

"The courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background foundation. In this case we have seen that on the administrative grounds the transfer orders came to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place."

(iii) The Allahabad High Court in the case of ***Dr.***

Krishna Chandra Dubey vs UOI dated

05.09.2005 has held: -

"The issue of transfer and posting has been considered time and again by the Apex Court and entire law has been settled by catena of decisions. It is entirely upon the competent authority to decide when, where and at what point of time a public servant is to be transferred from his present posting Transfer is not only an incident but an essential condition of service. It does not affect the conditions of service in any manner. The employee does not have any vested right to be posted at a particular place."

(iv) The Supreme Court of India, in the case of ***Mrs.***

Shilpi Bose and Others vs State Of Bihar And

Others on 19 November, 1990 has pronounced as under:

“In our opinion, the Courts should not interfere with a transfer Order which are made in public interest and for administrative reasons unless the transfer Orders are made in violation of any mandatory statutory Rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer Orders issued by the competent authority do not violate any of his legal rights. Even if a transfer Order is passed in violation of executive instructions or Orders, the Courts ordinarily should not interfere with the Order instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer Orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest.”

14. An employee holding a transferable post cannot claim any vested right to work at a particular place as the transfer order does not affect any of his legal rights and the Court cannot interfere with a transfer/posting which is made in public interest or on administrative exigency.

(i) In the matter of **Gujarat Electricity Board v. Atmaram Sungomal Poshani**, Hon'ble Supreme Court has observed as under: -

"Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to another is an incident of service. No Government servant or employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration."

15. Hon'ble Supreme Court, in another recent judgment dated 07.02.2020 pronounced in the Civil Appeal No. 1236 of 2020 in the matter of **Union of India and others v/s.**

Deepak Niranjana Nath Pandit (an officer of this Department itself), while setting aside the interim order of the Hon'ble High Court staying the transfer, has held: -

"4. The High Court, in interfering with the order of transfer, has relied on two circumstances. Firstly, the High Court has noted that as a result of the stay on the order of transfer, the headquarters of the respondent will remain at Mumbai and even if he is to be suspended, his headquarters will continue to remain at Mumbai. The second reason, which has weighed with the High Court, is that the spouse of the respondent suffers from a cardiac ailment and is obtaining medical treatment in Mumbai. In our view, neither of these reasons can furnish a valid justification for the High Court to take recourse to its extraordinary jurisdiction under Article 226 of the Constitution in passing an order of injunction of this nature. Significantly, the High Court has not even found a prima facie case to the effect that the order of transfer was either mala fide or in breach of law. The High Court could not have dictated to the employer as to where the respondent should be posted during the period of suspension. Individual hardships are matters for the Union of India, as an employer, to take a dispassionate view. However, we are categorically of the view that the impugned order of the High Court interfering with the order of transfer was in excess of jurisdiction and an improper exercise of judicial power. We are constrained to observe that the impugned order has been passed in breach of the settled principles and precedents which have consistently been enunciated and followed by this Court. The manner in which judicial power has been exercised by the High Court to stall a lawful order of transfer is disquieting. We express our disapproval.

5. Mr Manan Kumar Mishra, learned Senior Counsel urged that during the course of an earlier hearing, the Union government expressed its readiness to post the respondent at three alternative places instead of Bhubaneswar and hence the order of transfer may be modified. We decline to allow this jurisdiction to be utilized in terrorem to compel the Union government to post the respondent to a place which he may prefer. There is no lawful reason for the respondent to cling on to a posting at Mumbai. He cannot claim a posting as of right to a place of his choice"

16. The Hon'ble Supreme Court, in another recent judgment dated 06.09.2021 pronounced in the Civil Appeal No. 36717 of 2017 in the matter of **Namrata Verma v/s. The State of Uttar Pradesh & Ors.**, has held: -

"It is not for the employee to insist to transfer him/her and/or not

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to transfer him/her at a particular place. It is for the employer to transfer an employee considering the requirement"

17. The learned counsel for the respondents averred that that the submissions of the applicant that he has been instrumental in curbing the illegal activities pertaining to narcotic drugs and psychotropic substances is wrong and denied. Rather the allegations are that he was himself involved in such illegal activities. It is further submitted that there are serious allegations against him and the department has decided to initiate Disciplinary Proceedings against him as advised by the CVC.

18. He further stated that the contentions of the applicant are devoid of merit and not supported by any facts. CBIC Office Order No. 59/2022 dated 30.05.2022 was just, fair, transparent, and fully compliant with legal standards. All provisions of the extant Transfer/Placement Guidelines, 2018 (Annexure-J) had been adhered to while issuing of the transfer order under Office Order No. 59/2022 dated 30.05.2022. The applicant has been posted to DGTS, Chennai in a fair and transparent manner, in accordance with the extant Transfer/Placement Guidelines, 2018.

19. Furthermore, the applicant is an employee of the Central Government holding transferable post having All India transfer liability and cannot claim any vested right to work at a particular place. The officer is liable to be transferred from

one place to the other in the country anytime for administrative convenience. It is for the administration to analyze and fill the posts where it feels expedient in the interest of administrative necessity.

20. He further submitted that the administration enjoys this prerogative in public interest or in administrative exigency to post any officer to any station or post as the administration may deem fit. An officer of Central Govt. Services is liable to transfer anywhere in India. While considering the request of an officer, it has to be ensured that the postings are done in such a manner that minimum requisite numbers of posts across all formations are filled keeping in view the overall interest of administrative requirements across the country.

21. The Placement Committee at Board level is the authority for recommending transfers/ postings of Group 'A' IRS (C&IT) officers and collectively decide the rotation of officers among different formations/ stations. The applicant's representation dated 06.06.2022 after issuance of Office Order No. 59/2022 dated 30.05.2022 was placed before the Placement Committee for consideration along with other representations received from Group 'A' officers, and was disposed of accordingly. It is stated that the case law cited by the applicant in the matter is not applicable in the present case, as facts and circumstances of the case cited are different from the facts and circumstances of the present

case.

22. Learned counsel further states that the Applicant has relied on Para 7.3.1 of extant Transfer/Placement Guidelines which provides that: "An officer, upto and including the rank of Principal Commissioner, shall not serve in field postings in a particular category "A" station, with or without break, for more than 10 years....". It may be seen that words "with or without break" have been used making it amply clear that it does not infer a continuous tenure of 10 years at a particular category 'A' station. Moreover, the period of 10 years mentioned in para 7.3.1 of the Transfer / Placement Guidelines, 2018 for 'A' Station is the maximum tenure in a particular 'A' category station and no minimum tenure has been defined.

23. To support his claim and in rebuttal to the contentions of the learned counsel for the respondents, the applicant has filed rejoinder reiterating the grounds earlier taken in his Original Application and has stated that although he had remained posted at Mumbai only for twelve years and within the above-mentioned period of twelve years, yet period of six years and seven months was spent on deputation in Mumbai which needs to be excluded in terms of para 7.3 sub para 7.3.1. of the Transfer Policy of the respondents.

24. It is further stated that he is entitled to the permissible tenure at Mumbai for ten years. In his rejoinder, the

applicant has also cited examples of several officers who have spent more than ten years at the same station and allowed to continue to work in Mumbai and Delhi NCR, whereas transferring the applicant under the pretext of completion of maximum tenure shows biasness of the respondents towards him.

25. The applicant also contends that his transfer is not a routine transfer but an offshoot of an incident occurred in the National Crime Bureau (NCB) and this indicates malafide intention and biasness of the respondents towards him. He also states that his transfer is punitive in nature which is not permissible in law and shows malafide, arbitrariness and vindictiveness of the respondents towards him. The applicant also states that the respondents in their reply mentioned that his transfer was ordered on administrative ground under Clause 13.0 of the Transfer Policy which prescribes 'Transfer on Administrative Ground' and as per the above-mentioned clause, an officer against whom CVC has recommended initiation of vigilance proceedings should not normally be posted or remain posted at the formation where the cause of vigilance proceedings has originated. The applicant also submits that the alleged inquiry against him was initiated when he was working on loan basis in the NCB. It is not in the formation of applicant's parent Department i.e. Ministry of Finance. He also states

that as per his knowledge there is no CVC proceedings pending against the applicant till now, still the respondents have not considered him for transfer which smacks malafides, arbitrariness and vindictiveness of respondents.

26. The applicant contends that the respondents gave one of the reasons for transferring him that his name is in the Agreed List for the year 2022-23 and 2023-24 and the complaints and investigations against him are pending due to which the representation of the applicant cannot be acceded to. The applicant states that there is no pending CVC proceedings against him and his integrity can also not be questioned on the basis of impeccable record throughout his service career. He further states that he has received more than 9 numerical grading in his APAR throughout his career, which shows that he is doing his job honestly and efficiently. Copy of APAR for the year 2023-24 was also submitted (Annexure P-1).

27. The applicant further submits that in similar circumstances the Ahmedabad Bench of this Tribunal has held that inclusion of name of an employee in the "Agreed List" is fraught with the danger of being used as a weapon against the official. Relevant para of the judgement is hereby reproduced below for ready reference: -

"15. Before we conclude, we are constrained to observe that as of now there is no provision or mechanism where under

an official or an officer could avail of an opportunity to defend himself in the event of any proposal or move to include his name in the "Agreed List" since the inclusion in the "Agreed List" is fraught with the danger of being used as a weapon against the official. In this context, one cannot forget to adhere to the Principles of Natural Justice which is the sine qua non for prudent administrative practice. It is therefore, expected that the competent authority would cogitate over this matter and suggest a provision to give a reasonable opportunity to an official or the officer against whom a proposal tends to include his name in the "Agreed List" to defend himself against such proposal."

28. The applicant states that the Hon'ble Supreme Court in the case of **S. L. Abbas** which is cited by the respondents, has also held that while ordering transfer, government must keep in mind the guidelines on the subject. In this case, the impugned action of the respondents is arbitrary and violative of their own transfer policy, hence liable to be set aside. It is trite in law that State action should not be arbitrary and violative of its own guiding principles for exercise of powers. The existence of discretionary power does not mean reckless or arbitrary exercise of power. Transfer policies are framed to guide the absolute power of transfer and posting and therefore applicant is seeking judicial review. The applicant further relies upon the judgement of this Tribunal in the case of **R. K. Sharma Vs Union of India** in OA No. 289/2013 where it has been held that if transfer is ordered in deviation of policy, weighty reasons are required to be recorded for such deviation. No such reasons have been recorded and disclosed before this Tribunal and to the applicant.

29. Further, the stand of the respondents in their reply that

the applicant himself was involved in 'illegal activities' is completely unwarranted and a wrong statement made by the respondents without corroborating the same with documentary proof. These allegations are based on flimsy ground and have been made just to tarnish the image of the applicant which shows the resentment of the respondents. The statement made by the respondents that the applicant has himself involved in 'illegal activities' shows the malevolence behavior of the respondents towards him. This statement itself shows that the sole objective of the respondents is to target the applicant anyhow. The only intention of the respondents is to corner the applicant by any means and by doing so the respondents have no hesitation in making such unfair, unreasonable, unwarranted, unacceptable and unfounded allegation against him. The applicant's service record is clear of any involvement in illegal activities as documented in the APAR. Senior officers have consistently omitted any mention of such conduct in their evaluations. This demonstrates a consistent pattern of lawful behavior throughout the applicant's career. The absence of such allegations underscores his integrity and professional conduct. Therefore, the applicant's record stands as a testament to his commitment to ethical practices.

30. The respondents' claim that the Applicant is involved in illegal activities contradicts the applicant's performance

record. In his APARs, senior officers describe the individual as a valuable asset to the Department, praising his contributions. Further his senior officer remarked that the officer displayed initiative and alacrity worth emulating. Such remarks are testimony that the same Department is bent upon ruining his career and defaming him without any material to prove their defamatory claims. On the contrary, the allegations made by the respondents in the reply appear to be a deliberate attempt to defame the applicant, the intention of which is unclear. It may appear that the allegations made by the respondents in reply are intended to constitute a smear campaign. The applicant states that his unblemished record speaks volumes about his commitment to upholding professional standards.

31. Further, the applicant states that the respondents have failed to consider the essence of the representation submitted by him on the direction of this Tribunal that his family has received death threat and not the applicant. The presence of the applicant at Mumbai is required for the safety and security of his family as he is in fear for the safety and security of his family and kids. His family has received death threats continuously from unscrupulous elements. There is psychological impact on the kids minds because of the death threats that too without the physical presence of their father. The applicant is very much concerned about the

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safety of his family and kids as they have been facing death threats. The kids are living in the environment of fear. He states that the respondents have become insensitive to the distressing and worrying situation of the applicant. The latest death threat received by the applicant is on 08.12.2024 and 31.12.2024 (Annexure P/3) through which the well wisher of the applicant has warned him that some proclaimed offender has been following his family for causing harm to them. In one of the threats received by his wife on her mobile number, a derogatory morphed photo of his wife was sent to her with a message that she would face consequences for being applicant's wife. He has timely and promptly informed all the threat to the respondents, however, the respondents have paid no heed towards his request, which shows the condescension behavior of the respondents towards him.

32. The applicant also points out that despite the policy requiring obedience by the respondents, they have retained various officers of IRS service (to which the applicant belongs to) in one particular station ever since from the year 2010. Officers like Sh. Vaibhav Pagare is posted at Mumbai since 2014 in absolute violation thereof and enjoying continuous and uninterrupted posting at Mumbai since 2014. Various other officers namely Sh. Niranjana C.C. etc. are continuously posted at Delhi since they have joined the

services i.e. more than 15 years. These officers are enjoying continuous and uninterrupted posting at Delhi/Mumbai ever since they have joined services. Some other officers namely Ms. Neetu Singh and Shri Mahesh Chowdhary, who have been arrested by CBI in a bribe case and disproportionate assets and also have been suspended by the respondents, are continuing and not even transferred ever out of Ahmedabad. Likewise, Shri Deepak Kumar Sharma is the IRS officer who has been continued at Mumbai since 2016 even after he has been arrested by CBI and still have not been transferred. Applicant states that the impugned action of respondents cannot be selective and arbitrary. The applicant states that he has nothing against the above-named officers, however, their names are mentioned just to show the arbitrariness and biasness of the respondents towards him.

33. The applicant submits that his retention at Mumbai has become imperative due to severe security concerns of his family. As recent threats have created an untenable situation requiring immediate action, his retention at Mumbai is necessary to mitigate these death threats and ensure safety of his family. So far as the case law cited by the respondents is concerned, the applicant submits that the same is not applicable in the present case. On the contrary, the transfer of the applicant is punitive in nature and the applicant has been transferred by way of punishment and thus the transfer

order is bad in law and liable to be quashed and set aside.

ANALYSIS:

34. The applicant is an Indian Revenue Service (IRS) Officer of 2008 batch, currently working as Additional Commissioner, under the Department of Revenue, Ministry of Finance (Respondent No. 1). He was working as Zonal Director Narcotics Control Bureau, Mumbai, Maharashtra before his transfer to Chennai. An enquiry was initiated against the applicant through Special Enquiry Team, the Report of Enquiry Team was challenged by the applicant before this Tribunal in OA No. 3722/2022 and this Tribunal vide order dated 21.08.2023 passed an order which was upheld by the Hon'ble High Court with the observations that there is no infirmity with the directions issued by the Tribunal insofar as it directed that the applicant be granted an opportunity of personal hearing by respondents before initiating any action against him. The applicant submitted representations highlighting his grievance, however, the respondents vide Order dated 18.7.2024 rejected the representation of the applicant.

35. This Tribunal vide interim Order dated 9.12.2024 in OA no. 3677/2024 has ordered as under: -

“We have heard Mr. Luthra, learned counsel for the applicant for some time. Learned proxy counsel for the respondents submits that the arguing counsel, i.e., Mr. Hanu Bhaskar is indulged before Hon'ble High Court and requests some accommodation. This request is opposed by

Mr. Luthra on ground that further development has taken place during the pendency of this application. He submits that the applicant submitted a representation dated 08.12.2024 to the respondents, a copy of which is annexed at page no. 15 of the compilation handed over by Mr Luthra today. He requests that the respondents be directed to dispose of the above representation of the applicant.

In the above circumstances, we grant the request of learned proxy counsel for the respondents and defer the hearing of this matter to 09.01.2025.

Meanwhile, respondent no. 2 shall dispose of the aforesaid representation dated 08.12.2024 submitted by the applicant by passing a speaking and reasoned order. In order to enable respondent no. 2 to comply with this order, the applicant shall remain present before respondent no. 2 on 11.12.2024 at 11 AM along with a copy of the said representation. The respondent no. 2 shall carry out the above exercise within two weeks from the date on which the applicant remains present before it."

36. In view of interim order dated 9.12.2024 of this Tribunal in the present OA, competent authority under respondents passed an order dated 25.12.2024. For facility of reference, the relevant portion of the above-mentioned order is as under: -

"4. And whereas, in compliance of aforementioned Order of Hon'ble Tribunal, Shri Sameer Dnyandev Wankhede, Additional Commissioner presented himself before Chairman, CBIC on 11.12.2024 and submitted his representation dated 11.12.2024 along with representation dated 08.12.2024 requesting therein for transfer to an office in Mumbai for taking care of his family's security.

5. And whereas, the Placement Committee, which has been constituted under the Transfer/Placement Guidelines, 2018 to consider the cases of transfer/ posting of IRS (C&IT) officers of the ranks of Principal Commissioner to Assistant Commissioner, considered the representations of Shri Sameer Dnyandev Wankhede dated 08.12.2024 and 11.12.2024 in its meeting dated 18.12.2024.

6. And whereas, the Placement Committee examined the representations dated 08.12.2024 and 11.12.2024 of Shri Sameer Dnyandev Wankhede, Additional Commissioner. The Committee noted transfer of the officer from DGARM, Mumbai to DGTS, Chennai in May. 2022 was not a routine exercise of transfer rotational transfer but a transfer on administrative ground as per the Pam 14.3 of Transfer Placement Guidelines, 2018. The Committee also noted that the officer was in agreed list for the year 2022-23 & 2023

24 and the complaints & investigations against the offices are pending Similar remarks were recorded in previous meetings of Placement Committee he deciding the past representation dated 06.08.2024 of Shri Sameer Wankhede. The Committee noted that the present representation is substantially on the same ground of life and death threats, as the previous representations submitted by the officer. List of representation submitted by Shri Sameer Dayandev Wankhede is enclosed as Annexure-A with the representation dated 06.08.2024 being examined and disposed of by Placement Committee in its meeting held on 27.09.2024 & 10.10.2024 resulting in the non-acceptance of the transfer request as evident from the officer order No. 183/2024 dated 15.10.2024.

7. And whereas, the Committee further noted that the officer has death and life threats perception which emanate from Mumbai, and thus transferring the officer back to Mumbai perhaps may not mitigate such threats and risks that he and his family face. The Committee, however, felt that the department may inform the Police authorities in Mumbai and Chennai about the security concerns of the officer and his family for taking necessary action as deemed appropriate by them.

8. And whereas, the Committee also took note of the fact that from May, 2010 to June, 2022, the officer was continuously stationed at Mumbai Station which includes deputation/ loan posting in NIA & NCB, As per Transfer/Placement Guidelines, 2018, the countable tenure of the officer at Mumbai station is around 6 years and 9 months and non countable tenure (including exempted postings) is around 12 years and 01 month. The Committee also took note of the fact that the spouse of the officer is employed in private sector and thus not covered under compassionate ground of Para 11.2 of the Transfer/Placement Guidelines, 2018. Further, the officer was posted to Chennai in May, 2022 and hence the provisions of Para 11.4 of the Transfer Placement Guidelines, 2018 does not apply to the officer as the provisions of said Para are for retention in a particular station

9. And whereas, the Placement Committee, after due consideration of representations dated 08.12.2024 and 11.12.2024 of the officer, has proposed no change to the current posting of Shri Sameer Dnyandev Wankhede, Additional Commissioner

10. Accordingly, representations dated 08.12.2024 and 11.12.2024 of Shri Sameer Dnyandev Wankhede, Additional Commissioner are disposed of in compliance of Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi's order dated 09.12.2024.

11. This issues with the approval of the Chairman, CBIC.

Encl: Annexure-A

(शिरीश कुमार गौतम)

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अवर सचिव, भारत सरकार,
दूरभाषसंख्या - 011-23095520)

To:
Shri Sameer Dnyandev Wankhede, Additional Director,
Directorate General of Tax Payer Services, Chennai,
GST Bhavan, 26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai-600034
(Email: swankhed.nia@gov.in) "

37. Respondents, vide order dated 12.04.2018 have issued Transfer/Placement Guidelines, 2018 for the Indian Revenue Service (Customs and Central Excise) Officers under which the applicant is governed. In Para 7.4.2. of the above guidelines, the following is laid down on the issue of Tenure of Directorate Posting: -

“7.4.2. The Maximum continuous tenure in one stint in one or more non sensitive Directorates shall be 5 years. Further, the Maximum total tenure in more than one stints in one or more non sensitive Directorates plus DG Vigilance/CBN/CCF (which are sensitive but not countable) shall be 10 years in the service up to and including the rank of Principal Commissioner.”

38. In para 8.0 of the above-mentioned Transfer/Placement Guidelines, 2018 for the Indian Revenue Service (Customs and Central Excise) Officers, the respondents have deliberated upon the issue of exclusion of posting for reckoning tenure and have laid down the following guidelines: -

“8.0. EXCLUDED POSTING FOR RECKONING TENURE:

8.1 *The period spent on the following postings, in any Region/station, up to and including the rank of Principal Commissioner, shall not be counted towards calculation of stay in the particular Region/station, but may be so counted at the option of the officer.*

8.1.1. *Deputation under Central Staffing Scheme and non*

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*Central Staffing Scheme outside Department of Revenue,**8.1.2. Deputation/posting under Department of Revenue/CBIC,**8.1.3. Postings in Directorates except DGRI and DGGI,**8.1.4. Tenure of an officer in a posting will always be counted against the post in which he/she is actually working.”*

39. Para 10, 13 and 14 of the Transfer/Placement Guidelines, 2018 for the Indian Revenue Service (Customs and Central Excise) Officers, under which the applicant is governed, deliberate on the issue of posting on deputation and transfer of administrative grounds and how the issues relating thereto are to be dealt. For facility of reference, the above-mentioned guidelines are mentioned as follows: -

“10.0 POSTING ON DEPUTATION:

10.1.1 Deputation of officers under Central Staffing Scheme and other deputations shall be regulated as per the guidelines issued by the Department of Personnel and Training from time to time.

10.1.2 As far as possible, officers up to and including the rank of Commissioner shall be given exposure to a deputation posting of a technical post in CBIC. The officers who have applied for transfer to Delhi/NCR, shall be deemed to be willing for posting in Board /Directorates in Delhi. The same shall also apply for transfer requests to other stations.

13.0 TRANSFER ON ADMINISTRATIVE GROUND:

An officer against whom the CVC has recommended initiation of vigilance proceedings, should not normally be posted or remain posted at the formation where the cause of the vigilance proceedings originated. He shall also not be posted in a 'sensitive' charge. This restriction will remain in operation until the vigilance matter is closed.

14.0 Notwithstanding anything contained in these Guidelines

14.1 The Board/Placement Committee may, if it considers necessary to do so in public Interest and in furtherance of organizational objectives, transfer, retain or post any officer to any station/Region or a specific post.

14.2 In between two Annual General Transfer exercises, on administrative exigencies, the Placement may shift any officer from one place / post to another.

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14.3 The Board/Placement Committee may transfer any officer in respect of whom the concerned Principal Chief Commissioner/ Chief Commissioner/ Principal Commissioner/ Commissioner or Principal Director General/ Director General/ Principal Addl. Director General/ Addl. Director General and the concerned Zonal Member, under whom the officer is working, have made recommendations in writing that the continuance of a particular officer at a particular post/station/Region is not in public interest.”

40. The contentions of respondents adduced in their counter reply dated 09.1.2025 under the heading brief facts stating that the applicant has first joined as Assistant Commissioner, Mumbai Custom Zone on 13.5.2019 and ever since remained posted at Mumbai in different formations like Custom, Central Excise, NIA, DRI and NCB till 08.06.2022, needs to be examined in view of para 8 of the Transfer/Placement Guidelines, 2018. It lays down that the period spent by the applicant at a station needs to be worked out keeping in mind the criterion laid down in para 8 of the Transfer/Placement Guidelines, 2018. We could clearly decipher that the applicant has spent a period of 06 years and 08 months on deputation / loan basis in various entities at Mumbai / Delhi. Therefore, as per para 8 of the above guideline, the above-mentioned period of 06 years and 08 months is required to be deducted from the period spent by the applicant at a station (Mumbai). It could be seen that a period of 04 years and 04 months out of above-mentioned period of 06 years and 08 months, was spent in Delhi. Hence, the contention of the respondents is incorrect and cannot be relied upon. It is disheartening to state that the

respondents are indulging into such assertions despite of having complete details of postings of the applicant with them. This stand of respondents definitely smacks their bias towards the applicant. We are of the view that the Transfer Guidelines, 2018 issued by the respondents are not the dead letters and are the guiding principles under which the respondents are required to conduct their administrative business in just and fair manner. We are also of the given view that in this case, the respondents have failed to uphold their own policy.

41. It is well laid and accepted principle that while ordering transfer, government must keep in mind the guidelines on the subject. In this case, the impugned action of the respondents is arbitrary and violative of their own transfer policy, hence liable to be set aside. It is trite in law that state action should not be arbitrary and violative of its own guiding principles for exercise of their powers. The existence of discretionary power does not mean reckless or arbitrary exercise of power. Transfer policies are framed to guide the absolute power of transfer and posting. If transfer is ordered in deviation of policy, weighty reasons are required to be recorded for such deviation. No such reasons have been recorded by the respondents while issuing order dated 25.12.2024.

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42. While hearing the matter on 11.02.2024, learned counsel for the applicant has placed on record a communication dated 07.06.2024 from the Additional Director General (Tax Payer Services) Chennai Zonal Unit, 26/1, M.G. Road, Nungambakkam, Chennai addressed to the Principal Director General, Directorate General of Taxpayer Services, Central Board of Indirect Taxes and Customs, Central Revenue Building, I.P. Estate, New Delhi-1100109 and submitted report in response to the communication dated 6th June, 2024 of the Principal DG, Directorate of Tax Payers Services, New Delhi, informing that nothing adverse was noticed during the last two years of posting of applicant at DGST, CZU and hence, recommended for deletion of his name while reviewing the existing Agreed List in respect of Group A officers for the year 2024-25 under the jurisdiction of DGTS, CZU. The applicant has been rated as 9.5 numerical grading in his latest APAR for the period from 23.8.2024 to 31.12.2024. The Reporting Officer has written in the 'pen picture' that the he (the applicant) is an asset to the service. The Reviewing Officer has also mentioned in 'pen picture' that the officer is overall an outstanding officer. Nothing adverse is reported against the integrity. In view of this position, contentions of the learned counsel of respondents, wherein, endeavour has been made to give a meaning to deputation (going out of place) beyond the

Transfer/Placement Guidelines, 2018, is not acceptable. The above mentioned transfer / placement guidelines allows the applicant to remain in one or other formation at Mumbai.

43. There is no disagreement on the point that officer has All India liability to serve, however, respondents while posting the officers needs to adhere to their own policy in a fair, transparent and just manner. We are unable to agree to the contentions of the learned counsel of the respondents that APAR is not the final authority to decide the issue, we hold the view that APAR is an important document written by Reporting and Reviewing authority throwing ample light on the conduct and competence of an officer. Further, this is a crucial document which is relied upon while adjudging an officer on various attributes while considering the officer for promotion/impeachment for Central Staffing Scheme etc.

44. We are well aware of the facts that it is a settled law that a transfer, which is an incident of service, is not to be interfered with by the Courts, unless it is shown to be clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer. However, the actions of respondents are such which do not fall within the policy framework laid by themselves.

45. In view of the forgoing discussion, we are of the opinion that catena of judgments of Hon'ble Courts cited by the

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respondents will not come to their rescue as they have patently violated the transfer guidelines to transfer the applicant. With utmost restraint, we refrain from imposing cost on the respondents. It is held that the transfer of the applicant is not inconsonance with the new Transfer/Placement Guidelines, 2018 for Indian Revenue Service (C&CE) Officers issued by the respondents dated 12th April, 2018.

46. In the result, for the foregoing reasons, the order dated 30.05.2022 (Annexure A/2) transferring the applicant from DGARM, Mumbai to DGTS, Chennai is quashed and set aside with all consequential benefits.

47. Pending MAs, if any shall also stand closed. No Order to cost.

(Rajinder Kashyap)
Member (A)

(Justice Ranjit More)
Chairman

/ks/