

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2020

CORAM :

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
AND

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

W.P.No.7215 of 2020

and

W.M.P.Nos.8626 & 20587 of 2020

N.R.S.Ganesan

... Petitioner

Vs.

1.Union of India,
Represented by its Secretary,
Ministry of Law & Justice,
Department of Legal Affairs,
'A' Wing, Shastri Bhavan,
New Delhi – 110 001.

2.Income Tax Appellate Tribunal,
Represented by its Registrar,
Prathishtha Bhavan,
3rd & 4th Floor,
101, Maharshi Karve Marg,
Mumbai – 400 020.

3.The Deputy Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai – 600 104.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records pertaining to the impugned order in Original Application No. 310/00317/2020 on the file of the 3rd respondent passed by the learned Central Administrative Tribunal dated 18.03.2020 and quash the same as illegal, incompetent and ultravires.

For Petitioner : Mr.R.Jayaprakash

For Respondents : Mr.R.Sankara Narayanan,
Additional Solicitor General of India,
assisted by Mr.K.Srinivasamurthy,
Senior Panel Counsel for
Central Government

ORDER

(Order of the Court was made by M. SATHYANARAYANAN, J.)

The petitioner is the original applicant in O.A.No.317 of 2020 before the Central Administrative Tribunal at Chennai, challenging the order of his transfer, dated 04.03.2020, passed by the 2nd respondent, and pending disposal of the same, prayed for interim relief. The Central Administrative Tribunal at Chennai ("the Tribunal" for brevity), vide impugned order dated 18.03.2020, having found that the order of transfer came to be passed in the public interest and despite the fact that the petitioner/original applicant alleged *mala fide*, there was no reason to show that the impugned order of

transfer was issued with ulterior motive, has declined the grant of interim orders, as no *prima facie* case has been made out. The petitioner, challenging the legality of the order passed by the Tribunal in declining the grant of interim relief, has filed this writ petition.

2.The matter is listed before this Court as the earlier Benches had declined to hear the matter.

3.This Court, taking into consideration the plea made by the petitioner that he is looking after his mentally ill brother and also further taking into consideration the pendency of his representation dated 04.03.2020 before the 2nd respondent for removal of the order of transfer, permitted him to discharge his duties as Member-Judicial, Jabalpur Bench, by conducting proceedings through video conferencing, and directed the listing of the matter, and accordingly, the matter is listed today.

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4.The petitioner, at the time of transfer, was functioning as Member-Judicial in Income Tax Appellate Tribunal at Chennai Bench. The primordial submission made by the learned counsel appearing for the petitioner, by drawing the attention of this Court to Page No.19 of the main

Typed Set of Papers filed along with the writ petition, is that, admittedly, the petitioner is a care-giver to his dependent brother, who is mentally incapacitated, and that apart, he is also looking after his aged mother, who is aged about 90 years, and in the light of the fact that he is attaining the age of superannuation during April, 2021, the order of transfer may be removed. It is also the submission of the learned counsel appearing for the petitioner that, in respect of some other Members, despite the fact that they have served in the same station for very many years, they have been accommodated, and as such, there cannot be any impediment to retain the petitioner at Chennai and allow him to perform his judicial functions through video conferencing. It is also the submission of the learned counsel appearing for the petitioner that the Tribunal at Jabalpur is also lacking basic infrastructure and necessities, and as such, it may be difficult for him to discharge his functions and on that ground also, prays for his retention at Chennai.

5.Per contra, Mr.R.Sankara Narayanan, learned Additional Solicitor General of India, assisted by Mr.K.Srinivasamurthy, learned Senior Panel Counsel for Central Government, has drawn the attention of this Court to the counter affidavit filed on behalf of the 2nd respondent as well as the Typed Set of Documents, and would submit that the 2nd respondent, in

compliance with the order dated 29.05.2020, has considered the representation, dated 04.03.2020, submitted by the petitioner, and rejected the same, vide communication dated 07.08.2020. The learned Additional Solicitor General of India has drawn the attention of this Court to Para No.7 of the counter affidavit filed on behalf of the 2nd respondent, which speaks about the places in which the petitioner had discharged his duties as Member-Judicial and it is relevant to extract the same :

<i>Period</i>	<i>Details</i>	<i>Remarks</i>
19.04.2001 to 19.06.2001	Petitioner appointed sent to Kolkata for training	
19.06.2001 to 19.11.2001	Posted to Guwahati	
19.11.2001 to 02.09.2002	Posted to Bangalore	
03.09.2002 to 28.04.2006	Posted to Chennai	
01.05.2006 to 13.02.2011	Petitioner worked in Hyderabad	Medical certificate dated 24.03.2010 – about brother's disability
14.02.2011 to 11.09.2011	Worked in Rajkot	Petitioner took his brother to all the places along with him.
12.09.2011 to 27.03.2015	Worked in Cochin	He is provided with Government accommodation, vehicle and Driver.
30.03.2015 to 04.03.2020	Worked in Chennai	If he does not want/not available he is entitled to HRA commensurate to his pay + car and Driver
04.03.2020	Posted to Jabalpur	

6.Thus, it is pointed out by the learned Additional Solicitor General of India that the petitioner had served places in and around Chennai for quite number of years and insofar as the present posting is concerned, he has joined the Chennai Bench on 26.03.2015, and admittedly, completed five years, and before effecting his transfer, he was given the choice of posting, despite that, he had chosen to stay at Chennai only, and taking into consideration all the facts and the exigencies of service and requirements, he has been transferred to the Income Tax Appellate Tribunal, Jabalpur Bench, and that apart, the Accountant Member has also been transferred to the said place, and it also the submission of the learned Additional Solicitor General of India that the petitioner, while serving in other places, admittedly took his brother who is mentally ill, and therefore, it cannot be said as a ground for his retention at Chennai, and would further add that it is also well settled legal position that the order of transfer can be challenged only on two grounds, viz., punitive and *mala fide*, and at the case on hand, none of them has been made out by the petitioner, and prays for dismissal of the writ petition with exemplary costs.

7.This Court has carefully considered the rival submissions and also perused the materials placed before it.

8.The present writ petition is preferred against the interim order declining the grant of interim stay of operation of the order of transfer. A perusal of the impugned order would disclose that the Tribunal has exercised its discretion in a fair and proper manner. The materials placed before this Court would *prima facie* disclose that the petitioner had served in and around Chennai for quite numbers of years and insofar as his present posting is concerned, he was posted at Chennai on 26.03.2015, and before the impugned order, he has served in the place for five years. Though the learned counsel appearing for the petitioner made an attempt to canvass the merits of his case which is pending before the Tribunal, this Court is not inclined to it for the reason that any finding/observation given in this writ petition may affect his case pending before the Central Administrative Tribunal in O.A.No.317 of 2020. In the light of the well settled legal position as enunciated in various pronouncements of the Hon'ble Supreme Court and that apart, the Tribunal has also exercised its discretion in a fair and proper manner in declining to grant interim stay of operation of the order

of transfer, this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, cannot interfere with the same.

9.In the result, this writ petition is dismissed. Consequently, the interim order granted on 29.05.2020 stands vacated. No costs. Connected miscellaneous petitions are closed.

10.It is made clear that this Court has not gone into the merits of the rival contentions in this writ petition and it is for the Tribunal to adjudicate the same.

(M.S.N., J.) (R.H., J.)
27.11.2020

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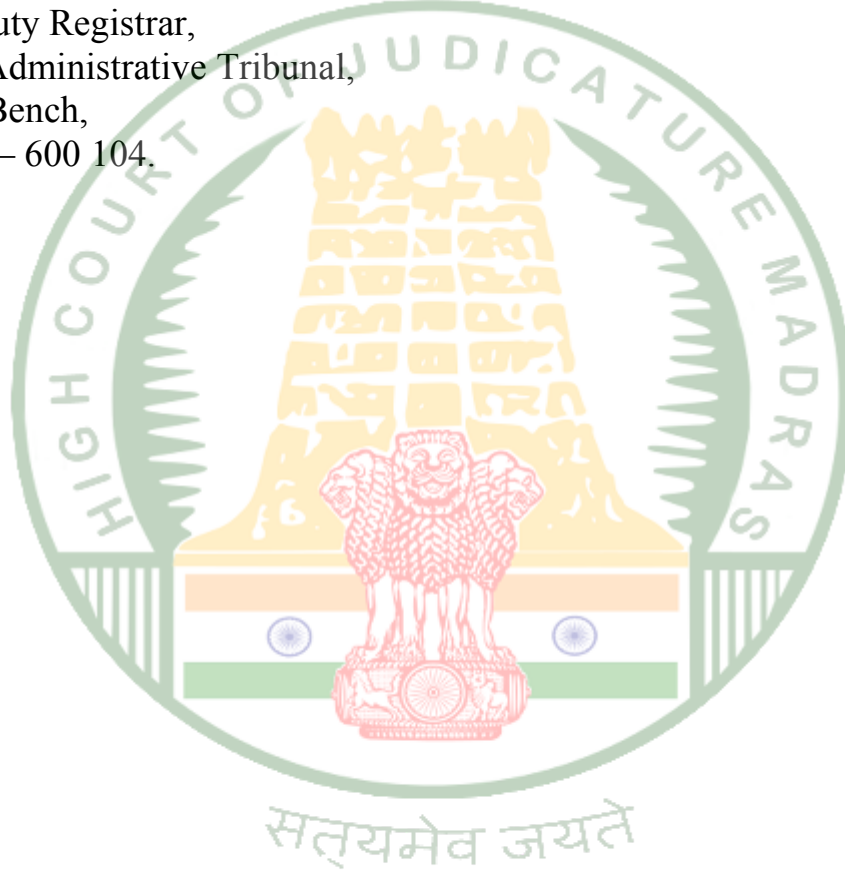
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1.The Secretary,
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Ministry of Law & Justice,
Department of Legal Affairs,
'A' Wing, Shastri Bhavan,
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2.The Registrar,
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Prathishtha Bhavan,
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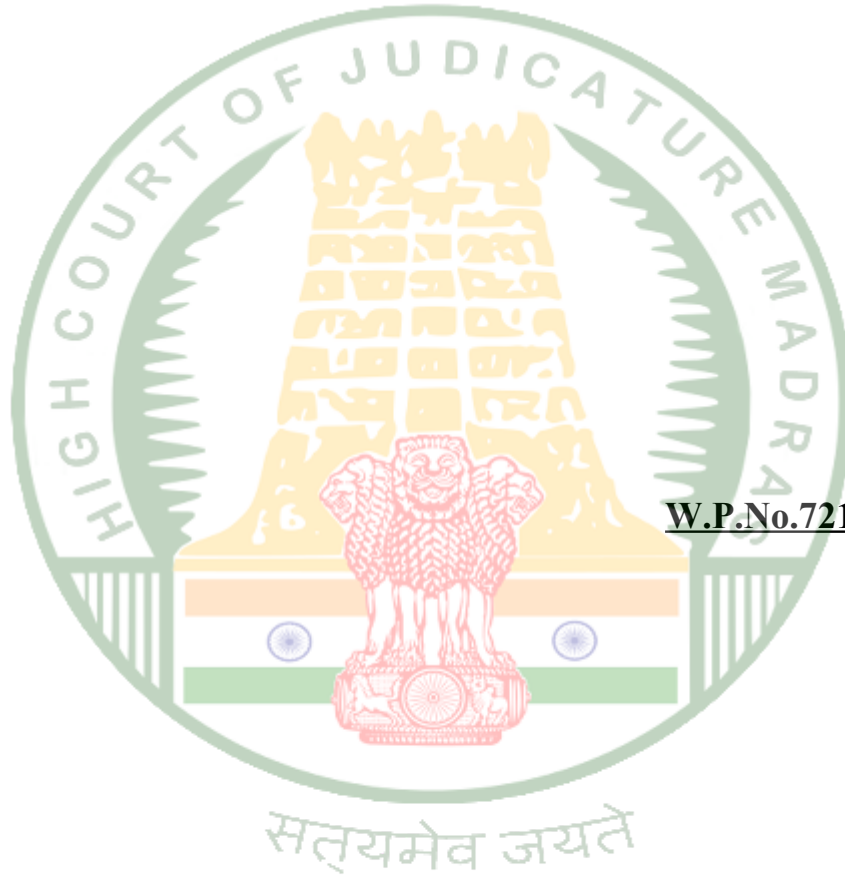


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