



2025:DHC:5570-DB



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

Date of decision: 14.07.2025

+ W.P.(C) 7511/2025 and CM APPL. 33587/2025

UNION OF INDIA & ORS.Petitioners

Through: Mr. Jivesh Kumar Tiwari, SPC
with Ms. Samiksha Mittal, Adv.

versus

SANTOSH KUMAR KARNANIRespondent

Through: Mr. S. Sunil, Adv. along with
respondent in person.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J (ORAL)

1. This petition has been filed by the petitioners, challenging the Order dated 19.12.2024 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the, 'Tribunal') in O.A. No. 1152/2024 and O.A. No. 1148/2024 (hereinafter collectively referred to as the, 'O.As.'), titled ***Santosh Kumar Karnani v. Union of India & Ors.***, allowing the said O.A(s) filed by the respondent herein in the following terms:

"16. In view of above both the Original Applications i.e. OA No. 1152/2024 and 1148/2024 are allowed with the following orders: -

(a) Transfer order dated 10.10.2022 posting the applicant to NE Region is quashed and set aside.

(b) As a result of quashing the transfer order dated 10.10.2022 vide which the applicant was



posted in the NE Region, the memorandum dated 02.05.2023 initiating disciplinary proceeding against the applicant is also quashed and set aside.

(c) Pending MAs, if any, stand closed.

(d) No order as to cost

(e) Let a copy of the order passed be placed in aforementioned OAs.”

2. The respondent, who belongs to the 2005 batch of the Indian Revenue Services, was transferred to Ahmedabad in the rank of Joint Commissioner of Income Tax in August, 2014.

3. On 04.10.2022, one Shri Rupesh Balwantbhai Brahmhatt filed a complaint with the Gujarat State Anti-Corruption Bureau (hereinafter referred to as the, ‘ACB’) against the respondent, alleging that he had demanded illegal gratification of Rs. 30 Lakhs.

4. Based on the said complaint, an FIR was registered on 04.10.2022 with the ACB, Ahmedabad, which was later transferred by the Government of Gujarat to the Central Bureau of Investigation (hereinafter referred to as the, ‘CBI’). The CBI registered the FIR on 12.10.2022.

5. The respondent, who was posted as the Additional Commissioner of Income Tax (OSD) in the office of the Director General of Income Tax (Investigation), Ahmedabad, was transferred to the North-East Region of India on 10.10.2022, and on the very same day, his relieving order was also issued.

6. The respondent challenged the aforesaid order by filing O.A. No. 3218/2022 before the learned Principal Bench of the Tribunal on 01.11.2022. The same was, however, returned for lack of territorial jurisdiction, *vide* Order dated 09.11.2022. He thereafter re-filed the



O.A., being O.A. No. 434/2022, before the learned Tribunal, Ahmedabad Bench, on 13.11.2022.

7. *Vide* Order dated 16.11.2022, the learned Tribunal directed the petitioners herein to consider the representation of the respondent, specifically keeping in mind that his transfer would jeopardize his defence in the criminal case. We reproduce the relevant portion of the said order as under:

"After arguing the matter at length, learned counsel for the applicant seeks permission to withdraw this OA with a liberty to file representation before the competent authority. Permission is granted to withdraw this OA with liberty as prayed for. The respondent authority is expected to decide the representation within a period of four weeks after receiving a copy of it by a speaking order keeping in mind the fact that whether the applicant shall be able to defend the criminal case instituted against him effectively while remaining posted in North East of India"

8. The petitioners, however, on 18.11.2022 placed the respondent under suspension with immediate effect on the ground of contemplated disciplinary proceedings and in view of the FIR registered against him by the ACB, Ahmedabad, Gujarat.

9. With regards to the said FIR, the respondent applied for anticipatory bail before the High Court of Gujarat, which was allowed on 19.12.2022, *inter alia*, subject to the following condition:

"....(e) at the time of execution of bond, furnish the address to the investigating officer and the court concerned and shall not change residence till the final disposal of the case till further orders"



10. The anticipatory bail granted to the respondent by the High Court of Gujarat was subsequently challenged and was eventually set aside by the Supreme Court, *vide* Order dated 17.04.2023. Post the rejection of the anticipatory bail, the respondent eventually surrendered on 21.04.2023 and remained in custody until November, 2023.

11. In the meantime, the petitioners, *vide* Order dated 23.12.2022, rejected the representation of the respondent seeking cancellation of his transfer to the North-East Region of India.

12. *Vide* Order dated 31.03.2023, the petitioners once again rejected the representation of the respondent for the recall of the Transfer Order. The learned counsel for the respondent points out that this order, however, was communicated to the respondent only on 10.04.2023.

13. Clearly, till 17.04.2023, if the respondent would have moved to his transfer station, that is, North-East, he would have been in violation of the condition on which he had been granted anticipatory bail. Thereafter, he was in custody and again could not have complied with his transfer order.

14. His application seeking regular bail was allowed on 27.10.2023, *inter alia*, subject to the following conditions:

“(d) Not to leave the State of Gujarat without prior permission of the Trial Court concerned.

(e) Mark presence before the concerned Police Station once in a month for a period of six months between 11.00 am. and 2.00 pm.

(f) Furnish the present address of this residence to the investigation officer and also to the Court at the time of execution of the



bond and shall not change the residence without prior permission of Trial Court."

15. In spite of the above, on 02.05.2023, the petitioners served upon the respondent a Memorandum of Charges, *inter alia*, alleging his willful and unauthorized absence from duty post his transfer.

16. The respondent filed O.A. No. 1152/2024 challenging the Order dated 31.03.2023, by which his representation against the transfer had been rejected by the petitioners, as well as the Transfer Order itself. He further filed O.A. No. 1148/2024 seeking to set aside the Memorandum of Charges dated 02.05.2023.

17. The learned Tribunal, by the Impugned Order, has allowed both the O.A.s, *inter alia*, observing that there was a condition imposed on the respondent not to leave the Station, and that neither the petitioners nor the CBI made any efforts to have the said condition vacated or modified.

18. The learned counsel for the petitioners submits that the condition to remain at his residence was imposed only *vide* Order dated 19.12.2022. Prior to that, there was no impediment to the respondent joining his transfer posting pursuant to the Order dated 10.10.2022.

19. He further submits that in any case, the condition in the anticipatory bail Order dated 19.12.2022 merely required the respondent not to change his residence; it did not bar him from joining his transfer posting. He submits that the respondent could have complied with the said condition by furnishing the address of his residence at the transferred location. He further submits that in any



case, these are matters which could have been determined in the departmental enquiry and should not have been gone into by the learned Tribunal while quashing the impugned Memorandum of Charges. He points out that the learned Tribunal erred in placing reliance on the conditions of bail that were imposed *vide* a subsequent Order dated 27.10.2023.

20. On the other hand, the learned counsel for the respondent, who appears on advance notice, submits that the learned Tribunal, in its Order dated 16.11.2022, while directing the petitioners to decide the representation of the respondent within four weeks, had also directed that the petitioners shall keep in mind the fact whether the respondent shall be able to effectively defend the criminal case instituted against him while remaining posted in the North-East Region of India. He further submits that the petitioners, however, mechanically rejected the said representation *vide* Order dated 23.12.2022. Even prior thereto, *vide* Order dated 19.12.2022, while granting anticipatory bail to the respondent, the learned Court had directed that the respondent shall not leave his residence.

21. The learned counsel for the respondent points out that even when this condition was pointed out to the petitioners, the petitioners *vide* Order dated 31.03.2023, rejected the said representation of the respondent, without appreciating the true import of the same. He submits that upon cancellation of his anticipatory bail by the Supreme Court *vide* Order dated 17.04.2023, the respondent surrendered and remained in custody. He further submits that the respondent was eventually granted regular bail *vide* Order dated 27.10.2023, which



again imposed a condition that he shall not leave the station.

22. Given these facts, the learned counsel for the respondent submits that the Impugned Transfer Order as well as the Impugned Memorandum of Charges have rightly been quashed by the learned Tribunal.

23. He further submits that pursuant to the Order of the learned Tribunal, the petitioners have issued fresh transfer orders, now transferring the respondent to Guwahati, Assam, a post which the respondent has duly joined, and the suspension has also been withdrawn.

24. The learned counsel for the respondent submits that the *bona fides* of the respondent are evident from the fact that both, in the anticipatory bail application as well as in the regular bail application, the respondent had duly disclosed the Transfer Order.

25. We have considered the submissions made by the learned counsels for the parties.

26. From the above narration of the facts, it would be evident that an FIR was registered against the respondent herein by the Gujarat ACB on 04.10.2022, that is, prior to the issuance of the Transfer Order. The matter was subsequently transferred to the CBI, and the CBI registered an FIR on the same on 12.10.2022. The respondent challenged his Transfer Order before the Principal Bench of the learned Tribunal, which was returned to be filed before the Tribunal having territorial jurisdiction. The respondent then filed his O.A. before the Ahmedabad Bench of the learned Tribunal, which, *vide* Order dated 16.11.2022, directed the petitioners to consider the



representation of the respondent, specifically keeping in mind whether the respondent would be able to effectively defend the criminal case instituted against him while remaining posted in the North-East Region of India. The investigation had only just commenced, and therefore, transferring the respondent to the North-East Region of India at this stage would have clearly jeopardized both his defence and the ongoing investigation.

27. Be that as it may, the respondent was eventually granted anticipatory bail *vide* Order dated 19.12.2022, that is, before his representation had been rejected by the petitioners *vide* Order dated 23.12.2022. One of the conditions in the bail order was that he shall remain at the address which he gives at the time of execution of the bond to the Investigating Officer. Notably, at that time, the respondent was residing in Ahmedabad, and he could have provided only that address. In fact, had he moved out of Ahmedabad, we have have no doubt that he would have jeopardized the anticipatory bail granted to him. Until the anticipatory bail was vacated *vide* Order dated 17.04.2023, there was a clear embargo on the respondent from moving out of his residential address in Ahmedabad. The non-joining of the post by the respondent was, therefore, neither willful nor intentional, but in due compliance with the orders of the Court.

28. The petitioners, however, without appreciating the above facts, rejected his representation of the respondent *vide* Order dated 31.03.2023 and issued the impugned Memorandum of Charges.

29. Even thereafter, the Court *vide* Order dated 27.10.2023 enlarging the respondent on regular bail, had restrained from moving



out of the State of Gujarat. Therefore, once again, he could not have joined his place of posting in the North-East Region of India.

30. Given these facts, the respondent clearly could not have been blamed for willfully not joining his place of posting pursuant to the Transfer Order. The learned Tribunal, in our view, has rightly appreciated the above circumstances while allowing both the O.A.s filed by the respondent herein. While it goes without saying that on a Transfer Order being passed, the officer is required to join the transfer posting in accordance therewith and the Courts are slow in interfering with the Transfer Order as also a Memorandum of Charges, in the peculiar facts of the present case, we find that the non-joining of the respondent at the transfer post was neither willful nor intentional, but was due to circumstances beyond his control.

31. As noted hereinabove, the respondent has since joined his new transfer posting at Guwahati, Assam, pursuant to the fresh Transfer Order issued by the petitioners.

32. Accordingly, we find no reason to interfere with the Impugned Order passed by the learned Tribunal. The petition, along with the pending applications, is hereby dismissed.

33. There shall be no order as to costs.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

JULY 14, 2025

p/bsn/Kj/DG