

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. 93/2002  
with  
C.P.14/2002

(16)

New Delhi this the 19th day of July, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).  
Hon'ble Shri S.A.T. Rizvi, Member (A).

O.A.93/2002

Binoy Bihari Prasad,  
S/o late Shishu Prasad,  
Commissioner (Appeals),  
Central Excise & Customs,  
Opposite Maida Mill,  
Hoshangabad Road, Bhopal,  
Madhya Pradesh,  
R/o VI/1, IT & CE Colony,  
Bharat Nagar, Shahpura,  
Bhopal.

... Applicant.

(By Advocate Shri Mohit Madan)

Versus

1. Union of India through  
the Secretary,  
Ministry of Finance,  
Department of Revenue,  
North Block,  
New Delhi.
2. The Central Board of Excise  
and Customs,  
New Delhi through  
its Chairman.
3. Member (Personnel & Vigilance),  
Central Board of Excise & Customs,  
North Block,  
New Delhi.
4. Member (Legal & Judicial),  
Central Board of Excise  
and Customs, North Block,  
New Delhi.

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(17)

5. Shri K.L. Verma,  
Member (Customs & EP),  
Central Board of Excise & Customs,  
North Block,  
New Delhi. ... Respondents.

(By Advocate Shri N.S. Mehta, Sr. Counsel with Shri  
R.R. Bharti)

CP 14/2002

- Binoy Bihari Prasad,  
S/o late Shri Shishu Prasad,  
Commissioner (Appeals),  
Central Excise & Customs,  
Opposite Maida Mill,  
Hoshangabad Road,  
Bhopal Madhya Pradesh,  
R/o VI/1, IT&CE Colony,  
Bharat Nagar, Shahpura,  
Bhopal. ... Petitioner.

(By Advocate Shri Mohit Madan)

Versus

1. Shri S. Narayan,  
Secretary,  
Ministry of Finance,  
Department of Revenue, North  
Block, New Delhi.
2. Shri Sukumar Shankar,  
Chairman, Central Board of  
Excise & Customs,  
New Delhi.
3. Shri A.K. Pande,  
Member (Personnel & Vigilance),  
Central Board of Excise & Customs,  
North Block,  
New Delhi.
4. Shri P.N. Malhotra,  
Member (Legal & Judicial),  
Central Board of Excise & Customs,  
New Delhi.
5. Shri K.L. Verma,  
Member (Customs & EP),  
Central Board of Excise & Customs,  
North Block,  
New Delhi. ... Respondents.

(By Advocate Shri N.S. Mehta, Sr. Counsel with Shri  
R.R. Bharti)

Yours

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

This application has been filed by the applicant against the Office Order dated 12.5.2001 posting him as Assistant Director General, DICCE, Chennai from the office of CCE (A), Bhopal.

2. The brief relevant facts of the case are that the applicant states that he has been functioning as Commissioner (Appeals), Central Excise and Customs, Bhopal since 1997. The applicant has submitted that his daughter was married to the son of Respondent No.5/Shri K.L. Verma, Member (Customs & EP), Central Board of Excise and Customs, North Block, New Delhi who was the Chief Commissioner, Customs and Central Excise in October, 1997. It appears that subsequently the marriage had broken up. Shri Mohit Madan, learned counsel has submitted that in the circumstances there was a lot of bad blood between the applicant and respondent No.5 and a number of cases were filed by each other in various courts. He has submitted that consequently Respondent No.5 had a personal vendetta against the applicant and so the impugned transfer order was passed. In the O.A., the applicant has also submitted that Respondent No. 5 was not at all his controlling officer to monitor his work as Commissioner (Appeals). However, learned counsel has very vehemently submitted that one Shri S.P. Srivastav and Shri K.L. Verma were responsible in passing the impugned transfer order which has been done at the behest of Respondent No.5. He has, therefore, submitted that the transfer order is mala fide and has prayed that the same may be quashed and set aside.

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3. A contempt petition has also been filed by the petitioner against the order issued by the respondents dated 12.5.2001. By this order, as mentioned above, he has been posted as Addl. Director General (ADG), DICCE from Bhopal to Chennai. The applicant had originally filed an application in the Jabalpur Bench of the Tribunal (OA 359/2001). The Tribunal (Jabalpur Bench) had by interim order dated 22.5.2001 stated that learned counsel had taken notice on behalf of respondents 1 to 4 and the applicant was directed to serve notice on respondent No.5 by speed post and the respondents were directed to file reply within six weeks from the date of receipt of the notice. Till reply was filed by the respondents, the Tribunal has directed that status quo should be maintained as on that date. It was also directed that the respondents should file reply with regard to the interim prayer of the applicant, stating therein as to why his request for transferring him to any other place where he had given an option cannot be accepted. The applicant had stated that at the time the O.A. was filed he was not relieved from the post of Commissioner (Appeals), Bhopal. The ad-interim relief prayed for by the applicant in the O.A. is as follows:

"The applicant <sup>humbly</sup> prays that this Hon'ble Tribunal be pleased to direct the respondents to stay the implementation of the order of transfer/posting dated 12.5.2001 (Annexure A-11) in so far as it concerns the applicant and direct the respondents to maintain status quo until the disposal of the instant application for the facts and reasons mentioned in the aforepreceding paras and in the ends of justice. It is further prayed that the posts lying vacant at Ahmedabad/Surat/Pune and other places for which option has been given by the applicant may not be filled up until the disposal of the case".

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4. In the contempt petition also, Shri Mohit Madan, learned counsel has very vehemently submitted that the above impugned transfer order has been passed as a result of mala fide action and in colourable exercise of powers of the respondents on the influence and behest of Respondent No.5/ Shri K.L. Sharma. According to the learned counsel for the petitioner, the order of the Tribunal dated 22.5.2001 had not only meant that the status quo pertained to the order dated 12.5.2001 but it also related to the filling of posts that were lying vacant in other places. He has submitted that the applicant ought to have been considered for posting in other places where the posts were lying vacant i.e. at Bhopal, Surat and Pune where he had given his three options for posting. He has, therefore, vehemently contended that the respondents have contumaciously and wilfully violated the aforesaid orders of the Tribunal in not considering the applicant for posting in the three cities of his choice as indicated in his option. Learned counsel has, therefore, submitted that it is absolutely necessary to proceed against the alleged contemners for violation of the directions of the Tribunal in terms of the order dated 22.5.2001.

5. On the other hand, Shri N.S. Mehta, learned senior counsel for the respondents has controverted the above submissions. He has submitted that the impugned order has been passed only in the interest of the administration and the applicant's name is only one amongst several other officers who have been posted from one place to another place in the country in the exigencies of service and for administrative reasons. He has submitted that in terms of the aforesaid interim order of the Tribunal, the status

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quo of the applicant has been maintained, as ordered and he has remained in Bhopal. This fact was not denied by the applicant's counsel. The applicant does not also deny that he has a transfer liability to any part of the country. Shri Mohit Madan, learned counsel had submitted that the applicant has no problem at all to be posted at Chennai but it is just that according to him the transfer order is mala fide. What he has emphasised is that the impugned transfer order has been issued only at the behest of Respondent No. 5 who was inimical to the applicant because of the marriage between their children having broken down and as a result the pendency of a criminal case at Bhopal which he can attend to if he continued there.

7. Shri N.S. Mehta, learned counsel has relied on the judgements of the Supreme Court in N.K. Singh Vs. Union of India & Ors. (1994 (28) ATC 246) and Union of India Vs. S.L. Abbas (1993 (2) SLR 585). Learned counsel has submitted that Respondent No. 5 was not handling the transfer matters of the All India Central Excise Service Officers, and he was, therefore, not at all concerned with the process of transfer of the applicant. He has, therefore, submitted that there is absolutely no proof of mala fide or bias, as alleged by the applicant against Respondent No. 5 on the basis of which the transfer order can be held as arbitrary or invalid. In the reply filed by the respondents, they have also submitted that they have considered the applicant's request for posting in alternative cities of his choice which was also not possible for administrative reasons. He has, therefore, prayed that in the light of the law laid down by the Supreme Court (supra), no case at all is made out by the applicant and has prayed that both O.A. and C.P. may be dismissed.

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8. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

9. In N.K. Singh's case (supra), the Supreme Court has held as follows:

"Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of the hierachial superiors to make that decision. Unless the decision is vitiated by mala fides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personal management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated.

(Emphasis added)

10. In the facts and circumstances of the case, as the applicant has not been able to establish that the impugned transfer order has been passed in a mala fide manner by the respondents at the behest of Respondent No. 5, who admittedly was not dealing with the subject in the office, we see no good grounds to justify any interference in the matter. Neither any rule or transfer policy has been violated by the respondents in issuing the impugned transfer order, which not only deals with the applicant but several other officers. The allegations of the applicant that the whole

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office has been brought under the influence of Respondent No.5 in acting in a mala fide manner against him is far fetched and cannot be accepted on conjectures against the concerned officers who are themselves senior officers. Having regard to the aforesaid judgements of the Supreme Court and the facts in the case, we find no justification to interfere in the matter in exercise of the powers of judicial review. We do not also find any wilful disobedience of the interim orders of the Tribunal.

11. In the result, for the reasons given above, O.A.93/2002 and CP 14/2002 are dismissed. No order as to costs.

S.A.T.Rizvi

( S.A.T. Rizvi )  
Member (A)

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)  
Vice Chairman (J)

'SRD'