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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 874 /1998.

DATE OF DECISION : 4th June, 1998.

HON'BLE SHRI JUSTICE K. M. AGARWAL, CHAIRMAN

HON'BLE SHRI R.K.AHOOJA, MEMBER (A)

Shri S.K.Bhatnagar ... Applicant(s)

-Versus-

U.O.I. ... Respondent(s)

Advocates :

Mr./Ms. In person for Applicant(s)

Mr./~~Ms.~~ Madhav Panikar, for Respondent(s)

1. Whether to be referred to Reporter? *ye*
2. Whether to be circulated to other Benches?

Km
(K. M. Agarwal)
Chairman

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH.

O.A. No.874 of 1998.

New Delhi, this the 4th June, 1998.

HON'BLE MR. JUSTICE K.M.AGARWAL, CHAIRMAN.

HON'BLE MR. R.K.AHOOJA, MEMBER (A).

Shri S.K.Bhatnagar,
S/o Shri M.L.Verma,
Vice President,
Customs, Excise & Gold (Control)
Appellate Tribunal, West Block-II,
R.K.Puram, New Delhi.

.....Applicant.

(Applicant in person)

versus

Union of India
(Through Secretary (Revenue),
Department of Revenue,
Central Secretariat,
New Delhi.

.....Respondent.

(By Advocate Shri Madhav Panikar)

O R D E R

JUSTICE K.M.AGARWAL:

In this O.A. the applicant is challenging his transfer from Delhi to Calcutta by the impugned transfer order dated 11.3.1998, (Annexure A).

2. The applicant is functioning as Vice President of Customs, Excise & Gold (Control) Appellate Tribunal, (in short, "CEGAT"), and is presently posted at Delhi. By the impugned order dated 11.3.1998, he has been transferred to Calcutta. One of the grounds taken for challenging the transfer order is that there is no post of Vice President at Calcutta. At the time of preliminary hearing on 29.4.1998, what submissions were made by the applicant in person may be gathered from the first paragraph of the order-sheet recorded on that day. It runs as follows:

"Heard the applicant in person. He submits that post of Vice President of CEGAT which he is currently holding is only sanctioned for the Headquarters at Delhi and there is no post of Vice President at Calcutta where he is proposed to be

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sent as per the impugned order dated 11.3.1998, Annexure-A. He submits that despite his personal problems, he would not have any objection to go to Calcutta provided the respondents were to first transfer the post of Vice President to the Calcutta. He had also explained this position to the Secretary of the Department and to the concerned Minister but no satisfactory reply has been forthcoming. He also points out that his daughter is appearing in MA examination for which also he requested that his transfer orders if not cancelled be deferred."

In the light of the said submissions, notices were directed to be issued against the respondents and in the meantime, the respondents were directed to maintain the status quo as an interim measure. On 12.5.1998, the respondents entered appearance in the case and at their request, the case was adjourned for a week with a direction to list the case on 21.5.1998 before a Division Bench. In the meanwhile, the respondents filed their reply along with a copy of the order dated 14.5.1998 of the Ministry of Finance, Department of Revenue, conveying "the approval of the President for transfer of the post of Vice President presently held by Shri S.K.Bhatnagar from Delhi to Calcutta with immediate effect and until further orders." On 21.5.1998, when the case was listed before us, we wanted to know if the applicant was willing to go and join his duties at Calcutta pursuant to his statement dated 29.4.1998 that despite his personal problems, he would not have any objection to go to Calcutta provided the respondents transferred the post of Vice President from Delhi to Calcutta. The applicant declined to abide by his words and instead desired to argue the matter by submitting that the transfer order was bad in law and, therefore, liable to be quashed. In this context the case was directed to be relisted for hearing on 1.6.1998 and accordingly on 1.6.1998 the case was finally heard, though the case was still at admission stage.

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3. It may be mentioned that after the case was adjourned on 21.5.1998 with direction to list the case for hearing on 1.6.1998, the applicant filed one application (registered as M.A. No.1124/98) for amendment of the main application under Section 19 of the Administrative Tribunals Act, 1985 and another application on 29.5.1998 (registered as M.A. No.1125/98) for production of certain documents. Appropriate orders on these M.As shall be passed hereafter at appropriate place.

4. The applicant argued that the transfer order was bad as on the date it was issued, there was no post of Vice President available at Calcutta, where he could be accommodated. He maintained that the subsequent order dated 14.5.1998 of the Government, transferring the post from Delhi to Calcutta supported his argument and that it also supported his allegation that the transfer was not in public interest, but vitiated by mala fides. He relied on a Single Bench decision of Chandigarh Bench of this Tribunal in Harjinder Kumar Kalia v. Union of India, 1994 (6) SLR 425 (CAT: Chd.).

5. As pointed out in paragraph 2 of the counter, the Tribunal has at present sanctioned strength of 21 Members, including 1 President, 2 Vice Presidents and 18 Members. The strength is not benchwise or regionwise but for the entire Tribunal as per averments made in the counter and as per various documents filed in support of those averments. Further, as pointed out in paragraph 2 itself of the counter, the distinction between Special and Regional Benches was dispensed with by an amendment in Section 129C of the Customs Act, 1962, under the Finance Act of 1955. In the light of the removal of distinction between Special and Regional Benches during 1995, Vice Presidents have been posted outside Delhi more than once, as stated by the

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respondents in their counter in reply to para 4.3 of the application. Instances of S/Shri S.Kalyanam, V.P.Gulati and K.S. Venkataramani have also been given by the respondents. It, therefore, appears that while transferring a Member or a Vice President from one place to another, it is not necessary first to transfer the post or to increase the strength of Members or Vice Presidents at a particular place, because as earlier stated, strength is not benchwise but for the entire Tribunal. Accordingly it further appears that earlier there was no dispute when Vice Presidents were either posted or transferred from one place to another place. According to us, any number of Members or Vice Presidents may be posted at any place according to the convenience and workload of the Tribunal without requiring the post being transferred from one place to another in the circumstances of each case. Accordingly in the present case also, there was no necessity of transferring the post of Vice President from Delhi to Calcutta. However, it appears, just to avoid further delay in implementation of the transfer order against the applicant and to set at naught his technical objection that the post was not transferred to Calcutta, one order dated 14.5.1998 was passed. Thus this case is quite distinguishable from the facts in the case of Harjinder Kumar Kalia (supra), relied on by the applicant in support of his case.

6. The applicant is a responsible Officer. He knows what the actual position is. He should not have, therefore, raised the technical objection. Having raised the objection, he ought to have lived upto his words that he would not have any objection to go to Calcutta provided the respondents first transferred the post of Vice President to Calcutta. However, he changed his mind.

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7. For the foregoing reasons we find no merit either in the M.A. No.1124/98 for amendment of the main application under Section 19 of the Administrative Tribunals Act, 1985 or in the M.A. No.1125/98 for production of certain documents. We are of the view that those M.As were filed with a view to protract the hearing of this case because the applicant had already obtained interim stay against his transfer order.

8. In the result, this application fails and it is hereby dismissed but without any order as to costs.

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(K.M.AGARWAL)
CHAIRMAN

R.K. Ahooja

(R.K.AHOOJA)
MEMBER (A)