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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA-529/95

New Delhi this the 29th day of October, 1999.
HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN(J)
HON'BLE MRS. SHANTA SHAstry, MEMBER (A)

Shri D.D. Kaushik,
S/o Shri Chandgi Ram Kaushik,
R/o Block No.17/950,
Lodi Colony,
New Delhi-110 003.

...Applicant

(By Advocate Shri G.D. Gupta)

-Versus-

1. Union of India through
the Secretary to the
Government of India,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi-110 001.

2. The Secretary,
Central Board of Excise and Customs,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi-110 001.

3. The Collector,
Central Excise and Customs,
Central Revenue Building,
I.P. Estate,
New Delhi-110 002.

...Respondents

(By Advocate Shri R.R. Bharti)

O R D E R

By Reddy, J.:-

The applicant challenges the validity of the seniority lists, published in 1990 and 1994, of Inspectors, Central Excise Collectorate at Delhi, seeking seniority w.e.f. 12.12.78, the date on which he was originally appointed in the Central Excise Collectorate, Bombay before his transfer to Delhi Collectorate.

2. The facts leading to the filing of OA, are as under:

2.1 On successful completion of the Subordinate

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Service Commission Examination conducted for the posts of Inspectors, Central Excise during 1977 the applicant was appointed on 23.11.78 and joined in the service on 10.12.78 at the Central Excise, Collectorate, Bombay. On 30.4.79 he made a representation to the Collector, Central Excise, Bombay requesting for his transfer to Delhi, on compassionate grounds. In response to the said representation the Assistant Collector, Central Excise, Bombay in his letter dated 28.5.79 required the applicant to submit a declaration to the effect that on transfer to Delhi Collectorate he would be treated as a new entrant and would be adjusted against direct recruitment vacancy of Inspector and his seniority would be fixed accordingly and that no transfer travelling allowance and joining time would be admissible to him and that he would not be considered for confirmation/promotion in Bombay Collectorate. He accordingly made the requisite declaration on 31.5.79. The applicant was later informed that he would have to complete two years probation period of service for becoming eligible for inter-collectorate transfer and that his application would be considered after he had completed two years probation at Bombay Collectorate. Subsequently, by order dated 2.8.82 the applicant was transferred to Delhi Collectorate on the terms and conditions mentioned in the said order. The applicant thereupon joined the Delhi Collectorate on 4.8.82 and was assigned the seniority at the bottom of the seniority list of Temporary Inspectors working in the Delhi Collectorate at that time. In the seniority list of 31.12.90 the applicant's seniority was accordingly shown.



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2.2 The applicant, however, felt aggrieved that his seniority in the grade of Inspector in the Delhi Collectorate was wrongly fixed, submitted a representation in 1991 stating that he was entitled for the benefit of the service rendered by him at Bombay Collectorate. The said representation was disposed of by the respondents by letter dated 30.9.92 stating that the benefit of past service was permissible as per the circular dated 12.2.58 to only those who had made the application for transfer before 20.5.80 on which date the circular dated 20.5.80 came into force. Since the applicant had made the application for transfer on 30.4.79, he requested, by his representation dated 30.10.92, to refix his seniority in the seniority list of 1990 taking into consideration his past service in Bombay Collectorate. Since he has not received any reply to the said representation, he made another representation on 6.7.93 for refixation of his seniority in terms of circular dated 12.2.58 but the respondents rejected both the representations in their letter dated 2.3.94 (Annexure A-2). Aggrieved by the action of the respondents the applicant filed the present OA.

3. The learned counsel for the applicant contends that the impugned order of the respondents is totally opposed to the order of the respondents dated 30.9.92, since the applicant had made an application for transfer in 1979 itself, the applicant's past service should have been allowed while fixing his seniority at Delhi Collectorate and the rejection of the representation of the respondents without assigning any reason was illegal. It was further contended that the transfer policy dated 12.2.58 having not been superseded, the transfer of the

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applicant was governed by the same and his transfer made contrary to the said policy whereby his past service has been wiped out, is wholly illegal. It is lastly contended that the action of the respondents is violative of Articles 14 and 16 of the Constitution of India since the applicant was denied his fundamental right.

4. A preliminary objection has been taken by the respondents on the ground of limitation. The contention of the learned counsel for the respondents is that the OA is hopelessly barred by limitation as the grievance of the applicant dates back to 1982 when he was transferred to Delhi Collectorate. The impugned seniority list has been issued in 1990, fixing his seniority, according to the conditions laid down in the order of transfer of 1982 and if the applicant is aggrieved by the same, he should have filed the OA within the period of limitation. It was further contended by the learned counsel that the applicant having been transferred at his own request on compassionate grounds and on the basis of the declaration made by him of agreeing to loose the benefit of the service at Bombay Collectorate it is not open to him to question the said order of transfer on any ground. It was further contended that the circular dated 12.2.58 was superseded in 1972 and it was no longer valid and the transfer of the applicant was validly effected as per the letter dated 20.5.80.

5. We have carefully considered the rival contentions advanced by the learned counsels

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6. Most of the facts are undisputed. The applicant was appointed as an Inspector of Central Excise in the Collectorate at Bombay. As there was no All India cadre of Inspectors of Central Excise each Collectorate has its own cadre of Inspectors and the seniority list is maintained taking the Collectorate as a unit for the purpose of promotion to the next higher post. Inspectors of one Collectorate are not entitled to be transferred to other Collectorate as a matter of right. As per the respondents normally the transfers are allowed on compassionate grounds subject to the conditions prescribed by the Central Board of Excise and Customs which is, however, disputed by the applicant. But, it is not in dispute that the applicant was transferred to Delhi Collectorate as per the instructions contained in the Board's letter dated 20.5.80 (Annexure A-11). It is clear from A-11 that the transfers were being allowed only on compassionate grounds on certain conditions. Collectors of Central Excise were delegated powers to allow such transfer only on compassionate grounds, provided an undertaking was given by the officer abiding by the conditions. One of the conditions is that the service rendered in the former collectorate will not be counted for seniority in the charge. The applicant accepted the condition that he would not be entitled to count his service rendered in the Bombay Collectorate for the purpose of seniority in Delhi Collectorate. This transfer was effected in 1982. Since then he has been working in the Delhi Collectorate taking the position in the bottom of the seniority list of the officers working at that time. A seniority list was issued in 1990 and his name was rightly shown at the bottom of the Inspectors working in the Delhi Collectorate at the time of his transfer. He



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was apparently satisfied with his position in the seniority list. Nearly one year thereafter, he made a representation in November, 1991 requesting refixation of his seniority giving the benefit of the service rendered by him at Bombay Collectorate. Two grounds were urged in the representation, viz. (i) According to the instructions of the Board issued in the circular dated 12.2.58 the transfer of the staff within a period of three years of appointment should be allowed without any loss of seniority, the Bombay Bench of the Tribunal in its judgement dated 19.11.87 also held that the Inspector was entitled to the benefit of the service prior to his transfer as per the instructions in the circular of 12.2.58. The said judgement was approved by the Supreme Court in 1990 and (ii) as per the judgement of the Principal Bench dated 30.11.88 orders were passed by the Board transferring certain Inspectors giving the benefit of the past service in Delhi Collectorate to Chandigarh and from Chandigarh to Delhi.

7. The representation was ultimately rejected by the impugned order dated 2.3.94.

8. We do not find any merit in any of the grounds raised in the representation or in the arguments advanced by the learned counsel for the applicant. It is true that as per circular dated 12.2.58, in case of transfer of non-gazetted staff from one charge to another within the same department and if the transfer is within a period of three years of his appointment, it should be allowed without any loss of seniority and as the applicant was transferred within three years of his appointment he was entitled under this circular for the benefit of past

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service. Though it is clearly stated in the counter-affidavit that the provisions of this circular were discontinued in 1972 no such order was placed before us. In the absence of such an order it is not possible for us to place any reliance on the same. But, it should be noticed that the applicant has been transferred purely on compassionate grounds on his request and that the transfer of the applicant was made in 1982 in accordance with the letter dated 20.5.80. Accordingly, the applicant has accepted the transfer on conditions that his past service will not be counted and has taken the last place in the seniority of the officers working at Delhi at that time. The applicant cannot be heard to say after nine years of his transfer that the conditions were violative of the circular of 1958. Moreover, he makes a grievance of his position in the seniority list issued in 1990 only in November, 1991. He relies upon the circular dated 12.2.58 and the judgements of the Tribunal of 1987 and 1988 and the subsequent orders of the Board of 1991 in this OA filed in 1995. Since the grievance of the applicant arose in 1982 he should have agitated the matter before the appropriate judicial forum immediately thereafter. We are clearly of the view that the OA suffers from laches and is hit by the provisions of the Administrative Tribunals Act, 1985.

9. Even on merits the applicant has no case. The applicant in the case before the Bombay Bench Sh. A.D. Despande in OA No.511/96 questioned the order of his transfer not on the basis of the circular of 1958. He relied upon certain instructions given in 1972. He was originally appointed as a Supervisor in the Jalgaon range of the then Bombay Central Excise Collectorate and he was

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promoted as Inspector and posted as Bhivandhi in 1972. In 1959, the Bombay Collectorate of Central Excise was divided into two separate Collectorates viz. Bombay and Pune and the applicant at that time was posted at Pune. He then made a request for transfer to Bombay on the ground that his father was residing and ailing at Bombay. In January, 1972 he was transferred on the condition that he should forego his service at Pune. He was confirmed w.e.f. 1.8.75 in the Bombay Collectorate. Since he was already confirmed in 1969 at Pune, he questioned the order of transfer in 1985 by way of Writ Petition in the High Court which was subsequently transferred to the Tribunal. Relying upon instruction No.V issued in 1972 on the ground that the request made by the applicant in 1972 was contrary to the said instruction No.V as he was a permanent employee at Pune, the Tribunal directed that the entire service at Pune should be counted for the purpose of seniority in the new Bombay Collectorate. This judgement was also approved by the Supreme Court. In the counter-affidavit it is stated that the above case was not identical to that of the applicant herein as it related to bifurcation of Bombay Central Excise Collectorate in 1959 and by virtue of the bifurcation the applicant was asked to work at Pune without giving him any option either to work at Pune or Bombay. It is also stated in the counter-affidavit that the case of the Inspectors who were transferred in 1991 were also not identical to that of applicant as they pertain to trifurcation of Delhi, Chandigarh and Jaipur Collectorates. The case of the Inspectors who were transferred in 1991 were also not identical to that of applicant, as they pertain to trifurcation of Delhi, Chandigarh and Jaipur Collectorates. In the Despande's case (supra) the

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question of continuance of the 1958 policies even after the issue of the Board's letter dated 20.5.80 did not arise for consideration for the simple reason that the transfer was made in 1972 well before the letter dated 20.5.80. Hence, the transfer of the applicant in that case was governed by the circular of 1958 and after issue of the Board's letter dated 20.5.80, it has necessarily to be followed that the 1958 circular has been superseded. In the circumstances, we are of the view that the judgement of the Bombay Bench or the Principal Bench or the judgement of the Supreme Court approving the judgement of the Bombay Bench have no application to the facts of the present case.

10. Much reliance is placed by the learned counsel for the applicant upon the letter dated 30.9.92 (Annexure A-18) and the representation made by the applicant in 1991 to argue that the applicant is entitled for his past service on the basis of the decision taken in the said letter. But in the counter-affidavit it has been clearly stated that at the time of issue of the Board's letter (A-18) the fact that there was a specific order of the Board issued in 1972 discontinuing the benefit of 1958 circular was lost sight of. Hence the Board have issued the fresh letter dated 21.9.94 clarifying the position that no action need be taken on the letter dated 30.9.92. Hence, the said letter stood withdrawn and was inoperative. The applicant was accordingly informed by letter dated 2.3.94. In the circumstances we do not find any force in the contention of the learned counsel for the applicant in this regard.

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11. Hence the applicant having been transferred on compassionate grounds and on the basis of the undertaking given by him to forego his seniority at Bombay and having accepted the bottom seniority at Delhi and having accepted the bottom seniority at Delhi Collectorate and having worked for more than 10 years at Delhi, questioning the seniority cannot now seek the benefit of circular of 1958 which in fact has been superseded by the department and issued separate orders in 1980. We are also fortified in our view by the judgement of the Principal Bench of the Tribunal in OA-1718/89 decided on 3.4.91 Shri D.P. Bhatia v. Union of India & Others. The facts in Bhatia's case are identical with the facts of the present case.

12. Further, though the seniority list was issued in 1990 showing the applicant at the bottom of the officers who were working in the Delhi Collectorate, it cannot be said that the publication of the seniority list in 1990 would give a fresh cause of action to the applicant for making any grievance as to his seniority. Even assuming that the 1990 seniority list gives a cause of action the applicant has not chosen to agitate the same in a court of law immediately thereafter. In K.R. Mudgal & Ors. v. R.P. Singh & Ors., 1986 (4) SCC 531 Supreme Court held thus:

"Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the Government servants created by the Writ Petitions filed after several years. It is essential that anyone who feels aggrieved by the seniority assigned to him should approach the court as early as possible as otherwise in addition to the creation of sense of insecurity in the minds of the Government servants there would also be administrative complications and difficulties. A Government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years of his

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appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity. In the present case the appellants had been put to the necessity of defending their appointments as well as their seniority after nearly three decades. This kind of fruitless and harmful litigation should be discouraged. The High Court was wrong in rejecting the preliminary objection raised on behalf of the appellants (who were respondents in the writ petition before the High Court) on the ground of laches."

13. We are also fortified by the view taken by the Principal Bench in OA Nos. 430/95 and 487/95 in its order dated 26.10.99, the judgement delivered only recently taking a similar view on identical facts.

14. In the circumstances the OA stands dismissed on merits as well as on the ground of limitation with costs of Rs.1500/- (Rupees one thousand five hundred only).

Shanta Shastray
(Smt. Shanta Shastray)
Member (A)

V. Rajagopala Reddy
(V. Rajagopala Reddy)
Vice-Chairman (J)

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