(28)

Central Administrative Tribunal
Principal Bench: New Delhi

1. OA No. 632/97
2. OA No. 645/97

New Delhi this the 30th day of August,2000

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman(J)
Hon'ble Mrs. Shanta Shastry, Member (A)

OA No.632/97

Shri A.K. Prasad & Others ...Applicants

(By Sr. Counsel Shri P.P. Khurana with Ms. Mamta Saha)

Vs.

Union of India & Others ...Respondents

(By Advocate Shri R.R. Bharti)

OA No.645/97

Shri L.K. Maheshwari & Others ...Applicants

(By Advocate Shri S.C. Luthra)

Vs.

Union of India & Others ...Respondents

(By Advocate Shri R.R. Bharti)

1. To be referred to the Reporters or not? YES

2. To be circulated to other Benches of the Tribunal? NO

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

(29)

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OA-632/97

1. Shri A.K. Prasad
Preventive Officer
I.C.D. Tughlakabad
New Delhi

2. Shri H.C. Saini
Preventive Officer
Air Cargo Unit
New Delhi

3. Shri S.K. Sharma
(Satish Kumar Sharma)
Preventive Officer
I.G.I. Airport
New Delhi

4. Shri S.S. Upadhyay
Preventive Officer
New Custom House
Indira Gandhi Int. Airport
New Delhi

5. Shri Indra Prakash
Preventive Officer
Air Cargo Unit
I.G.I. Airport
New Delhi

6. Shri Ranjit Singh
Preventive Officer
I.C.D. Patpargnj
Delhi.

7. Shri A.K. Moria
Preventive Officer
Air Cargo Unit
I.G.I. Airport
New Delhi.

8. Shri Pardeep Shukla
Preventive Officer
New Custom House
I.G.I. Airport
New Delhi.

.....Applicants

(By Senior Counsel Sh. P.P. Khurana with Ms. Mamta Saha, Advocate)

- Versus-

1. Union of India
through the Secretary
Department of Revenue
Ministry of Finance
North Block
New Delhi.

2. Central Board of Excise
and Customs
through its' Chairman
North Block
New Delhi.

3. Commissioner
Central Excise
C.R. Building
I.P. Estate
New Delhi-110002.

...Respondents

(By Advocate Shri R.R. Bharti)

OA No. 645/97

1. Shri L.K. Maheshwari
S/o Late R.K. Maheshwari
Working as Preventive Officer,
I.G.I. Airport
R/o A-2/245, Janakpuri,
New Delhi-58

2. Shri Chandra Bhatia
S/o Shri Ramesh Chand Bhatia
working as Preventive Officer,
I.G.I. Airport,
R/o B2B/143, Janakpuri,
New Delhi-58

3. Shri Rajiv Kumar
working as Preventive Officer,
I.G.I. Airport,
R/o 8/557, Gali No. 1,
Dayanand Colony,
Bahadur Garh, Distt. Rohtak-124 507

...Applicants

(By Advocate Shri S.C. Luthra)

-Versus-

1. Union of India through,
Secretary, Ministry of Finance,
North Block, New Delhi-110001.

2. Chairman
Central Board of Excise & Customs,
Ministry of Finance, North Block,
New Delhi-110 001.

3. Commissioner,
Commissionerate of Central Excise,
C.R. Bldg., I.P. Estate, New Delhi-2.

4. Commissioner,
Commissionerate of Customs,
I.G.I. Airport, New Delhi.

...Respondents

(By Advocate Shri R.R. Bharti)

O R D E R

By. Mr. Justice V. Rajagopala Reddy, VC(J)

As these two OAs arise out of similar facts and raise common questions of law, they are disposed of by a common order, as under.

2. The facts in OA-632/97 are stated as illustrative of the facts of both the cases.

3. The applicants have been presently working as Preventive Officers in the Customs and Excise Commissionerate at Delhi. Initially they were appointed in the Customs Department as direct recruits during the period between 1985 to 1991. Some of the applicants were posted at Madras and some at Bombay and Goa. The cadres of Preventive Officer, Examiner and Inspector of Central Excise are three different cadres and in respect of each cadre separate seniority is maintained Commissionerate-wise. Though the recruitment entrance test was the joint one, qualifications and other conditions are the same for all the three posts. As the applicant had their own personal problems, they had been representing to the respondents from time to time for being transferred and posted at Delhi as Preventive Officers. During 1991 the Government having approved the creation of additional posts of various categories in the Department of Customs and Central Excise, so far as Delhi was concerned, seven posts of Preventive Officers were sanctioned in the first phase which was followed by another

order by which 8 more posts of Preventive officers were sanctioned for Customs House at Delhi. Keeping in view the request of the applicants for transfer, eventually the applicants were transferred to Delhi by order dated 2.4.91, 6.8.91 and 17.9.91 whereby 16 Preventive Officers working in the various Customs Houses were transferred on compassionate grounds to Delhi Commissionerate on inter-collectorate transfer basis. As per the terms and conditions of transfer the applicants were to forego the entire service rendered in their parent Collectorate for the purpose of seniority in Delhi Collectorate and they were treated as new entrants to be adjusted against the direct recruit quota. Accordingly, agreeing with all the conditions of transfer the applicants joined the respective offices in Delhi as Preventive Officers in 1991. However, on 26.2.93 a corrigendum was issued stipulating that in partial modification of the above orders of transfer, the transfer orders of the applicants should be treated as on deputation basis instead of inter-Collectorate transfer. The said order was questioned in the OAs by the applicants before the Principal Bench of the Central Administrative Tribunal, which were allowed by a common judgement dated 20.5.96, whereby the impugned orders were quashed. It was, however, clarified that it would be open to the respondents to pass fresh orders in accordance with law after affording an opportunity of being heard to the applicants concerned. The respondents, however, without affording a reasonable opportunity issued the impugned order reiterated their earlier stand that they would have to be treated as on deputation basis duly modifying the earlier orders of transfer.

4. The learned counsel for the applicants Sh. P.P. Khurana and Sh. S.C. Luthra raised the following contentions:

> i) The respondents have not afforded a reasonable opportunity of hearing to the applicants as directed by the Tribunal.
>
> ii) Since the applicants had been transferred on inter-Collectorate transfer basis to Delhi they cannot now be treated as deputationists after six years of service at Delhi and their terms of appointment cannot be altered unilaterally.
>
> iii) The decision to redesignate the posts of RRs as Inspectors is also bad in law. and
>
> iv) The impugned order is hit by the principles of promissory estoppel.

5. It is, however, contended by the learned counsel for the respondents Sh. R.R. Bharti that though they were initially transferred and appointed at Delhi as Preventive Officers, as there was no sanction of the cadre of Preventive Officers to Delhi Commissionerate, it was clarified in December, 1992 itself that the transfer of the applicants should be treated as having been on deputation basis, and their lien was maintained in the posts of Preventive Officer by the parent Commissionerate. It was further clarified subsequently in 1993 that the posts of Preventive Officer to be allotted to Delhi Commissionerate allotted in the third phase as well as the post of Preventive Officers sanctioned during 1991 would stand re-designated as the posts of Inspector of Central Excise and hence the posts should be filled up from the Central Excise staff under the normal recruitment rules. It was also argued that in the absence of the cadre of Superintendent (Customs) and Appraisers in the Commissionerate, it would not be possible to promote the

applicants to these cadres for which they are feeder cadre. The learned counsel, therefore, contended that it was not possible under the rules to continue the applicants as Preventive Officers at Delhi or to absorb them into the cadre of Inspectors of Excise, as it was a different cadre of Excise Department.

6. We have given careful and anxious consideration to contentions as well as the wider issues that arise in these two OAs.

7. The first contention is as regards affording a reasonable opportunity of hearing by the respondents. In the impugned order it was clearly stated that the applicants had been heard. All the pleas raised by them have also been noticed and were duly considered and disposed of. It was not necessary to hear each and every applicant individually, repeating almost the same pleas. What has to be seen is whether the pleas taken by them have been considered or not. It cannot, therefore, be said that the respondents have not complied with the orders of the Tribunal passed in the earlier OAs.

8. The second and third contentions pertain to the validity of the corrigendum dated 26.2.93, treating the transfer orders of the applicants as on deputation basis. It is not in controversy that during 1991 about 16 posts of Preventive Officers have been sanctioned and 25 applicants have been transferred from various Custom Houses, and considering the request of the applicants they have been transferred to the Customs and Central Excise Collectorate at Delhi on inter-Collectorate transfer basis during 1991.

However, since it was clarified in 1992 that as no cadre of Preventive Officers had been sanctioned for Delhi Commissionerate it should be presumed that the posts of Prevenitve Officers sanctioned to Delhi Commissionerate were to be filled up strictly on deputation basis, by a separate proceeding dated 4.11.93, the Ministry observed that the posts of Preventive Officers allotted to Delhi Commissionerate would stand re-designated as the posts of Central Excise Inspectors. Hence the necessity arose for issuing the impugned corrigendum dated 26.2.93.

9. Thus the only short question that arises in this case is whether it is permissible to treat the applicants as on deputation basis. It is the assertion of the respondents that as no cadre of the Preventive Officers has been sanctioned to Delhi Commissionerate it was not possible to keep the applicants at Delhi. Though this assertion has been stoutly refuted by the learned counsel that there must have been a cadre in Delhi Commissionerate without which the question of sanctioning of post and transfer of the applicants to Delhi would not have arisen, but the applicants have not placed any material before us in support of their contention. In fact, in the counter-affidavit deposed by the Deputy Commissioner, the allegations made in this regard in the OA have been denied. It was categorically stated that there was no cadre of Preventive Officers in the Custom and Central Excise Commissionerate at Delhi and that was the reason why all the posts of Preventive Officers which have been sanctioned had to be re-designated as posts for the Inspectors of Central Excise to be filled up as per the recruitment rules. It was also stated that it was not possible to absorb the

applicants in the Delhi Commissionerate on inter-Collectorate basis. It was further clarified that the original order of inter-Collectorate transfer was issued without consulting the Ministry/Central Board of Excise and Customs. There was no rule or regulation or instructions, permitting filling up of 100% of posts in any grade by inter-Collectorate transfer on compassionate grounds. The learned counsel for the respondents Sh. R.R. Bharti also contends that in the absence of the cadre of Preventive Officers it is wholly impermissible and illegal to continue the Preventive Officers in Delhi.

10. In these circumstances, as there was no cadre of P.Os at Delhi, the respondents had taken the decision to redesignate the posts as Inspectors. The initial transfer as P.Os was therefore an administrative error which was clarified soon thereafter in 1992 itself. We, therefore, do not find any warrant to interfere with the impugned corrigendum or impugned orders of the respondents. The plea of estoppel cannot be accepted either. The explanation and corrigendum were issued in 1992 and 1993 respectively, bringing to their notice about the error in their transfer. The applicants are not put to any loss as their lien is maintained, the seniority would be restored and no junior to them has been promoted. Law is well settled that an administrative error can be corrected.

11. The next question that would crop up for consideration is whether the applicants could not be considered for absorption as Inspectors in the Central Excise Collectorate. It is contended that they were being continued in Delhi for one reason or other, extracting work

from them as Inspectors of Central Excise, without being repatriated. Hence, it is contended that the applicants are entitled for being absorbed into the posts of Inspectors in the Excise Department in which they are now working. But it must be noticed that the respondents had considered this aspect and have taken already a firm decision that it was not possible to absorb them into the cadre of Inspectors which is a different cadre in a different department. The learned counsel for the applicant, however, relies upon rule 5 (2) (b) of the Central Exicse and Land Customs Department Group 'C' Posts Recruitment Rules, 1979, which reads as under:

> "(2) Notwithstanding anything contained in sub-rule (1) the Central Board of Excise and Customs may-
>
> (a) if it considers to be necessary or expedient in the public interest so to do and subject to such conditions as it may specify, having regard to the circumstances of the case and for reasons to be recorded in writing, orders any post in one Collectorate of Central Excise and Land Customs to be filled by transfer from persons holding the same or comparable post but belonging to the cadre of another Central Excise Collectorate or of the office of the Central Board of Excise and Customs and"

12. Under the above provision, which is a special provision it may be permissible as an expedient on compassionate grounds that the post in the Collectorate of Central Excise could be filled up by transfer, from a comparable or higher post from any other department subject to certain conditions specified, consistent with the circumstances of the case. Hence, it is argued that the applicants could be considered for appointment on compassionate grounds as Inspectors of Central Excise,

though they belong to the Custom Department. However, it is for the competent authority to consider whether under the present circumstances the applicants could be absorbed on compassionate grounds. But the legal hurdle that would arise in such an eventuality would be with regard to the fixation of the seniority of the applicants in the post of Excise Inspectors. Normally, if an employee is adopted in another department he has to take the place below all the other employees of the Department foregoing his seniority. In the present case the applicant have already foregone their seniority in their parent Collectorate when they were transferred to Delhi hence they may claim that their seniority from the date of their transfer to Delhi should be maintained. It would then be disturbing the seniority of other employees who have already acquired rights of seniority in their department. Hence, we feel that the question of absorption would not be an easy solution for us to give any direction in that regard particularly as the respondents had taken a decision against absorption.

13. It is stated by the learned counsel for the respondnets that the applicants' seniority is maintained in their parent department and no employee junior to the applicants has been promoted from the posts of Preventive Officers.

14. It is lastly contended by the learned counsel for the applicants that as the applicants have been working at Delhi since 1991 it is wholly unjust to ask them to go back to their parent Collectorate after a lapse of 9 years. This contention appears to be wholly misconceived. In fact the department had clarified that in the absence of the

cadre of Preventive Officers the posts of Preventive Officers should be re-designated as Inspectors of Central Excise and the corrigendum was issued in 1993 which has been questioned by the applicants. During the pendency of the OA the applicants obtained stay orders, hence the department could not repatriate them to their parent Collectorate. Subsequently, the respondents were asked to pass fresh orders in the present OAs. Thus by virtue of the orders of the Court the respondents could not repatriate them to their parent Collectorate. Hence, it is evident that as early as in 1992-93 the respondents made their position clear stating that they should be treated as on deputation.

15. In the circumstances, in view of the foregoing discussion, finding no infirmity in the impugned order, the OAs are dismissed. We, however, ~~no~~ order ~~as to~~ costs.

(Smt. Shanta Shastry)
Member (A)

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

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