

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

- 8 -

O.A. No. 1718/89
T.A. No.

199

DATE OF DECISION 3.4.1991

Shri D.P. Bhatia Petitioner

Shri B.S. Gupta, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri P.H. Ramchandani. Senior Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *by*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

AB *3.4.91*
(AMITAV BANERJI)
CHAIRMAN

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

REGN. NO.OA-1718/89 DATE OF DECISION: 3.4.1991

SHRI D.P. BHATIA ...APPLICANT

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

CORAM

THE HON'BLE JUSTICE MR. AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT SHRI B.S. GUPTA, COUNSEL

FOR THE RESPONDENTS SHRI P.H. RAMCHANDANI, SENIOR
COUNSEL.

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE

MR. I.K. RASGOTRA, MEMBER (A))

The issue for adjudication in this OA is whether two Government servants can claim to retain their inter-se seniority in the original seniority unit after transfer to another seniority unit at their own request when one of them is transferred earlier and the other after lapse of more time keeping in view the adverse vacancy position.

Shri D.P. Bhatia, the applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging the rejection of his representation vide order dated 20.6.1986 (Annexure A-19) for assigning him seniority below Mrs. Rita Khanna who was also transferred on compassionate grounds from Bombay to Delhi like him but about two years earlier than him. The applicant appeared in the Competitive

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Examination held by the Staff Selection Commission (SSC) on 25th and 26th September, 1977 for the posts of Inspector of Central Excise in various Collectorates of that department. The applicant was declared successful but he could not be allotted to Delhi Collectorate in accordance with his option. He was advised by the SSC that vacancies were available in Collectorates of Bombay, Patna, Puna, Chandigarh, Nagpur, Shilong and Goa and that in case he wished to be considered for appointment of any of the said Collectorates he should make an application to reach the SSC by 31.8.1978. Consequently the applicant opted for Bombay Collectorate and received his appointment letter dated 23.11.1978 (Annexure A-1) from the Collectorate of Central Excise, Bombay in a temporary post of Inspector of Central Excise in the pay scale of Rs.425-800 (pre-revised). He joined the Bombay Collectorate on 12.12.1978. On 7.5.1979 he made a representation to the Chairman, Central Board of Excise and Customs (CBEC), requesting for transfer from Bombay Collectorate to that at New Delhi, as he was finding it difficult to live in Bombay due to non-availability of suitable accommodation within his means, deterioration of health on account of the climate and other family problems. In response, he was advised by the Bombay Collectorate that the CBEC has since clarified that officers recruited through SSC will become eligible for Inter-Collectorate transfer only after they have completed two years probation. Accordingly, the Bombay Collectorate

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was to forward only those applications of Inspectors for the Inter-Collectorate transfer to the CBEC who have completed two years probation period of service.

The applicant contends that there was no such condition regarding the period of probation in his appointment letter. Moreover, Mrs. Rita Khanna who was similarly situated, notwithstanding the CBEC Policy, was transferred from Bombay to Delhi Collectorate. He, therefore, submitted a representation to the Collectorate of Central Excise, Bombay on 28.1.1980 stating that there was no condition of probation in his appointment letter and that another Inspector Mrs. Rita Khanna of Bombay Collectorate who was similarly situated has already been transferred to Delhi even though she had not completed even one year's service, as she had joined the service later than the applicant. Again, Shri Ajay Kumar Khurana who joined the Bombay Collectorate on 12.12.1978 was also transferred from Bombay Collectorate to Meerut Collectorate in June, 1980 in violation of CBEC's Policy regarding Inter-Collectorate transfer. On 20.5.1989, the CBEC delegated the power to effect Inter-Collectorate transfers to the Collectors subject to the following conditions:-

- "i) the concerned two Collectorates should agree to the transfer.
- ii) the transferees will not be entitled to count the service rendered by him in the former Collectorate for the purpose of seniority in the new charge. In this words, he will be treated as a

new entrants in the Collectorate to which he is transferred and will be placed at the bottom of the concerned cadre in the new charge.

- iii) on transfer he will not be considered for promotion/confirmation in the old office;
- iv). if he is a permanent employee, he will retain his lien in the old charge till he is confirmed in the new charge;
- v) he will not be entitled to any joining time and transfer travelling allowance;
- vi) such transfers can be effected only in the posts filled by direct recruitment;
- vii) ordinarily, no requests for inter-collectorate transfer should be entertained till Collectorate/post/completes the probation period of two years."

After the delegation of power, the applicant along with two others Inspectors viz. Shri T.C. Joshi and Shri Jag Mohan Lal Gaur were transferred vide Establishment Order No.200/1981 dated 13.7.1981. Due to the adverse vacancy position in Bombay, however, the said order was cancelled vide Establishment Order No. 323/1981 dated 4.11.1981. Thereafter in partial modification of the order No.323/1981 dated 4.11.89 another order No.46/1982 was issued on 1.2.1982 advising the applicant that the order of his transfer to the Delhi is "valid for joining latest by 22.2.1982." In pursuance of headquarter's order No.46/1982 dated 1.2.1982, order No.74/1982 was issued by local office on

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30.3.1982, detailing the terms and conditions of transfer of the applicant, which is reproduced below:-

"OFFICE OF THE COLLECTORATE OF CENTRAL EXCISE
BOMBAY-II, PIRMAL CHAMBERS NINTH FLOOR JIJIBHOY
LANE, LALBAUG PAREL BOMBAY-400 012.

ESTABLISHMENT ORDER NO.74/1982.

In pursuance of Headquarters Assistant Collector Central Excise, Deli's Estt. Order No.46/1982 dated 1.2.1982 and telegram issued under F.No.II-3(4)ET-1/81 dated 29.3.1982 Shri D.P. Bhatia, Inspector Central Excise (O.G) working in Division V of this collectorate is hereby transferred to Delhi Collectorate on inter collectorate transfer basis on the following terms and conditions:-

- i) He will not be entitled to count the service rendered by him in Bombay II Collectorate for the purpose of seniority in new charge. In other words he will be treated as new entrant in Delhi Collectorate and will be placed at the bottom of the list of temporary employees in the grade of Inspector (OG) in Delhi Collectorate. He will be adjusted against direct recruitment vacancies.
- ii) On transfer he will not be considered for promotion/confirmation in the Bombay II Collectorate.

iii) He will not be entitled to any joining time and transfer travelling allowance.

The release and joining reports should be sent to this office.

Sd/-K.N.Gupta
30.3.82.
HQRS.Assistant Collector"

2. The applicant joined Delhi Collectorate on 2.4.1982 and a seniority list of Inspectors of Central Excise and Customs working in Collectorate of Delhi as on 1.7.1983 was issued in 1984. The applicant was placed in the seniority list at Srl. No.704 while Mrs. Rita Khanna was at Srl. No.539. It may be noted here that Mrs. Rita Khanna was working in the Collectorate of Central Excise, Bombay-I when she was transferred to Delhi Collectorate where she joined on 11.1.1980; on the other hand, the applicant was transferred from Excise Collectorate, Bombay II to Delhi where he joined on 2.4.1982. The applicant submitted a representation against wrong fixation of his seniority, submitting that while the seniority of the last candidate of 1977 batch has been fixed at Srl. No.524, he has been shown at Srl. No.704 of the seniority list. The claim of the applicant is that since out of the 55 candidates recommended by the Commission for Delhi Collectorate from 1977 batch, only 25 had joined, he should have been adjusted against the unfilled 30 vacancies of that year. The claim is based on the practice followed when the applicant qualified in the Clerks Grade Examination conducted by the SSC

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in 1974 but having secured low position in the merit list could not get appointment in the Ministry of External Affairs (MEA) according to his option. He was, therefore, allocated to Ministry of Energy but later when the full quota of candidates recommended for appointment did not join MEA he was again asked to give option if he would like to join MEA. His seniority on his re-option was fixed at the bottom of the 1974 batch. His request, therefore, is that his seniority should be refixed at Srl. No.625, i.e., immediately below the last candidate of 1977 SSC Examination. His representation, after examination was rejected on 16.2.1985 and the applicant was advised/that his seniority had been correctly fixed (Annexure A-11). He made another representation on 30.9.1985 (Annexure A-13) and on 8.1.1988 wherein he reiterated that his seniority has been wrongly fixed, pointing out that he has been denied seniority not only below the 1977 SSC Examination batch but also below those who joined after his joining the Delhi Collectorate viz. S/Shri Venkataswamy Gumulla, Bharat Bhushan and Ramesh Kumar who joined Delhi Collectorate on 16.4.1982, 28.4.1982 and 14.6.1982 but have been assigned seniority at Srl. No.652, 656 and 690 respectively. This was followed by a representation to Chairman, Central Board of Excise & Customs dated 8.1.1988 on the same ground as in his previous representation. His representation was sent to the CBEC and in the seniority list notified as on 1.3.1988 his seniority was revised and refixed at Srl. No.466(a) instead

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of at Srl. No.500. He made another representation on 27.4.1989 wherein for the first time he raised the issue of discriminatory treatment given to him, as Mrs. Rita Khanna was transferred from Bombay Collectorate on 11.1.1980 without completion of the probation period, his transfer was delayed on the ground of non-completion of probation period. He further requested that his seniority should be refixed immediately below Mrs. Rita Khanna. The applicant cited the judgement of the Tribunal in the case of Shri Satyender Kumar v. UOI & Ors in OA-784/87 dated 30.11.1988. His representation dated 27.4.89 was, however, rejected vide letter dated 20.6.1989 (Annexure A-19).

By way of relief the applicant has prayed that the respondents be directed to fix his seniority below the candidates of 1977 Examination and also below Mrs. Rita Khanna who stands at Srl. No.284 in the seniority list as on 1.3.1988 with all consequential benefits and to pass any other order as deemed fit.

3. The facts of the case as detailed at some length above are undisputed. The respondents however submit that the probation period of two years is prescribed in the conditions of Inter-Collectorate transfers issued on 20.5.1988. Ordinarily requests of Inter-Collectorate transfer are not entertained till completion of probation of two years as is apparent from the CBEC order dated 20.5.1980 (Annexure A-5 to the application). The transfers on compassionate grounds were ordered

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only by the CBEC till 20.5.1980 when the powers in this respect were delegated to the Collectors.

The applicant was initially transferred on 30th July, 1981 with instruction to report in Delhi by 27.5.1981. He could not be relieved by Bombay Collectorate II due to adverse vacancy position.

When the vacancy position improved his transfer was given effect to by reviving the earlier transfer order and his seniority was fixed in accordance with the instructions contained in the CBEC letter dated 20.5.1980 (Annexure A-5).

Mrs. Rita Khanna and Shri A.K. Khurana both Inspectors were transferred from Bombay Collectorate No. I to New Delhi and Meerut respectively.

Mrs. Khanna too was given bottom seniority in line with the instructions of the CBEC dated 20.5.1980 (Annexure A-5). Inter-Collectorate transfers are at the request of the individuals and on compassionate grounds on the conditions prescribed by the CBEC. The applicant can neither claim transfer as a matter of right nor seniority after transfer above those who are already there. Since the applicant was transferred later he has been given due seniority in accordance with the relevant instructions. The respondents also state that the Recruitment Rules, 1979 provide for the probation period of two years for the Inspectors and that it is not the practice to reproduce the policy instructions in the appointment letter. Besides the applicant there are other Inspectors who too could not be released on transfer due to the adverse vacancy position in Bombay Collectorate II and according to the respondents there

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is no question of discrimination. Further the conditions of transfer from Bombay to Delhi have been clearly spelt out in the order of transfer of the applicant dated 30.3.1982 (Annexure A-7). If he had any reservations he should have put-forth his claim before accepting the order of transfer. The question of assigning him seniority below Mrs. Rita Khanna has no rational and is not tenable. The respondents have further brought out that the case of Shri Satyender Kumar (supra) is not applicable in his case, as the issues of seniority in the said case arose on trifurcation of Delhi Collectorate into three Collectorates of Delhi, Jaipur and Chandigarh.

4. In his rejoinder the applicant more or less has reiterated the stand taken in the application.

5. Shri B.S. Gupta, the learned counsel for the applicant submitted that the applicant had joined the service at Bombay on 12.12.1978 while the Recruitment Rules, 1979 were issued later. The conditions prescribed in 1979 Rules are not applicable to the applicant. The learned counsel, therefore, stressed that the applicant has been treated differently from Mrs. Rita Khanna who was transferred on compassionate grounds in contravention of the policy of CBEC while the applicant was denied transfer in similar circumstances. The applicant was particularly aggrieved as Mrs. Rita Khanna was junior to him in the merit list and in her case the condition of probation was not insisted upon. The learned

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counsel drew our attention to the case of Neelima Misra v. Harinder Kaur Paintal & Ors. 1990 (2) SCC 746 and submitted that the applicant has not been given fair treatment as stressed by the Supreme Court in Neelima Misra (supra) case.

The facts and circumstances in Neelima Misra (supra) are not on all fours with the case before us. We also agree with the respondents view that the judgement in the case of Satyender Kumar (supra) is not applicable in the case of the applicant.

6. Shri P.H. Ramchandani, the Senior Standing Counsel for the respondents submitted that there has been no discrimination against the applicant and it is not fair to treat the case of the applicant with that of Mrs. Rita Khanna. Mrs. Rita Khanna was working in Bombay Collectorate-I while the applicant was working in Bombay Collectorate No. II. In both cases the transfers have been made at their own request on compassionate grounds. Mrs. Rita Khanna was transferred earlier as her case was forwarded by Collectorate No.1 to the CBEC for consideration while the applicant for transfer was not recommended by the Collectorate No. II due to adverse vacancy position. Transfers on compassionate grounds cannot claim priority over public interest. The learned Senior Counsel stressed that the conditions of transfer are well laid out and were in the knowledge of the applicant. He further submitted that the case is barred by limitation, as the cause of action arose in 1982 when the transfer was effected

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on the clear conditions that the applicant will be treated in Delhi Collectorate as a new entrant and will be placed at the bottom of the list of temporary employees in the grade of Inspectors in Delhi Collectorate. The application filed on 30.8.1989, therefore, is barred by limitation under Section 20 & 21 of the Administrative Tribunals Act, 1985.

7. Shri B.S. Gupta, the learned counsel for the applicant sought to controvert the argument on limitation by drawing our attention to the case of Mahabir Kishore & Ors. v. State of MP 1989 (2) SCALE 276.

8. Since the thrust of the argument was that Mrs. Rita Khanna was transferred in January, 1981 and the applicant had not been given a fair treatment by considering his transfer at about the same time, we had directed the respondents to produce the relevant records relating to the transfer of Mrs. Rita Khanna. The learned senior counsel for the respondents on 7.3.1991 filed a copy of the letter dated 6.3.1991 from the Department of Revenue, Ministry of Finance stating that the file dealing with the case of Mrs. Rita Khanna, Inspector has since been destroyed and further that "this office has not been able to lay hands on the instructions prior to 20.5.1980 which prescribed that the officers recruited through SSC have to complete two years' probation period of service to be eligible for Inter-Collectorate transfer."

9. We have heard the learned counsel of both the parties and perused the record carefully. We find merit in the argument of the respondents that the cause of action arose on 30.3.1982 when the applicant accepted the bottom seniority for transfer to Delhi from Bombay Collectorate. Even if that is ignored, the cause of action indeed surfaced when the applicant's representation dated 7.12.1984 was rejected by the respondents vide their letter dated 16.2.1985. The applicant, however, continued to pursue the matter through his representations initially on the basis that his seniority should be refixed by adjusting him against the unfilled posts relating to 1977 and at least above those who joined Delhi Collectorate later than him. The matter should have, therefore, ended once this position was rectified by the respondents by revising his seniority as on 1.3.1988 (Annexure A-15) at Srl. No. 466(a). Having apparently gained some ground, he shifted his stance and vide representation dated 27.4.1989 agitated for seniority with reference to Mrs. Rita Khanna as the bench mark. It is not comprehensible as to why he reserved this argument till 1989, as his earlier representation do not touch this point. From the record which was shown to us we find that the terms and conditions of transfer of Mrs. Rita Khanna are no different from the applicant. In that view of the matter, there has been no discrimination against the applicant. We cannot also fault the argument that due to the adverse vacancy position in Bombay Collectorate No. II, his transfer could not be

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given effect to earlier than it was. Admittedly, public interest precedes the interest of the individuals seeking compassionate transfers. Besides, Mrs. Rita Khanna and the applicant were working in two different Collectorates although the Bombay Collectorates apparently constituted a single unit for the purpose of administration. In absence of the relevant records it will be futile to conjecture on the facts and circumstances in regard to the transfer of Mrs. Rita Khanna on compassionate grounds from Bombay Collectorate No. I earlier than the applicant whose case was not dealt with due to adverse vacancy position. All that can be said is that the circumstances in which Mrs. Khanna was transferred on compassionate grounds might have been more compelling than in the case of the applicant. There is, however, no denying of the fact that in both cases, i.e., Mrs. Rita Khanna and the applicant, the seniority has been assigned with reference to the date they joined the Delhi Collectorate at the bottom of the temporary Inspectors as on the relevant date. This is in accordance with the well laid out policy for such transfers and there is no reason for us to interfere in the matter when the transfers have been effected in accordance with the said policy at different points of time. The seniority has to be regulated in such cases from the date of joining the new office. The fact that the applicant is claiming seniority

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below Mrs. Rita Khanna although senior to her in Bombay Collectorates does not give his claim any added value.

Accordingly, the application is dismissed with no order as to costs.

Shrikant

(I.K. RASGOTRA)
MEMBER(A) 27/4/91

Ab

(AMITAV BANERJI)
CHAIRMAN

/SKK/