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DATE OF DECISION 11.9.1987

Shri E.X. Joseph Applicant
Advocate for the Petitioner(s)

Union of India & others	Respondents
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Mrs. Raj Kumari Chopra, Advocate for the Respondent(s)

The Hon'ble Mr. Kaushal Kumar, Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether to be circulated to all the Benches ? *Yes*

(Kaushal Kumar)
Member
11.9.87

CENTRAL

ADMINISTRATIVE
PRINCIPAL BENCH: DELHI

TRIBUNAL

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REGN. NO. O.A. 1117/86

Date of Decision: 11.9.1987

Shri G. Chandrasekharan Pillay Applicant

Vs.

Union of India & others Respondents

CORAM: Hon'ble Mr. Kaushal Kumar, Member

For the Applicant

..... Shri E.X. Joseph, Counsel

For the Respondents


..... Mrs. Raj Kumari Chopra,
Counsel

(Judgement delivered by Hon'ble Mr. Kaushal Kumar,
Member)

JUDGMENT

The applicant, who was posted as a Communication Assistant in the office of the Directorate of Preventive Operations, Customs & Central Excise, New Delhi, has in this application filed under Section 19 of the Administrative Tribunals Act, 1985 challenged the order dated 18th August, 1986 (Annexure 'A' to the application) transferring him from the Directorate of Preventive Operations, New Delhi to West Bengal Preventive Collectorate, Calcutta with immediate effect and relieving him with effect from the same date. The main ground on which this order has been challenged is that it involves transfer of the applicant from one cadre to another cadre, which is not permissible without the consent of the applicant.

2. The applicant joined the Central Board of Excise and Customs in the Central Excise Collectorate, Cochin on 1.2.1975 as a Supervisor. He was transferred to the Directorate of Preventive Operations, New Delhi from 15.7.1975 and promoted as Communication Assistant



on 20th October, 1978. He belongs to Group 'C' of the Telecommunication Staff working in the various Collectorates and the Directorate of Preventive Operations at Headquarters in Delhi.

3. The short point for determination in this case is whether there are separate cadres in the Service to which the applicant belongs and, if so, whether transfer from one cadre to another cadre is permissible either under the rules or administrative instructions or law without the consent of the applicant.

4. The learned counsel for the applicant Shri Joseph relied on the circular No.A.11019/25/86-AD IV, dated 31.3.1986 (Annexure 'C' to the application) in support of his contention that from the said date cadres had been formed for Group 'C' Telecommunication Staff corresponding to the various Collectorates. The said circular is reproduced below:-

" F. No.A. 11019/25/86-AD IV
Government of India
Ministry of Finance
Department of Revenue

.....

New Delhi, the 31st March, 1986

To

All Heads of Department under
Central Board of Excise & Customs

Subject: Administrative/Cadre control over Tele-
communication Group 'C' Staff- orders regarding.

Sir,

The question regarding administrative/cadre control over Group 'C' Telecommunication staff working in various Collectorates of Customs and Central Excise has been under consideration of the Government for quite some time. I am directed to say that in supersession of all the previous orders, Government have now decided that the Group 'C' Telecommunication staff would be borne on respective Collectorates

(Signature)

cadres both for administrative and cadre control purposes. Further, they would be considered for promotion and confirmation within Group 'C' in their respective Collectorates.

Yours faithfully,

Sd/-

(O. P. GULLA)

Dy. Secretary to the Govt. of India "

The learned counsel for the applicant also referred to the Notification dated 9th July, 1986 regarding designation of Appointing Authority and Disciplinary Authority etc. for imposition of penalties. In the said Notification, whereas against " All telecommunication group 'C' posts borne on the strength of the Collectorates of Central Excise or Customs Houses", the concerned Appointing Authority and Disciplinary Authority have been shown as "Deputy Collector(incharge of Personnel & Establishment) and the Appellate Authority has been shown as "Collector", against the entry " All ministerial and non-ministerial(including telecommunication) posts borne on strength of Directorate of Preventive Operations", the Appointing and Disciplinary Authority has been shown as "Deputy Director(Communications) in the Directorate of Preventive Operations and the Appellate Authority has been shown as Director(Preventive Operations). The argument of the learned counsel is that consequent upon formation of separate cadres for the Group 'C' Telecommunication Staff, as corresponding to various Collectorates, it became necessary to designate the Appointing and Disciplinary Authorities with reference to the authorities not only of each Collectorate, but separately for the staff borne on the Headquarters strength of the Directorate of Preventive Operations, meaning thereby that the staff borne on the Headquarters strength of the Directorate of Preventive Operations formed

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a separate cadre as distinct from the cadres corresponding to the various Collectorates. He pointed out that prior to this amendment, the Notification dated 8th January, 1982 (Annexure A-O to the rejoinder) prescribed for all ministerial and non-ministerial Group 'C' posts borne on the strength of Central Excise Collectorates, "Assistant Director of Preventive Operations (HQ)" as the Appointing and Disciplinary Authority and "Director Preventive Operations" as the Appellate Authority, meaning thereby that there was one all-India cadre for all group 'C' incumbents. The necessity for the amendment issued on 9.7.1986 arose because of the formation of separate cadres vide Circular dated 31st March, 1986, referred to above.

5. The documents relied upon by the learned counsel for the applicant, referred to above, provide irrefutable and incontrovertible evidence in support of the contention that separate cadres were formed for Group 'C' incumbents belonging to the Telecommunication staff and that these cadres correspond to the various Collectorates and the Directorate of Preventive Operations at Headquarters.

6. The learned counsel for the respondents Mrs. Raj Kumari Chopra stated that this was only an administrative decision communicated on 31.3.1986 that separate cadres were going to be formed and that this was in the process of being implemented. This plea cannot be sustained in view of the clear language in which the circular dated 31.3.1986 is couched. It clearly states that "in supersession of all the previous orders, Government have now decided that the Group 'C' Telecommunication staff would be borne on respective Collectorates cadres both for administrative and cadre control purposes". This leaves no doubt whatsoever

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that separate cadres had come into being with effect from the date of issue of the circular viz., 31.3.86. There is no ambiguity or equivocation in the language of the circular. Further the amended Notification issued on 9th July, 1986 regarding designation of Appointing and Disciplinary Authorities Collectorate wise and separately for the Headquarters Staff substituting the earlier provision confirms beyond doubt that separate cadres had in fact come into being.

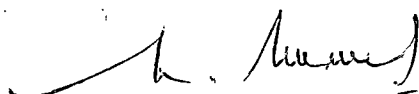
7. The next question which is to be considered is whether persons can be transferred from one cadre to another without the consent of the person concerned. In this connection, the learned counsel for the applicant referred to certain rulings in support of his contention that they cannot be transferred without consent.

8. In Ganga Prasad Sharma v. Delhi High Court and others (1977(1) SLR page 176), it was held that:

"... Subject to any provision to the contrary, a public servant is liable to be transferred within the cadre and the establishment. Unless there is a special provision in that behalf to the contrary a civil servant is not liable to be transferred outside the Cadre or the establishment except on deputation. He may, however, be transferred outside the cadre or establishment, otherwise than on deputation only by his consent. Such a transfer without his consent would ordinarily amount to unilateral change in the conditions of service and would be brought about only by statutory sanction."

(Para 7)

9. Again in Bhagwati Prasad Gordhandas Bhatt v. The State of Gujarat and others (1979 (3) SLR



page 805), the Gujarat High Court held:-

" When a person is in the department or is in a cadre, the proper authority can post him wherever it is open to the authority to post that person belonging that cadre and take the very duty which is the duty assigned to him. But if an employee is to be taken out of cadre and sent to altogether another field of service, it can never be done without his consent....."

(Para 16)

10. Again in Prakash R. Borker v. Union of India and others (1984(1) SLJ page 61), the Bombay High Court held that Fundamental Rule 15 does not permit transfer of a Government servant from one cadre to another without his consent.

11. The case law is clear that a person cannot be transferred from one cadre to another without his consent. The learned counsel for the respondents Mrs. Raj Kumari Chopra contended that even assuming that separate cadres had been formed, there was still one all-India seniority list for all incumbents holding Group 'C' posts and that transfers from one Collectorate to another or from the Headquarters staff to a Collectorate were absolutely necessary in the exigencies of service and public interest. She also referred to the recruitment rules for Group 'C' Telecommunication staff framed under the proviso to Article 309 of the Constitution and contended that since there were uniform rules for all posts and one common all-India seniority list, transfers could be made without the consent of the concerned incumbent. This plea cannot be sustained under law supported by various rulings referred to above.

12. In view of the above discussion, the transfer order in respect of the applicant is liable to be set aside and it is not considered necessary to deal with the other

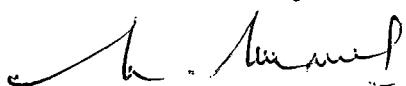
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contentions of the learned counsel for the applicant in this regard.

13. The next question which arises for consideration is as to how the period since the relieving of the applicant till the date of setting aside the impugned order and rejoining duty by the applicant is to be treated. The learned counsel for the applicant strongly contended that this should be treated as one on duty. He also referred to the various rulings in which it has been held that a Government servant is entitled to arrears of salary of a higher post from the deemed date of his promotion even though he had not actually worked in the said post or where a Government servant is dismissed or removed from service or his services are terminated and such termination or removal/dismissal is set aside, he is entitled to wages for the intervening period between the date of termination or removal from service and the date of reinstatement. The learned counsel could not refer to any ruling where it might have been held that where a transfer order is set aside and the Government servant concerned has, in the meantime, not joined at his new place of posting, the intervening period is to be treated as one on duty and full salary paid to him.

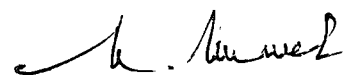
14. The learned counsel for the applicant also contended that since the order of transfer was not in accordance with law, it had to be treated as non est and the applicant having not complied with it, cannot be deprived of his salary for the intervening period.

15. In this case, the transfer order cannot be held to be ab-initio void or non est. Admittedly, it had been issued by the competent authority under an erroneous



conception or understanding of law on the subject. It was open to the applicant to have joined at his now place of duty and still challenged the transfer order. No interim stay in regard to operation of the transfer order was granted even though such interim relief was prayed for. It is not open to the applicant to claim that even though he was relieved and did not join at his new place of posting and has not discharged any functions or duties, he should still be paid salary for the intervening period. The ends of justice will be met if the period of absence from duty from the date he was relieved and the date of his rejoining is regularised by grant of leave of the kind due to the applicant.

16. In the result, the application is partly allowed and the transfer order dated 18.8.86 is hereby quashed. The applicant shall be allowed to resume his duties at the Headquarters Office immediately on receipt of this order by the respondents. A direction is further issued that the period between the date when the applicant was relieved and the date when he rejoins duty in pursuance of this order shall be regularised by grant of leave of the kind due to the applicant. There shall be no order as to costs.



(Kaushal Kumar)
Member
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