

(14)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.3318/92

NEW DELHI, this 9th day of November, 1993

1. Shri Mohinder Singh
s/o Shri Bhopal Singh
Office of Assistant Collector
Central Excise Division
Muzaffarnagar
2. Shri L.S. Rana
s/o Shri D.S. Rana
Office of Additional Collector
Central Excise, Ghaziabad
3. Shri Bijender Singh
s/o Shri Sunder Singh
Office of Assistant Collector
Central Excise & Customs
Division IV, Ghaziabad
4. Shri Deo Narain
s/o Shri Vishwa Nath
Office of Assistant Collector
Division IV, Central Excise
Ghaziabad
5. Shri Nandan Singh
s/o late Shri Purmal Singh
Office of Additional Collector
Central Excise, Ghaziabad
6. Shri Ram Kishan
s/o Shri Sant Ram
Office of Additional Collector
Central Excise, Ghaziabad

.. APPLICANTS

By Shri B.S. Mainee, Advocate

VERSUS

Union of India, through

1. The Secretary
Deptt. of Revenue, Min. of Finance
North Block, New Delhi
 2. The Collector,
Central Excise, Meerut
 3. The Director
Pharmacopial Laboratory
for Indian Medicines
Kamla Nehru Nagar
Ghaziabad
 4. The Assistant Estate Manager
Ministry of Urban Development
Estate Cell, CGO Building
Kamla Nehru Nagar
Ghaziabad
- 1

5. The Director
Central Indian Pharmacopoeial
Laboratory for Indian Medicines
Raj Nagar, Ghaziabad

6. The Director
Homeopathic Pharmacopoeial Laboratory
for Indian Medicines, CGO Building
Kamla Nehru Nagar, Ghaziabad

.. RESPONDENTS

By Shri M.L. Verma, Govt. Counsel

ORDER

(By Hon'ble Shri P.T. Thiruvengadam, Member(A))

This OA was filed by seven applicants of whom one of the applicants Shri Anil Babu has requested that his name may be deleted from the list of applicants. Accordingly only six applicants are now figuring in the memo of parties. Of the six, 4 of the applicants were working in Pharmacopoeial Laboratory for Indian Medicine (PLIM in short), Ghaziabad, one was working in Central Indian Pharmacopoeial Laboratory, Ghaziabad and one was working in Ministry of Urban Development Estate Office, Ghaziabad. All the applicants applied for inter-departmental transfer from their parent department to the Central Excise & Customs, Meerut and their applications were forwarded by their parent department for suitable consideration. Respondent No.2, namely the Collector of Central Excise, Meerut, after having scrutinised the applications of the applicants and having found them suitable, passed an order for inter-departmental transfer of the applicants in his office with the consent of the departments in which the applicants were working. One such transfer order issued by the Additional Collector (P&V)

2

16

Central Excise, Meerut dated 27.8.92 is reproduced as under:

"In pursuance of the instructions contained in the Board's letter F.No.A/22015/34/80-Admn.III B dated 20.5.80, the Director, Pharmacopoeial Laboratory for Indian Medicine, Ministry of Health and Family Welfare, Kamla Nehru Nagar, Ghaziabad and Collector Central Excise Meerut have agreed to transfer Shri Nandan Singh, LDC of PLIM, Ghaziabad to Central Excise Collectorate, Meerut on the following terms and conditions:

- 1) That the seniority of Shri Nandan Singh, LDC will be fixed below the last temporary LDC of the common seniority of Kanpur/Meerut/Allahabad Collectorate i.e.he will be treated as a fresh entrant in the cadre of LDC new charge.
- 2) That no transfer travelling allowance and joining time will be admissible to him as a result of this transfer.
- 3) That Shri Nandan Singh will not be considered for further confirmation and promotion in PLIM, Kamala Nehru Nagar, Ghaziabad. In case he is confirmed in any grade in PLIM, Ghaziabad his lien on the post will be treated in present office till he is confirmed in any grade in new charge. On having accepted the above terms and conditions Shri Nandan Singh LDC may report for duty to Additional Collector Central Excise Ghaziabad on/before 25.9.92"

2. The applicants were subsequently relieved from their parent department and in the relieving order it was mentioned that the lien of the concerned applicant would be kept in the relevant substantive post for a period of two years. However in one of the relieving order, namely with regard to Shri Deo Narain, the original employing department- CIPL, Ghaziabad, it was mentioned that "Sh. Deo Narain is also authorised to retain the lien on the post of LDC in CIPL, Ghaziabad for a period of two years at the end of which he will have either to resign from CIPL or revert back. While on transfer he will not be considered for promotion in CIPL and if he reverts to his present post he will have no claim for his seniority and promotion etc. He will not be entitled to any TTA and joining time etc."

17

3. The applicants joined the Collectorate of Central Excise & Customs on various dates ranging from May, 1992 to October, 1992. In December, 1992, another order was served to the effect that the inter-departmental transfer already ordered in the case of the applicants were not in conformity with the instructions contained in Board's letter No.A.22015/38/84/AD-III A dated 24.2.84, and accordingly all the applicants were reverted back to their respective parent department with immediate effect. This Establishment Order No.208/92 has been challenged in this OA, wherein it has been prayed that this order may be quashed.

4. This Tribunal has already passed an interim order on 23.12.92 staying the operation of the above impugned order.

5. During the arguments, the learned counsel for the applicants mainly raised the following points:

a) No opportunity was given to the applicants before the impugned order, adversely affecting their service conditions, was issued. A number of citations were referred to in support of this, viz.

- i) 1989(1) SC 764
- ii) AIR 1989(2) 723
- iii) ATR 1988 (1) 26
- iv) ATR 1990(1) 255

All the above citations are to the effect that any ~~multifarious~~ order which ^{visits} beset the employee in ^{an} adverse way with regard to service conditions can be issued only after suitable opportunity is given to the employee for explaining his case. ✓

b) A reference was made to Hon'ble Supreme Court observation in SLJ 1990(2) 705 ^{as per which} where the provision of promisory estoppel will apply in this case. The case of the applicants is that having been given assurance of inter-departmental transfer and having accepted the various terms and conditions by which they were taken on the next department as fresh entrants and on bottom seniority, the new department is estopped from retransferring them. ✓

c) The Department of Central Excise had issued an order dated 23.9.92 accepting the applicants on transfer from their earlier parent department under certain terms and conditions. This order was issued in consultation and with the concurrence of the respective parent department. However, the Establishment Order No.208/92 dated 4.12.92 by which the applicants were reverted back to their parent department was issued unilaterally without consulting the respective parent department.

Also, With such reversion to the parent department, the applicants would be put to disadvantage, as to whether the parent department would accept them at all is a moot point; at least with regard to one applicant where ~~the condition~~ ^{was} one of the conditions at the time of relieving was that in case the applicant gets reverted, he would not claim seniority, promotion, etc, *the damage would be severe*

d) The impugned order dated 4.12.92 has been issued since it has been alleged that inter-departmental transfer was not in conformity with the instructions contained in Central Excise Board's letter dated 24.2.84. A copy of this letter has not been served to the applicants, nor even produced to the Tribunal, even though the Tribunal had directed to produce a copy of this letter vide order dated 13.8.93.

6. The learned counsel for the respondents Shri M.L. Verma argued that inter-departmental transfer had been made inadvertently; these transfers were not as per the recruitment rules for the relevant posts in the Central Excise Department, as such the transfer from other Ministry is not permissible. When the mistake committed came to the notice of the department, action was taken for not only the applicants but some more candidates for reverting them back to their original parent department. The Department of Central Excise had also requested the concerned earlier parent departments to allow the candidates to rejoin.

7. It is also the case of the respondents that the applicants had been transferred on certain terms and conditions but they did not submit any declaration abiding by the prescribed conditions.

8. With regard to the acceptance of the terms and conditions, the learned counsel for the applicant drew our attention to the order issued by the Additional Collector (P&V), Central Excise, Meerut dated 23.9.92 (copy reproduced in the earlier paragraph) wherein it has been stated that "on having accepted the above terms and conditions _____ may report for duty to the office of Additional Collector, Central Excise, on or before _____.

9. It is the case of the applicants that no further undertaking was called for from them and hence the question of submitting further undertaking did not arise.

10. Having heard both the counsel, we are of the opinion that the original order issued by the Additional Collector, Central Excise dated 23.9.92 by which the applicants have been accepted on inter-departmental transfer, was issued with the concurrence of the respective parent department. However, the impugned order dated 4.12.92 by which the applicants were referred back to their respect parent department, does not seem to have been issued with the concurrence of the department to which the applicants have been asked to report back. In the reply filed, it has been mentioned that the concerned department had been requested to take back the respective applicant. It does not bring out where ^{the} the erstwhile parent departments were willing to take back the applicants and if so under what terms and conditions, when ^{at} least in one case wherein the erstwhile parent department had clearly forewarned the applicant that in case of his reversion, he will not claim for seniority, promotion, etc, the departments' specific terms for reversion should have been given in it.

20

10. We, therefore, ^{have} no doubt ~~feel~~ that the impugned order dated 4.12.92 is adversely affecting the service condition of the applicants. We also note that the impugned order is a non-speaking order and despite our efforts to go into the conditions mentioned in letter dated 24.2.84, we have not been supplied with a copy of this letter. Again the applicants have been denied the opportunity to present their case before their reversion back to their parent department, which opportunity should have been extended to them in all fairness, in view of their having accepted various terms and conditions imposed on them prior to the inter-departmental transfer and keeping in view the various citations already referred.

11. For the reasons stated above, we hold that the impugned order, namely Establishment Order No, 208/92 dated 4.12.92 issued by the Additional Collector (P&V), Central Excise, Meerut is bad in law and accordingly we set ^{his} aside ~~this~~ and quash the same.

12. With this, the OA is disposed off accordingly with no order as to costs.

P. J. Rao
(P.T. THIRUVENGADAM)
Member (A)
9.11.93

C. J. Roy
(C.J. ROY)
Member (J)
9.11.93