

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 1011 of 1992

(Connected with O.A. No. 1012 of 1992)

V.K. Pandey & R.A. Upadhyaya Applicants

Versus

Union of India and Others Respondents

CORAM:

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. K. Chayya, Member (A)

These two cases directed against transfer orders transferring the applicants and shifting them from Anti Smuggling Operation of Indo Nepal Border Controlled by Preventive Collectorate Viz. Collectorate of Customs Indo Nepal Border (Preventive) Patna was listed before single Member Bench Viz Bench No.2 from where it has been transferred to Division Bench on requisition and heard. This is the second inning by the applicants who have come again before the same transfer order second time after dismissal of first one by a Division Bench of which one of us was a member directing for disposal of their representations which has been disposed of

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by a detailed and speaking orders. Learned counsel for the Central Government mentioned for these cases today in which the interim order staying the transfer is upto today that same may be heard only by a Division Bench as earlier it was heard by a Division Bench and important questions are involved in it including applicability of Article 14 and 16 of the Constitution of India in the matter of transfer including the rights on the basis of guidelines, its enforceability and binding effect, procedure of general guidelines framed by subordinate authority over specific direction or guidelines by Ministry in the matter of transfer of officials of Preventive Collectorate. Learned counsel for applicant opposed the prayer and contended that transfer matter are single Member matter and the case is listed before Single Member who initially granted interim order in this fresh OA filed after rejection of representations and who also extended it though in between it was extended by Division Bench which also directed its listing before Single Member Bench. In view of the request made, questions involved and that it was earlier decided by Division Bench and Chairman's C.A.T, latest order regarding distribution of work and hearing by Division Bench Member case in certain circumstances which are existing in this case the file was requisitioned and the case was heard and by Division Bench.

2. The Collectorate of Customs Indo Nepal Border (Preventive) Patna has 30 customs formations in the State of Uttar Pradesh spread in 3 division viz. Lucknow, Gorakhpur and Varanasi and Anti Smuggling Work is under supervision of Addl. Collector Customs at Lucknow. The work of Indo Nepal Border is highly sensitive and a D.O. was issued by the Government on 13.7.77 conveying the decision that Collector of Customs (Preventive) Patna would have greater say in the administrative matter relating to staff posted in his jurisdiction. Vide Circular dated 20.12.1983 which is still in force the Ministry has laid down instructions for the staffing and posting of Excise Staff placed at the disposal of Preventive Collector Patna. It provides that services placed at the disposal of the said Collector shall ordinarily be of 5 years but a person can be reverted to his cadre Collectorate even before expiry of the period of 5 years and that no officer in the field/ and customs station, in this charge will ordinarily be kept at the said post station for more than 2 years. The guidelines regarding transfer dated 27.3.92 relied on by the applicants were issued by Principal Collector, a subordinate authority to the authority issuing circular in 1983 referred to above is regarding posting in Central Excise formation as is evident from its wording

which does not make any mention of customs. In the middle, reference to the Custom Preventive Collectorate has been made in paras 18 and 19 and on the basis of the guidelines which, according to the applicant, applies not only to the Central Excise but also to the Customs and in the guidelines, which are primarily made for Central Excise, the normal tenure has been laid down four years and reliance has been placed by the applicant on the guidelines and according to the applicant he has given instances of 5 persons, who according to the applicant have stayed in Gorakhpur division for 4, 3 and 5 years and have not been transferred.

3. The applicant Shri V.K. Pandey who was posted at Allahabad made representation for his transfer from out of Gorakhpur and this is how he was transferred in the year 1992 and since then stayed at Gorakhpur. He joined in August, 1992, though the transfer order was passed earlier. Many Officers were transferred from ~~Custom~~ Custom Division to another and the persons who have been transferred in place of Shri V.K. Pandey, have taken over. Shri V.K. Pandey has been transferred to Sonauli and even before that Shri V.K. Pandey even worked in Gorakhpur Customs Division and except between 1987-90 he was transferred to Allahabad on his own request. Most of the time his posting was in

Gorakhpur Division, although he has 17 years of service left for attaining the age of superannuation. He was in Central Excise Division, Gorakhpur from 29.7.80 to July, 1984 and after his reversion again he was I.I.O Gorakhpur from 30.5.86 to 21.5.87. Similarly other officers, Shri R.A. Upadhyaya except for a year stayed at Allahabad and two years in Nepalganj and he had been working in and around Gorakhpur from 1971. Thus, these two officers are interested in staying at Gorakhpur or near about in the border area and do not like their transfer elsewhere even though the department may require their service and experience elsewhere.

4. The learned counsel for the applicant contended that the transfer has been made with malafide intention and with oblique motive. No material has been placed indicating any malafide behind the transfer or any oblique motive. The transfer order has not been passed only in respect of these two officers but of several officers also. The learned counsel for the applicant contended that the transfer order is violative of Articles 14 and 16 of the Constitution of India, in as much as the officers of five, four and three years stay have been allowed to stay without mentioning that these officers also stayed in the division since long though with a break and they have given the instances of five persons.

5. The respondents have resisted the claim of the applicants stating that Shri S.K. Tewari was posted from

1.8.1988 to 30.8.1988 at Babatpur Airport Varanasi and thereafter to Gorakhpur and thereafter he was transferred to Land Customs Station. Shri Deepak Shukla was posted at Customs Division Gorakhpur from 25.1.88 to 28 29.8.88 and thereafter from 29.8.88 to 9.8.90 he was transferred to Customs division, Gorakhpur and now he has been transferred to Balrampur Gonda. Shri S.K. Srivastava was posted at Nichlaul, District Maharajganj and remained there upto 17.7.1991 and thus these persons, according to the respondents, have not been posted for the period and in the manner stated by the applicant and we do not find any discrimination in the matter of transfer. The main thrust of the learned counsel for the applicant was that the guidelines of the department are being violated, without any reason and the department is bound by the guidelines. It is true but the guidelines are to be followed as far as possible but nobody can claim as a matter of right to stay at a particular station on the basis of the guidelines. Transfer is normally made in the exigency of situation and the department can utilise the experience and services of a person who has been posted at the Border area for a number of years. Thus, the transfer cannot be said to be involving any malafide and we have taken similar view in O.A. No. 870¹⁹ decided at Allahabad on 3.9.92, wherein we have also observed that the responsibility

of good administration and placement of employees on objective considerations rests with the authorities and that employee has no vested right to claim either a particular post or a particular place.

6. The learned counsel made reference to the case of Raghavendra Mathur Vs. Allahabad Bank (1989 U.P. Local Bodies and Educational Cases, 330) decided in the High Court of which one of us (Hon. Justice W.C. Srivastava) was a member, which was a case of Bank employees and which order is under challenge before the Hon'ble Supreme Court. The said case is distinguishable from the present case as in the said case the provisions of Industrial Disputes Act and Settlement which was arrived at between the Management and Allahabad Bank Employees Coordination Committee and the mutual agreement between the parties in which certain decisions arrived at which gets the legal force, was broken and the transfer order was passed in violation of the same. In the instant case, the authority concerned has passed the detailed order rejecting the representation and we do not find any good ground to interfere.

7. On behalf of the respondents, it was contended that the interference in the transfer orders are formal and these guidelines have been issued by the authorities and cannot be super imposed. The circular is of the

year 1983 and even if there is some inconsistency in the executive order, it is the specific direction which will prevail over the general directions. As a matter of fact, general directions were for the excise department but it cannot mean that it can go over and above the directions of the Ministry. Ministry is the best judge as to whether services of a particular employee are required at a particular station.

8. Learned counsel for the respondents made reference to the case of E.P. Royappa Vs. State of Tamilnadu (A.I.R 1974 S.C, 555) wherein it was observed that the government is the best judge to utilise the services of an employee. A reference was made to the case of Dr. N.C. Singhal Vs. Union of India & Others (A.I.R 1980, S.C page 1255) in which court declined to interfere in the transfer order as the same was passed in the administrative exigency. In the case of Shanti Kumar Vs. Regional Dy. Director Health Services (A.I.R 1981 S.C 1577) a reference to which was also made in other case, it was held that the transfer order was passed in the administrative exigencies and no interference is to be made. In the case of Dr. B. Vardhana Rao Vs. State of Karnataka (1986 S.C. 1955) it was held that these executive instructions are directory and not mandatory and the transfer order passed for collateral purposes and with oblique

motive and not in public interest only then it can be challenged and not otherwise. It is not the position in this case. Reference has also been made to the full Bench Decision of this Tribunal in Kamlesh Trivedi Vs. I.C.A.R(1988) 7 ATC page 253) in which great reliance has been placed on Vardhana Rao (Supra). In Gujrat Electricity Board and another Vs. Atma Ram(AIR 1989 Supreme Court, 1433) it was held that transfer is an incident of service. Transfer cannot assailed merely on the ground of having made a representation and pendency of the same. In the case of Union of India Vs. H.N. Kirtaniya it was held that it is not open to the Court and there is no justification in entertaining the order of transfers and issuing of interim injunctions unless there is malafide.

9. The learned counsel for the applicant contended that the guidelines act as promissory estoppel. This plea has got to be rejected. The guidelines are only the guidelines given to the officers for transferring the employees which are in the nature of guidelines only. Merely because the guidelines have been made, the applicants have not stated how they have changed the position because of the guidelines itself. The question of promissory estoppel does not arise in the function of State and accordingly the plea of promissory estoppel is rejected.

10. In our opinion absolutely, no ground whatsoever, has been made out by the applicants for staying the transfer and the transfer order cannot be stated to be malafide or with oblique motive or violative of Articles 14 and 16 of the Constitution of India or against the guidelines which cannot be read with in isolation or cannot be read with circular of 1983. The department must have considered the personal difficulties of the applicants. It is for the applicants to go to the department for personal difficulties. As there is no ground for interference in the order of transfer, these applications are liable to be dismissed and accordingly, these applications are dismissed. No order as to costs.


Member (A)


Vice Chairman

Dated: 28 November, 1992:

~~Dated: 16th October, 1992:~~

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