

Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...  
Registration O.A. No. 1797 of 1993

H.K. Khandelwal ... ... ... Applicant.

Versus

Union of India  
and others ... ... ... Respondents.

...

( By Hon. Mr. S. Das Gupta, Member(A) )

In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 the relief prayed for is that the order dated 25.11.1993 passed by the respondent No. 2 (Annexure-A13) transferring the applicant from Customs Gorakhpur to I.D.O. Rai-Bareilly be quashed. Since the pleadings were complete in this case and counter and rejoinder affidavits exchanged, it was decided with the consent of the parties, to finally hear the application and disposed of the same.

2. The factual matrix in this case is that the petitioner was an Inspector in the Central Excise Division. He was promoted to this post by the order dated 30.8.1988 (Annexure-A 1) and joined at Padrauna range Deoria on 10.4.1988. Later, he was transferred from Deoria and joined in the Central Excise Division Gorakhpur on 1.7.1988. Subsequently, the applicant was transferred to Customs (P) Circle Gorakhpur on 1.7.1991 and has since then been working as Inspector in Customs (P) Circle, Gorakhpur until he was transferred by the impugned order dated

Contd ... 2p/-

25.11.1993 which is under challenge in this application. This transfer order came in the wake of certain complaints lodged against the applicant among others into which certain preliminary investigations were carried out.

3. The applicant has assailed the impugned order on several grounds. Briefly stated these are the following;

- (i) that the Additional Collector, who had issued the order of transfer, has no jurisdiction to do so since the petitioner was appointed to the post of Inspector by the Deputy Collector;
- (ii) that the transfer is motivated and malafide;
- (iii) that the transfer is violative of the departmental guidelines in this regard;
- (iv) That the petitioner has been transferred on the basis of a complaint and as such, the transfer order is penal in nature;
- (v) that no enquiry was held against the petitioner before transferring him;
- (vi) that the impugned order is violative of Articles 14 & 16 of the Constitution;

4. In their counter affidavit, the respondents have submitted that the entire anti-smuggling Operation across the Indo-Nepal Border, is being

WL

Contd ... 3p/-

looked after by a separate Preventive Collectorate, namely, Collectorate of Customs (Indo-Nepal Boarder) Preventive, Patna, For the State of U.P., which also has a <sup>border</sup> ~~border~~ of Nepal, there are more than 30 customs formations. All these customs formations lie within 3 groups located at Gorakhpur, Lucknow and Varanasi each headed by an Assistant Collector. ~~Since~~ The Collectorate of Customs (Preventive), Indo-Nepal Boarder does not ~~have~~ <sup>for</sup> a separate cadre of its own but draws its staff for Anti-Smuggling work in Uttar Pradesh from Central Excise Collectorate, Allahabad. This is how, the applicant who was staff of the Central Excise Collectorate, Allahabad was drawn by the Collectorate of Customs (Preventive) Indo-Nepal Boarder for Anti-Smuggling work at Gorakhpur.

5. The respondents have further submitted that on 7.10.1993, one R.S. Pandey and one Radha Raman Tripathi, appeared before the Assistant Collector, Customs Gorakhpur along with one Jhanwar Singh, a Nepali National and <sup>lodged</sup> a complaint about snatching of Rs. 80,000/- from Jhanwar Singh on 6.10.1993 by a checking party ~~ao~~ of the Customs Department. On preliminary enquiry, it <sup>can</sup> be established that the checking party in question comprised the applicant among others. However, subsequently, the complainants <sup>complaints</sup> did not turn up and they all submitted written statements to the effect that they have not made any

W.E.

- 4 -

complaint. The statement of Jhanwar Singh was infact a sworn affidavit. The respondents submit that the ~~ante~~-smuggling work on the Indo-Nepal Boarder being of a very sensitive nature, the Government has provided for a quick turn-over of the staff engaged in this operation and that personnel of high integrity can only be engaged on such operation. The applicant had to be transferred out since there was a prima-facie case of his involvement in the alleged snatching of Rs. 80,000/- from a Nepali National while carrying out checking and thus his integrity came under a cloud. The transfer was also necessary to facilitate the proper and detailed enquiry into the allegations.

6. I have heard the counsel for both the parties and carefully perused the record.

7. In the light of the averments made in the petition~~s~~ and the counter and rejoinder affidavits, I shall now proceed to <sup>deal</sup> with the various grounds on which the applicant has sought to assail the impugned order of transfer.

8. The first ground listed in para 3 of the judgment is regarding lack of jurisdiction on the part of the officer who has issued the transfer order. It has been clarified by the respondents that the Additional Collector ( P & V) Central

W

Contd ... 5p/-

- 5 -

Excise, Allahabad is duly empowered to transfer the petitioner. Moreover, during the course of argument, the learned counsel for the respondents also mentioned that on account of cadre re-structuring, the post which was earlier held by the Deputy Collector has since been upgraded to that of Additional Collector. The contention of the applicant that the Additional Collector has no jurisdiction for issuing the transfer order does not appear to have much force.

9. As regards the plea of the applicant that the order was malafide, the only ground he has imputed in the application is that he had submitted a representation against some of his colleagues in the department and had also filed a F.I.R. against them. Thus fact does not constitute a firm foundation for any presumption of malafide, particularly, in view of the fact that such complaints are not stated to have been made against the authorities who have issued the order of transfer. This plea also does not have much force.

10. As regards the alleged violation of guide-lines in issuing the order of transfer, there are rival contentions of the applicant and the respondents as to what correct guide-lines are in this regard. The applicant has relied on the guide-lines issued by the Principal Collectorate, Kanpur on 27.3.1992, extract from which has been placed at Annexure-A 12. In terms of Clause- 19 of these guide-lines, normal tenure in customs

W.L.

- 6 -

(Preventive) Collectorate would be 4 years. On completion of the tenure, the officer would be reverted to Central Excise Formations and be eligible for reconsideration for Customs (Preventive) Collectorate after cooling-off period. The applicant contends that these guide-lines are being violated by posting him out of the Customs (Preventive) Collectorate before completion of tenure of 4 years. The respondents on the other hand, have averred that the clear cut instructions for the staffing and posting of Excise Staff placed at the disposal of the Patna (Preventive) Collectorate have been laid down in a letter dated 20.12.1983 by the Ministry of Finance, Government of India. Though a copy of the said letter has not been annexed to the counter affidavit, A copy of the same was made available by Sri C.S. Singh, learned counsel for the respondents during the course of arguments. This letter stipulates that the services of officers shall be placed at the disposal of the Collectorate of Customs (Preventive) Patna ordinarily for a period of 5 years but such officers can be reverted to their parent Collectorate even before the expiry of the period of 5 years. It further stipulates that no officer in the field/land custom station within the charge shall ordinarily be kept in the same post/station for more than 2 years. The respondents claim that these guide-lines

Contd ... 7p/-

W.L.

- 7 -

having been violated in transferring the applicant.

11. Whatever be the guide-lines which are applicable in this case, there is no doubt that these guide-lines are in the nature of Executive instructions. The question whether the transfer order can be challenged for violation of such Executive Instructions, has been set at rest by the principle enunciated in the case of Shilpi Bose (Mrs) and others Vs. State of Bihar and others, 1992SCC(L&S),127 In this case it was held by the Supreme Court that even if a transfer order is passed in violation of Executive Instructions of order, the court ordinarily should not interfere with the order. The applicant has not been able to make out any extra-ordinary ground that would warrant this Tribunal to interfere with the transfer order merely on the ground of alleged violation of guide-lines relating to transfer.

12. This leads me to consideration of the plea taken by the applicant that the transfer is penal in nature. This point has been argued for and against at considerable length by Dr. R.G. Padia, learned counsel for the applicant and Sri G.C.S. Singh learned counsel for the Respondents. Both the counsel have sought to rely on a number of case laws, I shall refer to some of those.

W.R.

- 8 -

13. Among the decisions cited by Dr. R.G. Padia, learned counsel for the applicant, one is that of the Supreme Court in the case State of U.P. and others Vs. Jagdeo Singh, AIR 1984 SC, 1115. In this case, the facts were that the respondent was working as Station House Officer at Chandpur Police Station in U.P. The respondent was transferred from Chandpur police station to Kotwali police station as second officer. The station of posting was latter changed to Fatehgarh. He represented that he was entitled to be posted as Station House Officer but the same was rejected. He was latter transferred as Second Officer to Kanpur. He filed a writ petition in the High court at Allahabad for quashing the order transferring him as a second officer of a police station. The writ petition was allowed. In the appeal filed by the State of U.P., the Supreme Court held that it was ~~because~~ <sup>because</sup> of the finding of negligence against the respondents ~~and~~ <sup>of</sup> the entry of mis-conduct that he was transferred to the Fatehgarh Police Station as a second officer and not as a Station House Officer. In this manner, the respondent was deprived of a special emoluments which was payable to a station house officer. On the basis of these facts, the Supreme Court held that the transfer was by way of punishment.

14. The present application is clearly distinguishable from the case of Jagdeo Singh on facts.

W.R.

- 9 -

In the instant case, there has, yet no definitive findings as regards his envolvement in the alleged incident of snatching of money during checking nor ~~is~~ there any entry regarding misconduct.

Moreover, it is not the case of the applicant that there is any loss of emoluments envolved in the transfer. The decision of the Supreme Court in Jagdeo Singh's case is, therefore, clearly not applicable to the present application.

15. The next case cited by the learned counsel for the applicant is that of State of U.P. Vs. Sheshmani Tripathi, (1991) 2 UPLBEC 1303. In this case decided by the Allahabad High Court, it was stated in the counter affidavit and in the original application that the transfer of the petitioner had been made on administrative ground and that a complaint was received against him in which it was alleged that the petitioner had physically assaulted a sub-ordinate security staff belonging to Scheduled Caste. The High Court held that since the transfer was merely on the basis of a complaint, it cannot be called a valid basis for transfer. The decision in this case also cannot apply to the present application since in this case, the order of transfer is not merely on the basis of a complaint but after a preliminary enquiry into the complaint which showed that there was a *prima-facie* case.

16. I shall now <sup>consider</sup> ~~see~~ the decisions cited by Sri C.S. Singh, learned counsel for the Respondents.

W.S.

Contd ... 10p/-

- 10 -

One of the decision cited is that of the Full Bench of the C.A.T. New Delhi in the case of Kamlesh Trivedi Vs. Indian Council of Agricultural Research and another, (1988) 3 ATC 352. It was held in this case that ~~when an order of transfer is that~~ having regard to the position an employee holds and the influence he commands at the place of his posting, a proper enquiry into the complaint itself may necessitate a transfer instead of resorting to suspension. This ruling would appear to be clearly applicable to the present case, since the respondents have specifically averred that the transfer of the applicant is to facilitate investigation into the complaint against him.

17. Similarly in the case of A. Marimuthu Vs. Union of India and another, (1990) 12 ATC 305, it was held by the Madras Bench of the Central Administrative Tribunal that the administration, having regard to to the nature of complaint or allegation against a government servant, may come to the conclusion that it is better that he is removed from a particular work spot and transfer may be ordered. In such circumstances, as <sup>long</sup> ~~long~~ as the transfer itself does not visit the official concerned with adverse or penal consequences, such as reduction in emoluments, rank or status, any challenge of the transfer order would

W.R.

- 11 -

not merit consideration. This decision would also lend support to the contention of the respondents that the transfer in the present application cannot be challenged as being penal in nature, in view of the fact that the administration has come to the conclusion that it is better that the applicant be removed from his present work spot and as <sup>the</sup> ~~such~~, transfer does not visit the applicant with any adverse or penal consequences.

18. In view of what has been discussed above and in the light of the various decisions cited by the respondents, I am of the view that in the present case, the transfer cannot be challenged as being penal in nature, since the applicant has been transferred in order to facilitate enquiry into complaint against him and this transfer does not involve any adverse or penal consequences.

19. As regards the plea that no enquiry was held before transferring him, the same is clearly not tenable on the basis of the averments made both in the petition and in the counter affidavit which would indicate that a preliminary enquiry into the complaint was actually held.

20. This brings me to the ground taken by the applicant that the transfer order is violative of Articles 14 & 16 of the Constitution. As already discussed above, I do not find the order of transfer to be arbitrary or <sup>a</sup> colourable exercise

W.C.

- 12 -

of its powers by the concerned authority~~s~~ and as such, the same cannot be considered as violative of Articles 14 & 16 of the Constitution.

21. In the result the petition fails, and the same is dismissed. In the circumstances of the case, I do not pass any order as to costs.

*W*  
Member(A)

Dated 11 February, 1994.

(n.u.)