

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.805 OF 2003
ALLAHABAD THIS THE 19TH NOVEMBER, 2003

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A
HON'BLE MR. A. K. BHATNAGAR, MEMBER-J

P.K. Saxena,
S/o H.S. Saxena,
R/o-L.I.G. 203, Barra-5,
Kanpur.

.....Applicant

(By Advocate Shri Ashish Srivastava)

Versus

1. Union of India,
through Secretary,
Ministry of Finance,
New Delhi.
2. Chief Commissioner,
Central Excise & Customs,
R/o 117/7, Sarvoday Nagar,
Kanpur.
3. Joint Director,
National Academy of Customs Excise & Narcotics,
Regional Training Institute-Kanpur.

.....Respondents

(By Advocate Shri N.C. Tripathi)

ORDER

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A

In this O.A. filed under section 19 of Adminiistrative Tribunals Act 1985, the applicant has prayed for quashing the order dated 16.4.2003 (Annexure A-1) passed by respondent no.3.



2. The facts, in short, are that the applicant is 1983 appointee Inspector in the respondent's establishment. He was sent on deputation in the year 1996 to D.G.C.E.I. (Regional unit) Kanpur, where he continued for six years. The applicant joined back the department after completing deputation on 10.04.2003. The applicant is aggrieved by the impugned order dated 16.04.2003 by which he has been posted to NACEN, Regional Training Institute, Kanpur on loan basis till further orders. The applicant has filed this O.A. which has been contested by the respondents by filing counter reply.

3. Shri Ashish Srivastava, learned counsel for the applicant invited our attention to Annexure A-2 which is letter dated 13.2.2003 by which the decision of the Board has been conveyed by NACEN that one Officer in the Grade of Inspector may be deployed to NACEN, RTI, Kanpur on loan basis for ~~the~~ period of two years.

4. Learned counsel for the applicant further submitted that on the bottom it is clear that copy was forwarded to various authorities with request to obtain willingness of the willing officer and forward the same latest by 10.03.2003.

5. Learned counsel for the applicant also submitted that one Shri S.B. Nigam has already given his willingness by letter dated 12.03.2003 (Annexure A-3) and the applicant has given his unwillingness for posting at NACEN, RTI, Kanpur by letter dated 17.04.2003 (Annexure A-4). Therefore, the impugned order dated 16.04.2003 is arbitrary in nature.

6. Learned counsel for the respondents Shri N.C. Tripathi submitted that NACEN, RTI, Kanpur is also under respondent no.2 and, therefore, the applicant is not being transferred but is posted on return from deputation. The pay and/ of the applicant ^{allowances}

would also be paid by the respondents. He is at par with other Inspector of Commissionerate.

7. Learned counsel for the respondents further submitted that as per the service condition, the applicant has no claim to be posted to a place of his own will. He has to carry out the orders issued by the respondents.

8. Learned counsel for the respondents also submitted that as per the settled law by Hon'ble Supreme Court and various Hon'ble High Courts, the Tribunal should not interfere in the matter of posting unless the same has been passed in malafide/ colourable exercise of power or the same is in violation of statutory rules.

9. We have heard counsel for the parties, carefully considered their submissions and perused records.

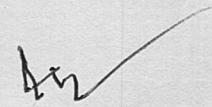
10. The grievance of the applicant is that when he ~~is~~ not willing for a posting to NACEN, RTI, Kanpur and has given his unwillingness application he is being harassed. In normal course we would have not interfered in such matters. However, perusal of Annexure A-2 leaves no doubt in our mind that it is not a normal posting but a posting on loan basis on the decision of the Board of Revenue. Even in the impugned order it is clearly mentioned that the applicant has been posted on loan basis. We are unable to understand as to why the applicant who returned from deputation only on 10.04.2003 has been posted to NACEN, RTI, Kanpur, specially when the other inspectors are available who are willing to join NACEN on loan basis. One such example of Shri S.B. Nigam has been cited by the applicant and his willingness letter dated 12.03.2003 is annexed as Annexure A-3.



11. We would also like to observe that the Commissioner Central Excise, Kanpur has forwarded the copy of letter dated 13.02.2003 from NACEN, RTI, Kanpur to Dy./Asstt. Commissioner Central Excise etc. with a request to obtain the willingness of the willing officer and forward the same to him latest by 13.03.2000. What surprises us the most is that on one hand the respondents are calling for willingness and one such officer is available yet on the other hand the applicant has been posted though he is unwilling. Such an action appears to be arbitrary in nature and is liable to be set aside.

12. In the circumstances and our aforesaid discussions the O.A. is allowed. Order dated 16.04.2003 is quashed with direction to the respondents to allow him to continue on the post he was working. The interim order dated 23.07.2003 merges with it.

13. There shall be no order as to costs.


Member-J


Member-A

/Neelam/