

JUDGEMENT

The applicant, Shri H. N. Shekhawat, being aggrieved by the order dated 28.5.'86, transferring him from Sidhpur to Ahmedabad, by the Collector, Central Excise and Customs, Ahmedabad, has prayed for quashing and setting aside of this order on the ground that it is malafide. Further, he has also pleaded that he has not handed over charge, and this Tribunal by its order of 11th June, 1986, had directed that status quo as on 6.6.'86 should continue. The respondent by virtue of having caused obstruction in discharging of his duties by arranging to have another officer to function in his office is in contempt of this Tribunal.

The applicant was transferred to Sidhpur, where an inspector Shri K. K. Makwana misbehaved allegedly with him and his staff and the applicant reported this misconduct as well as falsification and manipulation of records by Shri Makwana, for which a criminal complaint was filed. The Assistant Collector of Customs and Excise allegedly brought pressure on the applicant to change C. R. of Shri Makwana, but the applicant did not oblige him and was then threatened to be transferred from Sidhpur. The complaint was filed by the applicant at Sidhpur Police Station, and within three months thereof, he was transferred to Ahmedabad by the impugned order dated 28th May, 1986, against which the applicant made a representation on 2nd June, 1986, to the Collector of Customs and Excise. He challenged the impugned transfer order on the ground that he was transferred from Sidhpur within only fourteen months of his joining there, in violation of the guidelines governing transfers which advise that "in making transfers of executive



officers it should be considered whether those who have remained at the place for, say, more than three years should be shifted." The applicant had challenged the transfer order on account of malafide intention of his superior, Mr. Desai, and also requested that on humanitarian grounds, his wife being a patient of heart trouble, he should not be transferred. In spite of this, the respondent made ad hoc arrangement to see that Shri K. S. Chowdhury, Supdt. of Central Excise, Palanpur, takes over charge on 5th June, 1986, even without waiting for the applicant to hand it over. The applicant has obtained an order of this Tribunal on 11th June, 1986, directing that the status quo as on 6.6.'86 should continue. The applicant admits that he had applied for advance of salary and allowances and was on leave on the date on which Shri K.S. Chowdhury took over charge. In reply, the respondent has taken the stand that consequent to the orders of transfer dated 28th May, 1986, instructions were issued on 30th May, 1986, to Shri Chowdhury to relieve the applicant, and a copy of this communication was also endorsed to the applicant to hand over the charge to Shri Chowdhury in the afternoon of 4th June, 1986. On 3rd June, 1986, a meeting of the Superintendents was held in the office of the Asst. Collector of Central Excise when the applicant was present and acknowledged that he had received the order of transfer, and had consequently applied for advance of transfer, T.A., and of salary. This has been admitted by the applicant. Thereafter, the applicant was not available on the 4th of June and Shri Chowdhury had addressed a letter to the applicant to the effect that he had come to take over the

..... 3



5

(5)

charge and the applicant was not available and that he would come on the 5th of June, to take over the charge, and when he was not present on the 5th of June, Shri Chowdhury took over the charge. In these circumstances, the position on 6.6.'86 was that Shri Chowdhury had already taken over the charge. Therefore, there was no contempt of the order of the Tribunal, for violation of status quo as on 6.6.'86. Regarding malafide, the respondent Mr. Desai, had stated that the transfer has been ordered by his superior officer viz. the Collector, and therefore, the question of any animus against the applicant by the respondent Mr. Desai, cannot be regarded as having been the basis for such a transfer.

It appears that while the transfer has been ordered within a short period of the applicant joining at Sidhpur, and there is a policy not to transfer field officers for a period of about three years, it cannot be accepted that there would not arise administrative exigencies, in which such a policy cannot be departed from. In this case, whatever may be the individual responsibility there has been unpleasantness, between the inspector and the Superintendent (applicant) resulting in a criminal case which cannot be said to have shown the office in a favourable light in the eyes of the public and for smooth working of the office, it is in order for those who are in charge of running administration to take a view about removing one or another of the persons involved from the scene. Such a decision based on a judgement of the situation cannot be regarded as having been based on malafide. It is arguable that

..... 4



(6) 6

the authorities competent to transfer the applicant might have considered a question of removing the inspector, Shri Makwana, also from the scene but this is a matter which is well within the responsibility of the Collector. As the order of the transfer has been passed by the Collector, the plea that it was based on malafide on the part of the Asst. Collector is not convincing. It has been shown that the applicant was duly informed about the transfer, both in writing and verbally, and he was also informed about the date on which he was to hand over the charge. From the circumstances of the case it is clear that the applicant avoided handing over charge and by his own admission he had asked for payment of advance on account of travelling and salary and on the dates on which he was supposed to hand over the charge, he had been on leave for filing his case, according to him, before the Tribunal. Normally, it is well-settled in several decisions that the Courts should be reluctant to intervene in matters of transfers in the interest of smooth administration unless a strong case is made out for setting aside such orders on the ground of proven arbitrariness or malafide. In this case, a decision to transfer the applicant cannot be regarded as arbitrary or malafide. In the circumstances we are unable to intervene and the application must fail. No order as to costs.



sd/-
(P. H. TRIVEDI)
Vice Chairman

sd/-
(P. M. JOSHI)
Judicial Member