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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 353

1986

T.A. No.

DATE OF DECISION 16-1-1987

MADHUKAR M. GODBOLE

Petitioner

PRADIP PHADKE

Advocate for the Petitioner(s)

Versus

COLLECTOR OF CENTRAL EXCISE

Respondent

AND CUSTOMS, VADODARA.

J.D. AJMERA

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI

... VICE CHAIRMAN

The Hon'ble Mr. P.M. JOSHI

... JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal.

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Per: Hon'ble Shri P.H.Trivedi, Vice Chairman

JUDGMENT

The applicant Mr.Godbole was first promoted as Administrative Officer Group-B post, but on his forgoing promotion the orders were cancelled on 30th May 1985. Subsequently he was promoted to Administrative Officer's Group B post by Est. Order 137/1986 dated 31st July, 1986. This representation was rejected by Collector Central Excise and Customs, Vadodara by a letter dated 29th September, 1986 and he was advised either to join at Rajkot as Administrative Officer or as Office Superintendent on or before 30th September, 1986. The petitioner has come up this Tribunal against his transfer on the ground that by forgoing promotion he has right to continue in the Collectorate of Vadodara and as he continues to be a Ministerial Officer by virtue of remaining a Superintendent, he cannot be transferred outside the Collectorate by virtue of relevant Rules and instructions. Transfers of Class-I and Class-II Officers from one Collectorate to another under the relevant Rules can be made by Ministry of Central Board of Revenue. Transfers of Class-II Officers can be within the area under the Collectorate under intimation to the Board and transfer of ClassIII officer can be made by the Collector concerned. The petitioner has also drawn our attention to the relevant instructions under which the staff should not normally be transferred outside of their parents stay and for staff posted at Collectorate,

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the head quarters should be rotated after completion of their normal period of one station.

2. The respondent's case is that originally the Collectorate of Vadodara had its jurisdiction over the whole of Gujarat State but its office was divided in three Collectors subsequently and staff had to be distributed in the three offices. This created a situation in which unless the staff moved from Vadodara the staff which had to be brought back from Rajkot could not be relieved and would have a legitimate grievance. For this purpose the three Collectors of Vadodara, Ahmedabad and Rajkot held meetings in which certain arrangements were arrived at. These arrangements are likely to be frustrated if the petitioner does not move to Rajkot.

3. The crucial question is whether a Ministerial Officer in this case Superintendent is liable to be transferred from one Collectorate to another. The petitioner had already represented that he would like to forgo promotion. His representation is rejected. But the Collector, Vadodara's orders referred to give him an option to go to Rajkot as Administrative Officer or as Superintendent. The orders on which both parties have relied show that the competence of authority of Collectorate, Vadodara is limited in the case of Ministerial Officers to order transfers within the area of jurisdiction of the Collectorate. He therefore cannot transfer the petitioner to Rajkot as Superintendent. If the authority is competent to impose promotion on the petitioner as Group 'B' Officer he is

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liable to transfer from one Collectorate to another but the status of the petitioner is left vague by the impugned order. He may go as Administrative Officer or he may go as Superintendent to Rajkot. But from Vadodara ~~he must go~~ is the order.

4. The respondent has shown no rule or instruction or orders to show the Collector, Vadodara is the competent authority for transferring Ministerial Officer from one Collectorate to another. The proceedings of various meetings held by the Collectors of different Collectorates in which more arrangements were arrived with the union representatives need to be followed by necessary revisions or the orders or instructions. Although these rules/instructions may not be statutory and may be administrative, still certain guidelines governing transfers are in force and presumably much thought has been given to them before finalising them and enforcing them. They certainly are objective and reasonable. While we appreciate that certain administrative arrangements are required to give effect to transfers to stations in the areas under Rajkot Collectorate it is not possible to allow the legitimate claims of Ministerial staff based upon the Department of Customs and Excise's own Rules to be ignored by virtue of such administrative arrangements, however, legitimately arrived at. The proper course for the authorities would have been undertaken consequential revision of Rules and instructions governing such transfers instead of making

adhoc exceptions to their option.

5. We normally are reluctant to interfere with the Departments' action regarding transfers but in this case we can not ignore that the transfer is contrary to Department's own instructions and the language in which the order is couched makes it ambiguous whether the petitioner is to move to Rajkot on promotion or in the same capacity as Superintendent, if his representation to forgo the promotion is rejected. There is no reason to believe that the impugned order is mala fide. It may have been made for reasons for rotating staff. But the order is not consistent with department's instructions governing transfer of Ministerial staff and therefore cannot be upheld. This does not ban the competent authority to decide upon the promotion of the petitioner and if allowed under the rules to impose if and in that case the officer would be liable to transfer to another Collectorate. There is ofcourse no prohibition on transfer of the petitioner within the Collectorate's area in his present capacity.

6. For these reasons the application is found to have merit. The impugned order of transfer No. B3/86 which requires the petitioner to report at Rajkot in the capacity as a Superintendent is set aside. No order as to costs.

Dinesh
(P. H. TRIVEDI)
VICE CHAIRMAN

Joshi
(P. M. JOSHI)
JUDICIAL MEMBER