

6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 471 of 1987
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DATE OF DECISION 15-07-1988

Shri J. S. D'cruz Petitioner

Shri A. R. Thacker Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri J. D. Ajmera Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. Trivedi : Vice Chairman

The Hon'ble Mr.

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.

J U D G M E N T

OA/471/87

15-7-1988

Per : Hon'ble Mr. P.H. Trivedi : Vice Chairman.

By an order dated 19th August, 1987 the petitioner was among 16 officers named therein was transferred and promoted. The promotions were purely provisional and without prejudice to the claims to their seniors and carried the following warning.

"The officers at Sl. No.2, 6, 8, 15, 7, 9, 10, 11, 12, 14, 16 are posted to their parent collectorate with a warning that as soon as an officer of Baroda/Ahmedabad Collectorate working in Rajkot Collectorate completes one year they will be transferred to Rajkot Collectorate."

Thereafter by an order dated 27th August, 1987 the petitioner was among the officers who were transferred to the Anand Range. The petitioner has challenged these orders on various grounds. He contends that the respondent No.2 who has passed the orders has no competence to transfer the petitioner from Ahmedabad Collectorate to another collectorate namely Rajkot. The Central Board of Revenue or the Ministry of Finance have such powers. The plea that the Baroda Collectorate exercises such powers has no validity because only for the limited purpose of bifurcation of division such limited powers were given and now bifurcation has been completed and these powers cannot be exercised by Baroda Collectorate. No public interest is being served by such transfer and the orders violate Article 14 and 16 because other persons who are longer in service or are junior to the petitioner are available for such transfer and he has given details of such persons. The question of transfer to Rajkot arises only when persons who have been earlier sent to Rajkot complete one year and when junior

persons are not available. The petitioner was posted at Anand when posts are available at Ahmedabad and the order of transfer is inconsistent with the warning given by Respondent No.2. The transfer is also in the middle of the term and the petitioner should be protected by the guidelines providing against such transfer. He has also named S/Shri M.A. Upadhyaya and R.H.Ganatra who are not likely to join at Ahmedabad which posts would be available to the petitioner.

2. The respondents have stated that the Baroda Collectorate is cadre controlling authority and the powers of transfers have been given Baroda Collectorate not only for bringing about the bifurcation but such powers continue with the Baroda Collectorate for transfer to Rajkot division. The respondents have produced relevant circular at R1 dated 16th July, 1987 in support of their contention.

3. No reply has been filed from the Baroda Collectorate.

4. The petitioner has relied upon the judgment in OA/353/86 dated 6-1-87, Madhukar.M.Godbole Vs. Collector of Central Excise and Customs, Vadodara.

5. The contention regarding the guidelines about the transfers in the middle of the term or domestic circumstances or accommodating the petitioner at Ahmedabad and whether there are vacancies there or not, need not detain us. The petitioner can only make representation on this subject on such grounds and the respondent authorities are free to dispose it of but no right can be based upon them, if administrative exigencies require the transfer to be made.

6. The only substantial question is whether the authorities who have passed the impugned orders have the competence to do so. Even when the order dated 19th August, 1987 promoting the petitioner was made, specific warning that the petitioner was expected shortly to go to Rajkot was included in it. The petitioner does not seem to have refused his promotion if this stipulation was not acceptable to him. The order dated 27th August, 1987 has been

passed by the Ahmedabad Collectorate posting the petitioner at Anand and this posting is within the same Collectorate. Powers to transfer Inspectors within the same Collectorate are given to the Collector and on this ground they cannot be challenged. Nor can they be challenged on the ground that when the petitioner was to be posted at Rajkot, there was no reason to send him to the Anand Range. Given the competence to do so, orders of transfer in administrative exigencies cannot be held to be invalid merely because there was a prospect of further transfer already envisaged. The mere availability of post of Inspector at Ahmedabad also raises no right for the petitioner to be retained in it.

7. Whether the Baroda Collectorate had powers to transfer the petitioner to Rajkot has been debated at length in the pleadings. No doubt para 2 under the heading "Authorities competent to order" specifies the Ministry of Finance or the Central Board of Revenue for transfers from one collectorate to another but these orders have been modified by further instructions and such doubt as might have remained on the matter had been set at rest by the letter dated 16th July, 1987 from the Ministry of Finance in which it is stated as follows.

"Certain doubts have been raised whether C.C.E. Baroda in the cadre controlling authority for the staff borne on the common cadre of three collectorates of Central Excise at Baroda, Ahmedabad and Rajkot for the purposes of their postings, transfers, seniority etc. In this connection attention is invited to this Ministry's letter P.No.3-har/15/70-A.d.IV dated 1st March, 1971 which provide that officer of the rank of Superintendent or Central Excise Class II and below in the new collectorate of Central Excise at Ahmedabad should form a common cadre with the Baroda Collectorate for the purpose of their seniority, postings, transfers, promotions etc. In

view of those orders, the Collector of Central Excise, Baroda continues to be the cadre controlling authority for Grade 'B' and 'C' staff posted in both the Baroda and Ahmedabad Collectorates.

On the carving out of the Collectorate of Central Excise Rajkot out of the two Collectorates of Baroda and Ahmedabad the cadre of Grade 'B' & 'C' in all the three Collectorates continue to remain combined and the Collector of Central Excise Baroda has since then continued as the cadre controlling authority for the staff working in all the three Central Excise Collectorates at Baroda, Ahmedabad and Rajkot.


In order to dispel any doubts it is hereby reiterated that the Collector of Central Excise Baroda has been and will continue to be the cadre controlling authority for the Grade 'B' & 'C' staff posted in all the three Collectorates of Central Excise at Baroda, Ahmedabad and Rajkot."

8. Our judgment dated 16-1-1987 in OA/353/86 on which the petitioner relies only interpreted the proceedings of the meetings in which certain conclusions were arrived at and in the facts of that case the promotions and transfers were considered regarding the competence of authorities derived from such conclusions of meetings. In fact the judgment itself draws the attention of the respondent authorities to undertake consequential revision of rules and instructions covering such transfer which the authorities now appear to have done.

9. Exigencies of service covers a wide spectrum of circumstances and in a department like that of Customs, the posting of an officer at a particular place is presumed to be decided upon after taking into account the requirement of the job at that place and the suitability of the officer with reference to his experience

and abilities. Even normally we are reluctant to interfere with the orders of transfer unless there are good grounds on the basis of mala fide or arbitrariness or violation of rules. We are especially chary of interfering with the administration of Department like Customs because it is not possible for judicial authorities to appreciate the complexity and diversity of the factors that go into the decisions regarding such transfers in that department. However, it must be obvious to the respondent authorities that the grievances of the employees and officers regarding discriminatory or unjust treatment should not only be dealt with fairly and speedily but should be seen to be done with objectivity and with justice by the staff and the employees also. This is a part of good administration without which the morale of a sensitive department like Customs cannot be maintained. We make these observations only because we hope that the mere fact that the petitioner has sought recourse to legal remedy in the forum of the Tribunal, should not stand in the way of the respondent authorities in considering his circumstances specially regarding his domestic circumstances fairly.

10. With these observations we find that the application has no merit and is rejected. No order as to costs.


(P.H. Trivedi)
Vice Chairman.

MA/518/88
in
CA/471/87

12

Coram : Hon'ble Mr. P. H. Trivedi : Vice Chairman

24-6-1988

Heard learned advocates Mr. A. R. Thakkar and Mr. J. D. Ajmera for the petitioner and the respondents respectively. Annexure R/I of the respondents' reply be taken on record with consent of the petitioner's learned advocate.

After hearing the learned advocates CA/471/87 deferred for judgment until 15-7-1988. So far as MA/518/88 with MA/625/87 are concerned, they refer to impugned transfer from Rajkot to Garudi. This might give rise to cause of action ^{from it} to its distant from that in CA/471/87 and the petitioner cannot join them in CA/471/87 or obtain relief relating to it as the antecedent circumstances and the exigencies are not identical with CA/471/87. The petitioner may file separate O.A. if he ~~is~~ wishes to pursue it.

On conversion of the M.A. to O.A. by affixing stamp etc. the petitions be posted on Tuesday the 28-6-1988 for ad interim relief. The respondents be given copies by the petitioner.

P. H. Trivedi
(P. H. Trivedi)
Vice Chairman

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