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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 15/90 & 22/90

Ex. No.

DATE OF DECISION 1-5-1992

Mrs. Rugmini M.K. & Petitioner s
Mrs. Daksha B. Shah,

Mr. D.M. Thakkar, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. Akil Kureshi, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

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 ?

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O.A.No. 15/90

Mrs. Rugmini M.K.
A-2, Kailashnagar
Co.Op.Hsg. Society, Ltd.,
Chandkheda,
Ahmedabad.

O.A.No. 22/90

Mrs. Daksha B. Shah,
A/12, Fateh Apartment,
Near Fatehpura Bus Stand,
Paldi, Ahmedabad.

..... Applicants.

(Advocate: Mr. D.M. Thakkar)

Versus.

1) Union of India
(Notice to be served
through the Collector
of Customs & Central
Excise, Ahmedabad.)

2) The Deputy Collector,
(P & V)
Central Excise and
Customs, Vadodara.

..... Respondents.

(Advocate: Mr. Akil Kureshi)

J U D G M E N T

O.A.No. 15 OF 1990

AND

O.A.No. 22 OF 1990

Date: 1-5-1992.

Per: Hon'ble Mr. R.C. Bhatt, Judicial Member.

Heard Mr. D.M. Thakkar, learned advocate
for the applicants and Mr. Akil Kureshi, learned
advocate for the respondents.

2. These two applications filed under section
19 of the Administrative Tribunals Act, 1985, are

heard and disposed of by a common judgment by consent of learned advocates for the parties as identical questions of facts and law arises in both the cases.

3. Each applicant of these two applications seek the relief that the order of transfer dated 10th January, 1990 transferring them from Ahmedabad Collectorate to Rajkot Collectorate be quashed and set aside as the said order of transfer is arbitrary, illegal, null and void. The case of the applicant as pleaded in the application is that there is no rule under which the applicant can be transferred from one collectorate to another collectorate of the Customs and Central Excise department. It is alleged that the respondents ⁱⁿ incomplete disregard of the principle of "last come first go" retained the junior-most person at Ahmedabad and the senior-most persons like the applicants are being transferred. It is alleged that such an action on the part of the respondents is arbitrary, illegal, inconsistent with the service rules and against the settled principle of natural justice. Each applicant was appointed as Lower Division Clerk in 1969. The applicant of O.A.15/90 was thereafter promoted to the post of U.D.C. in the year 1973 while the applicant of O.A.22/90 was

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promoted to the post of U.D.C. in the year 1972. It is alleged by the applicant that the senior-most U.D.Cs were entrusted the most complicit and important nature of work by the Department, that the applicant was paid the special pay, that thereafter the department had taken a decision to upgrade the 30% posts of U.D.Cs as Tax Assistants and instead of paying the special pay to the senior U.D.Cs, it was in the interest of the department to upgrade 30% posts of U.D.Cs designating the same as Tax Assistants. It is alleged that the pay scales of Tax Assistants after upgradation was fixed after merging the pay scale of U.D.C. and special pay which was being paid to the senior-most U.D.Cs before the upgradation. It is the case of the applicant that she was upgraded to the post of Tax Assistant alongwith other similarly situated employees working as U.D.Cs vide order Annexure A dated 17th June, 1988, that equal number of posts of U.D.Cs were abolished as mentioned in the said order, that though the aforesaid order is styled as promotion order, the same is in fact the order of upgradation of U.D.Cs to the post of Tax Assistants. It is alleged that in the said order Annexure A, there is no condition attached that

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the applicant would be liable to transfer to Rajkot, each applicant continued to work in Ahmedabad Collectorate as Tax Assistants. The applicant, Mrs. Rugmini.M.K. in O.A. 15/90 is shown at Sr. No. 12 and the applicant of O.A.No. 22/90 Mrs. Daksha B. Shah shown at Sr. No. 2 of the said order Annexure A. The case of each applicant is that, thereafter, she was further offered promotion to the post of Deputy Superintendent on condition that the applicant would be transferred to Rajkot for the period of one year but since the applicant is a lady having family to be looked after and having domestic problems, it was not acceptable to her to go to Rajkot on promotion and hence the applicant had forgone the said promotion to the post of Deputy Superintendent Grade-II. It is alleged that thereafter to the surprise of the applicant, the department had decided to transfer her and few other similarly situated employees from Ahmedabad to Rajkot in the month of November, 1989. The case of each of applicant^{is} that there is no rule under which an employee can be transferred outside the Collectorate in the same cadre and hence the action of the department is absolutely illegal. Thereafter, the applicant through the Union made representations and also individually produced at Annexure A-1

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collectively not to transfer them and other Tax Assistants from Ahmedabad to Rajkot. However, by an order dated 10th January, 1990, which is an order under challenge in both these applications, each applicant is sought to be transferred from Ahmedabad to Rajkot in the same cadre of Tax Assistants by the Collector, Central Excise & Customs, Ahmedabad, i.e., Respondent No.1, produced at Annexure A-2. It is alleged that there is no rule governing the transfer of the employees working under the different Collectorate, namely Ahmedabad Collectorate, Baroda Collectorate and Rajkot Collectorate.

4. The applicant of O.A. 15/90 has averred in para 6.9 of her application that her husband is working as Telephone Operator under the Government of India in Railway Department at Ahmedabad and that as per the consistent policy and guidelines framed by the Government, where both the spouses are working in the Government department, they should not be transferred so as to avoid the domestic problems. Therefore, according to her, if the applicant is compelled to go to Rajkot, the same would cause undue hardship to the entire family, which consists of two minor sons and husband. The applicant of O.A.22/90 in para 6.9 of her application stated that the applicant and her husband are working at Ahmedabad and if the applicant is compelled to go to Rajkot

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the same would cause undue hardship to the entire family.

5. The respondents have resisted the application by filing reply in both the applications taking almost identical contentions. It is contended by the respondents that the transfer is an incident of service and that the action of the respondents ^{is} in accordance with the service conditions and the applicant cannot challenge the same. The respondents have denied that there is no rule under which the applicant cannot be transferred from one place to another and denied that the transfer is inconsistent with the policy and service rules of the department. It is contended that the Collector of Central Excise & Customs, Vadodara has been declared as "Cadre Controlling Authority" for the staff borne on the common cadre of three collectorates of the Central Excise & Customs Collectorates at Vadodara, Ahmedabad and Rajkot for the purpose of their posting, transfers, seniority, promotions etc. as has been clarified by the Ministry in their letter dated 16th July, 1987. It is contended that the transfer order is issued by the competent authority i.e. Collector of Central Excise & Customs Baroda as the cadre control of all the three collectorates in Gujarat is vested with him. It is contended that the reason why the applicant was

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transferred to Rajkot in the grade of Tax Assistant will be clear from the contents of the said order and the principle of last come first go referred to by the applicant is not enforceable in this case. It is contended that as per the policy accepted by the staff association and three Collectors, everyone is required to go and work in Rajkot Collectorate for a year and this agreement is a concession shown by the department and it is not a matter of right, because the terms of appointment clearly specify that the staff is liable to be posted anywhere in Gujarat State not only on promotion but even at other times and therefore, the applicant cannot escape the transfer simply because no condition was attached in the order.

6. The respondents have denied that the grade of Tax Assistants was not a promotion from U.D.C. and denied that the applicant was upgraded as alleged. It is contended that the grade called Tax Assistant is a newly created grade above the grade of U.D.C. and therefore, the Government abolished an equal number of posts in the already existing grade of U.D.C. and therefore, it was described that a given number of posts in the grade of U.D.C. was upgraded to the post of Tax Assistant, but the U.D.Cs themselves were not upgraded. It is contended that the U.D.Cs were considered by a regular DPC and promoted to the grade of Tax Assistant. The respondents have denied

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that the promotion of applicant from U.D.C. to the post of Tax Assistant should be called as upgradation. It is contended that the promotion of the applicant to the grade of Deputy Office Supdnt. Grade-II and the forgoing of such promotion by the applicant which was due to purely personal and domestic reasons is totally irrelevant to the issue of the application. It is contended that the staff grade 'C' and Group-B grades of the common cadre of Vadodara, Ahmedabad and Rajkot Collectorates are liable to be posted anywhere in the jurisdiction of these collectorates as per the fundamental terms of appointment itself. It is contended that the problem of hardships indicated by the applicant is

to all working couple and who have children and that cannot be the ground not to transfer the applicant. It is contended that the transfer order which is issued purely on administrative ground cannot be challenged by the applicant and the application be dismissed.

7. The applicant has filed rejoinder controverting and the averments made by the respondents in the reply /
contended that any order which is contrary to the rules of the employee and adverse to the service conditions are always subject to judicial scrutiny. It is contended that there is no such condition of

service under which the applicant can be subjected to transfer from one Collectorate to another. The applicant has reiterated that the order given to the applicant styling a promotion as Tax Assistants was an order of upgradation infact.

8. The learned advocate for the applicant submitted that the order Annexure A dated 17th June, 1988 by which each applicant was styled in the promotion order as promoted to officiate as Tax Assistants was infact an order of upgradation of U.D.C. to the post of Tax Assistants. It is also submitted by the learned advocate for the applicant that in the aforesaid order Annexure A, no condition is attached to the effect that the applicant would be liable to transfer to Rajkot. It is important to note at this stage that the order under challenge is not this order Annexure A dated 17th June 1988. This order Annexure A shows that the applicants who were working as UDC were promoted as Tax Assistants. He also submitted that the post of Tax Assistants being an upgraded post, came into existence only in 1988 and therefore, no policy decision was taken in respect to the aforesaid post as to whether the Tax Assistants are liable to transfer to Rajkot for a period of one year. It is submitted that on careful reading of the aforesaid

order Annexure A, it is clear that the equal number of posts of U.D.Cs were abolished while upgrading the same as the post of Tax Assistant. It is submitted that even there are no rules governing transfer of the employees working under the different collectorates namely, Ahmedabad collectorate, Baroda Collectorate and Rajkot collectorate. He submitted that an employee cannot be transferred outside the collectorate in the same cadre. The learned advocate for the applicant submitted that the wording of para 2 of Annexure A shows that equal number of posts of UDCs would be abolished from respective collectorates and hence order Annexure A was not a promotion order but it was upgradation of the post.

9. Learned advocate for the respondents submitted that apart from the fact that order Annexure A is not challenged by the applicant, there is no substance in the submission of the learned advocate for the applicants that the same order was not an order of promotion. He submitted that the grade of Tax Assistants was a newly created grade above the grade of UDC and while sanctioning the posts in grade of Tax Assistants which was newly created, the Government abolished an equal number of posts in the already existing grade of UDC. He submitted

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that entire posts of UDC were not upgraded but 1/3rd posts of UDC were upgraded to Tax Assistants and hence it was described that the given number of posts in the grade of UDC was upgraded to the grade of Tax Assistants. He therefore, submitted that the wording of para 2 of order Annexure A that the whole order was an order of upgradation and not a promotion cannot be upheld. He submitted that UDC themselves were not upgraded but they were considered by regular DPC and then promoted to the grade of Tax Assistants. I agree with the submission of the learned advocate for the respondents. The submission of the learned advocate for the applicants that since the posts in the grade of Tax Assistants were created by upgrading an equal number of posts in the grade of UDC, the staff concerned who were promoted as Tax Assistants should be called as upgraded/ I also do not agree with the learned advocate for the applicant that an order Annexure A was not an order of promotion because if the UDC is not found fit for promotion/^{by}the DPC as Tax Assistant, he shall not be promoted even/^{though his} junior was promoted. Therefore, the order Ann. A was an order of promotion.

10. The learned advocate for the applicants submitted that even if there is a policy that on promotion one can be transferred, this is not a case

of promotion and hence also policy would not apply, but as observed above, the order Annexure A was an order of promotion and therefore the applicant cannot make a grievance. The learned advocate for the applicant has produced at page 32 the Draft Resolution but the same ^{merely a draft} can not be considered as a policy of the respondents. Learned advocate for the applicant on this point relied on the decision in O.A. 362/87 (Miss Hasumati J. Patel V/s. Union of India) decided by the single member of this Tribunal on 27th November, 1987 in which cases Mr. Thakkar appeared for the applicant. In O.A. 362/87, the applicant of that case had challenged the order posting her at Rajkot and not accomodating her at Ahmedabad and her challenge was on the ground that there were only two collectorates namely Banoda and Ahmedabad and on account of a new collectorate opened at Rajkot recently, the petitioner was not liable to transfer there. A policy decision dated 4th July, 1986 was referred in that judgment. According to that policy it was obligatory for the staff to go to Rajkot on their first promotion for a period of one year and on completion thereof, the officers so transferred had a right to be sent back to their respective parent collectorate. In para 3 of the said judgment it is observed as under:

"After hearing the learned advocates we find that the transferability of the officer is not in dispute. There are no allegations regarding mala fide. The only question which remains is whether the transfer is arbitrary or violative of policy or against equity. We do not know what is the status of policy instruction dated 4th July, 1986 referred to. It does not appear to be more than the minutes of a meeting called by the concerned Collectorate and purports to be only a working arrangement for the staffing problems of the Rajkot Collectorate. It may not be right to construe the conclusions recorded in this minute as more than such working arrangements. Certainly they cannot over-ride the provisions regarding competent authorities for transferring officers or the transfer liability of the staff available to them under the rules and instructions have the force of law. However, taking these policy instructions as applicable to the case, in view of the petitioner herself having relied upon them and not disputed their applicability, we find that there is no bar in it in terms against posting an officer a second time at Rajkot from Baroda or Ahmedabad Collectorate".

Therefore, this observation completely destroys the case of the applicant that there is no policy to transfer on first promotion to Rajkot nor there is any substance in the submission of the learned advocate for the applicant that the applicants cannot be transferred from one collectorate to other collectorate. The Tribunal has observed that it was necessary that the policy was reviewed so that uniform principles are equitably laid down regarding the transfer liability to Rajkot etc. On facts, it was held that the Tribunal would not like to involve itself in the administrative

arrangements which makes this objective feasible.

It was ultimately on the factual aspect of the case held that the applicant on that case had a prior claim to be accommodated in Ahmedabad collectorate in vacancy as administrative officer had arisen.

Therefore, this decision does not help the applicants at all on the contrary, the Tribunal refused to probe into the administrative arrangements of the collectorates. More over, the Tribunal did not hold that a transfer on first promotion cannot be made because it is observed in that decision that transferability of the officer was not in dispute. Therefore, the applicants cannot make any grievance that on their first promotion of Tax Assistants, they cannot be transferred or that the transfer was arbitrary. They cannot get relief that in absence of any rules they cannot be transferred.

11. So far the submissions of the learned advocate for the applicant that an employee from one collectorate can not be transferred to another collectorate also cannot be accepted, because, the respondents have produced at Annexure R-1, a copy of instruction letter dated 16th July, 1987 from the Government of India, Ministry of Finance, Department of Revenue to the Collector of Central Excise, Baroda in which it is mentioned that as certain doubts have been raised whether CCE, Baroda

was 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 her posting, transfer, seniority, promotion etc. The attention was invited to the said Ministry's letter dated 1st March, 1971 which provided that officers of the rank of Superintendent of 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 purposes of their seniority, posting, transfers, promotions etc. and in view of these orders, the Collector of Central Excise, Baroda continued to be the Cadre Controlling Authority for the staff working in all the three Central Excise Collectorate at Baroda, Ahmedabad and Rajkot for Grade B & C staff posted in both in Baroda & Ahmedabad collectorates and on the carving out of Collectorate of Central Excise Rajkot out of the two collectorates of Baroda & Ahmedabad, the cadre of Grade B & C in all the three collectorates continue to remain combined and the Collector of Central Excise Baroda had since then continued as the Cadre Controlling Authority for the staff working in all three Central Excise Collectorate at Baroda Ahmedabad & Rajkot. The learned advocate for the respondents relying on this instruction letter

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submitted that there is no bar against transferring such officers mentioned in the letter from one Collectorate to other collectorate because these persons are borne on the common cadre of three collectorates. He, therefore, submitted that the transfer order under challenge dated 10th January 1990, Annexure A-2 passed by the Collector, Central Excise, Baroda was legal and proper. He submitted that the subsequent denial of the applicants for further promotion would not change the position in law. The learned advocate for the applicant submitted that on 3rd May, 1989 the respondents offered promotion to both the applicants as Office Superintendent but since it was promotion, the applicants were to resume at Rajkot but they refused promotion and due to domestic problems they were retained at Ahmedabad as Tax Assistants it may be that the applicants refused that promotion. The first order Annexure A was a promotion order and as there was no bar against transferring the applicants to other collectorates, the impugned order Annexure A-2 can not be held to be illegal or invalid. The learned advocate for the respondents submitted that there is no rule that transfer of same cadre can not be made and there is no rule that only such transfer can be made on promotion. The applicants belong to group C

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and they were liable to be posted anywhere in the jurisdiction of three collectorates. He submitted that the grievance of the applicant that the principles of last come first go is not observed also not correct because the applicants even when promoted as Tax Assistants were liable to transfer. He submitted that the policy^{was}/accepted by the staff association and three collectors, and that everyone required to go to work in Rajkot Collectorate for a year is only a concession shown by the department and is not a matter of right and the applicants were liable to^{be}/transferred because it was a transferable job.

12. It may be noted at this stage that the Hon'ble Supreme Court has recently held in the decision in Miss. Shilpi Boss & Ors. V/s- State of Bihar & Ors. AIR 1991 SC p.532 that the Court should not interfere the transfer orders which are made in public interest and for administrative reasons unless transfer orders are made in violation of a mandatory statutory rule or on the ground of malafide. Even if a transfer order is passed in violation of executive instructions or orders, the Hon'ble Supreme Court held that the courts ordinarily should not interfere with the order, instead effected party should approach the higher authorities in the

department. No malafides are alleged in this case. Each applicant has in her application discussed the domestic hardships which they would suffer if they are transferred but as per the Hon'ble Supreme Court decision, the transfer order cannot be quashed on that ground. In absence of proof of malafides, patent illegality or violation of statutory mandatory rule, the transfer order cannot be held illegal because transfer is only an incident of service and not penalty.

13. I have considered all the points raised before me by both the learned advocates, no other points was urged. For the reasons stated above, I hold that there is no merit in both the applications. Hence following order:

ORDER

O.A.No. 15/90 is dismissed with no orders as to costs. O.A.No. 22/90 is dismissed with no orders as to costs.



(R.C. BHATT)
Member(J)