

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

O.A. No. 74/1999

Date of order: 06.06.2002

P.P. Joshi Son of Shri D.D. Joshi, Official Address:
Aged about 44 years, Resident of Custom Division, Barmer,
Official Address: Radio Technician Custom Division Barmer.

...APPLICANT.

versus

1. The Union of India through:
The Secretary,
Ministry of Finance,
Govt. of India, New Delhi.
2. The Commissioner,
Central Excise and Custom-Ist,
N C R Building Statue Circle,
JAIPUR
3. Additional Commissioner,
(Personnel and Vigilance),
Central Excise and Custom,
N C R Building Statue Circle,
JAIPUR
4. Shri Raj Kanwar,
Radio Technician,
(Telecommunication Wing),
Central Excise and Custom,
N C R Building Statue Circle,
JAIPUR.



...RESPONDENTS.

Mr. Kamal Dave, counsel for the applicant.
Mr. Vinit Mathur, counsel for respondent no. 1 to 3.
None present for Respondent No. 4.

CORAM:

HON'BLE MR. JUSTICE O.P. GARG, VICE CHAIRMAN.

HON'BLE MR. A.P. NAGRATH, ADMINISTRATIVE MEMBER.

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(Per Hon'ble Mr. A.P. Nagrath, Adm. Member)

The applicant P.P. Joshi and Respondent No. 4

Raj Kanwar, both Radio Technicians were posted in the Customs and Central Excise Collectorate, Rajkot. By order dated 24.11.88 (Annexure A/3), they were transferred to Customs and Central Excise, Jaipur on their own request. It was clarified in that order that their seniority will be fixed below the last temporary direct recruit Radio Technician in CCE, Jaipur. It was a case of inter-collectorate transfer. A seniority list of Radio Technicians, Group 'C' working in Jaipur as on 31.12.1996 was issued vide office order dated 20.3.1997. In this seniority list, the applicant has been shown above the Respondent No. 4, Raj Kanwar Sharma. Raj Kanwar Sharma submitted a representation against the said seniority list vide application dated 16.9.1998. After examination, the official-respondents accepted his plea and revised the seniority list and placed him above the applicant vide order dated 02.02.1999 (Annexures A/1 & R/14). This action of the seniority has been challenged by the applicant by filing this Original Application. The revised seniority position has been shown in Annexure A/2 which has also been assailed in this Original Application.

2. Common case of the parties is that while working in Rajkot Collectorate, the applicant was senior to Raj Kanwar. Every Collectorate has its own seniority unit and in the seniority unit of Rajkot, the applicant was senior. Both were transferred under the same order dated 24.11.1998 to Jaipur Collectorate and in Jaipur Collectorate, initially, the applicant was shown senior in the seniority list issued a

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on 31.12.1997 but later on the seniority was revised and the applicant was placed junior to Raj Kanwar.

3. Shri Vinit Mathur, learned counsel for the respondents defended this revision of seniority, primarily on the ground that in the case of transfer on request, the seniority in the new seniority unit is reckoned from the date, the transferee joins in that unit. The respondent no. 4, Raj Kanwar joined Jaipur Collectorate i.e. on 7.12.1988 while the applicant joined on 12.12.1998. By virtue of rules relevant to transfer on request the learned counsel for the respondent contended that Raj Kanwar was placed senior to applicant correctly. In support of this action of the respondents, the learned counsel referred to Central Board of Excise and Custom's letters dated 20.5.1980 and 23.11.1981.

According to Shri Mathur, seniority of the applicant and the respondent no. 4 has been revised in keeping with the instructions contained in these two circulars. Further, to re-inforce the stand of the respondents reliance was placed on the judgement, decided by the Principal Bench of the Tribunal in O.A. No. 430/1995 and 487/1995 on 26 October, 1999. A copy of the said judgement is annexed as Annexure R/18 to the reply of the rejoinder. Shri Mathur vehemently stressed that the controversy involved in the present Original Application is exactly similar to the issues involved in the above mentioned two O.As decided by the Principal Bench. The prayer of the applicants in those O.As, was rejected. In this background, Shri Mathur stressed that the present applicant has no case for granting relief. Learned counsel also stated before us that respondent no. 4 has been promoted further in Jaipur Collectorate and his position in the higher grade cannot now be allowed

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to be disturbed.

4. Shri Kamal Dave, learned counsel for the applicant agreed that ordinarily the seniority in the new unit in the case of transfer on self request shall count from the date of reporting to that unit but in the instant case, the applicant was prevented from reporting earlier. While referring to the transfer order dated 24.11.1988, Shri Kamal Dave has drawn our attention to the stipulation made in the order in respect of the applicant, whereby his relieving was tied up with one Shri A.K. Singh, whereas the date of relief of Raj Kanwar was to be decided by the Deputy Director (Comns.), Ahmedabad in due course. Because of this reason, the learned counsel for the applicant submitted that it was not in the hands of the applicant to get released from Rajkot Collectorate. The applicant was senior to respondent no. 4 in that Collectorate and by delaying his release, his seniority cannot be affected to his detriment. The transfer order is common and in the erstwhile seniority unit, the applicant was decidedly higher in the seniority list. Merely that his release was delayed by a couple of days cannot make him junior to the erstwhile junior, in the new seniority unit.

5. Controversy in this case is very short whether the applicant who was senior to respondent no. 4 in Rajkot Collectorate and who was transferred alongwith him to Jaipur Collectorate under the same order would rank senior to respondent no. 4 even though he joined at Jaipur 3-4 days after to private respondent no. 4. In so far as the rule position is concerned it is clear that those who come on their own request to the new seniority list will rank below all those who are already in position in that unit.

The length of service rendered in the earlier Collectorate



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will have no bearing while the determining seniority in the new unit. It is clear from the transfer order that the applicant's release from Rajkot Collectorate was tied up with one Shri A.K. Singh whereas there was nothing to hold back the Respondent no. 4. Apparently, he was released earlier whereas the applicant could be released a couple of days later only. Both have been transferred from the same erstwhile seniority unit to the same new seniority unit under the same order. The applicant was relieved later not for his own fault but for administrative reasons. Such reasons cannot work to the detriment of the applicant. The rules have to be given harmonious construction. The spirit behind this rule relating to transfer on request is that the transferee will be placed below all those who are already available in the receiving seniority unit. But in a situation like the one before us, this cannot mean that the erstwhile senior coming to the new unit alongwith his junior will become junior for the simple reason that he was released late from the erstwhile unit.

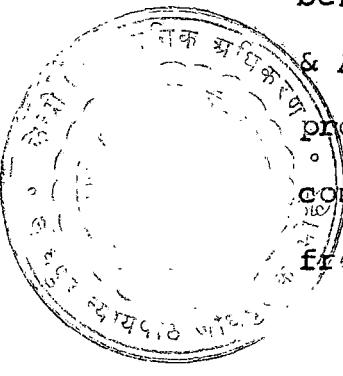
6. In our considered view in the new unit i.e. in Jaipur Collectorate the inter se seniority of the applicant and respondent no. 4 cannot be disturbed. The seniority list issued earlier as on 31.12.1996 was correctly prepared and there was no need to revise the same at the instance of respondent no. 4. The action of the respondent-deptt. in placing the applicant, P.P. Joshi, below the respondent no. 4, is not sustainable and we have no hesitation in quashing the same. There is absolutely no similarity of facts of this case with the cases relied upon by the respondents

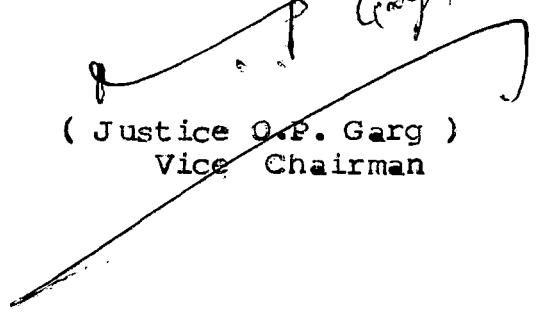
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to support their action. None of those cases related to transfer under a common order from one seniority unit to the other common seniority unit.

7. We allow this Original Application and quash and set aside the order dated 02.02.1999 (Annexure A/1) and order dated 31.12.1998 (Annexure A/2). The seniority of the applicant vis-a-vis respondent no. 4 shall stand restored to the position shown as on 31.12.1997 (Annexure A/5), with immediate effect. The applicant shall also be entitled to all consequential benefits including proforma promotion and difference of Pay & Allowances, from the date respondent no. 4, Raj Kanwar was promoted to the next higher grade. The respondents shall comply with these directions within a period of two months from the date of receipt of this order. No order as to costs.


(A.P. Nagrath)
Adm. Member


(Justice O.P. Garg)
Vice Chairman

20/10/1962

Recd/H

10/10/1962

Part II and III destroyed
in my presence on 19.10.62
under the supervision of
Section Officer () as per
order dated 14.10.62

Section Officer (Record)