

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.425 of 1998.

Friday this the 15th day of December, 2000.

CORAM:

HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

Jeboy Thomas,
Inspector of Central Excise,
Kottayam Divisional Office,
Kottayam.

Applicant

(By Advocate Shri Mohan Pulikkal)

Vs.

1. Union of India, represented by
the Secretary, Ministry of Defence,
Department of Revenue,
New Delhi.
2. The Secretary,
Central Board of Customs & Excise,
New Delhi.
3. The Deputy Commissioner (P & V),
Office of the Commissioner of
Central Excise & Customs,
Central Revenue Building,
Kochi-682 018.
4. The Commissioner of Central Excise &
Customs, Kochi -682 018. Respondents

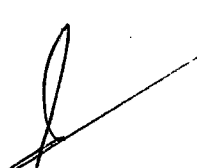
(By Advocate Shri Govindh K Bharathan, SCGSC)

The application having been heard on 15.12.2000, the Tribunal
on the same day delivered the following:

O R D E R


HON'BLE MR A.M.SIVADAS, JUDICIAL MEMBER

Applicant seeks to quash A-3 and to declare that he is
entitled to have his entire service with effect from
20.11.1989 as Inspector of Central Excise under both the
Coimbatore and the Cochin Commissionerates reckoned for the
purpose of seniority and promotion to the post of
Superintendent of Central Excise.



2. Applicant says that he is working as Inspector of Central Excise in Kottayam Division. He was initially recruited to the post based on an examination conducted by the Staff Selection Commission in the year 1988. He had indicated Cochin Commissionerate as his priority station. However, he was posted in Kottagiri range within the jurisdiction of the Coimbatore Commissionerate. The applicant had applied to the authorities concerned for a transfer to Kerala and his repeated representations in this behalf failed to find favour with the authorities. In the year 1993 Kottagiri Range Office was wound up. Pursuant to that he was transferred to Thodupuzha Range Office as per A-1. He was not required to furnish the usual undertaking as was required of the other officers who were given inter-commissionerate transfer on request. On being transferred to Cochin Commissionerate, he was placed in the seniority list of Inspectors under the Cochin Commissionerate, below all the persons appointed up to the date of his joining duty in Cochin Commissionerate i.e. 1.5.1993. He submitted a representation dated 21.2.1997 to the 4th respondent requesting that his seniority from the date of his initial appointment as Inspector of Central Excise to be considered for all purposes. The same was turned down as per A-3 impugned order.

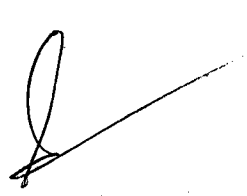
3. Respondents contend that it was clearly mentioned in the transfer order of the applicant that transfer is subject to certain conditions. Inter Commissionerate transfers were made on the basis of request on compassionate grounds and on express willingness by the applicants to forgo their past services for reckoning seniority in the new Commissionerate. The transfer of the applicant was not necessitated by the winding up of Kottagiri Range. It was done only as per his request.



4. It is the undisputed fact that the applicant was formerly working in Kottagiri Range and was transferred as per A-1 to Cochin Commissionerate. A-1 specifically says that the seniority of those who are transferred will be fixed below the last temporary Inspector of Central Excise in Cochin Collectorate and no transfer TA/joining time etc. will be admissible.

5. The applicant came on transfer as per A-1 to Cochin Collectorate. After that till 24.2.97 he has not raised any objection or grievance as to his seniority. If the applicant was really aggrieved by the conditions stipulated in A-1 in the normal course within a reasonable time, but not after a lapse of 3 to 4 years, he would have taken up the matter with the authority concerned. That has not been admittedly done.

6. In A-2, the representation submitted by the applicant to the 4th respondent dated 21.2.97, it is stated that he had assigned rank No. 767 in the seniority list pertaining to Cochin Commissionerate. The rank No. 767 is the old rank No. as it is specifically stated in A-2. So, the applicant was well aware that he was assigned No. 767 in the old list and that would have been in the normal course much prior to 21.2.97. The position is that for 3 to 4 years he had absolutely no grievance with regard to the seniority assigned to him. After a lapse of time he cannot say that the said position is to be unsettled. If the applicant is given seniority as sought for by him, it will be affecting certain other Inspectors of the Central Excise, Cochin Collectorate. It cannot be a case of the unsettling of the settled seniority after a lapse of considerable time.



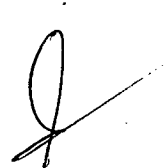
7. Applicant says that Kottagiri Range Office was wound up in the year 1993 and that is why he was transferred to Cochin Commissionerate. There is no document in support of the case of the applicant that Kottagiri Range was wound up.

8. Respondents have specifically stated in the reply statement that the transfer of the applicant was not due to the winding up of Kottagiri Range and was done at his request.

9. Annexure R-4(A) is a request made by the applicant to the Principal Collector, Customs and Central Excise, Madras, through proper channel on 1.3.93 for a transfer on the ground that he is a native of Kottayam District and he has got domestic problems. So, from R-4(A) it is seen that the applicant has requested for transfer from Kottagiri Range to Cochin Commissionerate. The definite stand of the respondents is that as per A-1, the applicant was favoured with a transfer to Cochin Collectorate as per his request R-4(A) and that is the reason why the conditions are also specified in the order.

10. There is no case for the applicant that he has raised any objection against non-granting of joining time and transfer TA to him as per A-1. Non-granting of TA and joining time is a feature of request transfer. If it was not a request transfer as contended by the applicant in the normal course he would have taken some action on the ground that his right has been taken away.

11. Since the transfer of the applicant was only subject to the conditions contained in A-1 and he having accepted that transfer without any murmur and having remained so for some 3 to 4 years he cannot now come forward and say that his rights have been adversely affected.

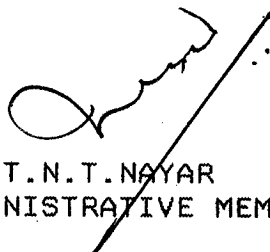


12. From R-4(A), it is clearly seen that the applicant was very much hopeful of getting a transfer in near future since it is clearly stated therein that "I will be under orders of transfer in the near future."

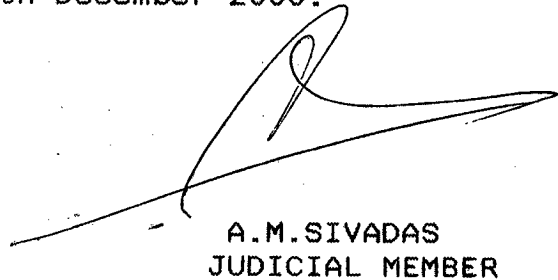
13. As per A-1 transfer order has been issued within a couple of months from the date of R-4(A) and so, there is considerable force in the stand of the respondents that the applicant was given a request transfer. That being so, the applicant is not entitled to the reliefs claimed.

14. Accordingly the O.A. is dismissed. No costs.

Dated the 15th December 2000.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

rv

List of Annexures referred to in the order:

Annexure A1: True copy of the order C No.II/3/6/93-Estt.I dated 22.4.93 of the 3rd respondent.

Annexure A2: True copy of the representation dated 21.2.97 to the 4th respondent.

Annexure A3: True copy of the Memo C No.II/34/4/97-Estt.I dated 20.3.1997 issued by the 3rd respondent to the Assistant Commissioner, Central Excise Division, Kottayam.

Annexure R4(A): Photo copy of the letter from the applicant to the Principal Collector dated 1.3.93.