

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 142/92
XXXXXX

199

DATE OF DECISION 8.10.92

P.T.Bhaskaran _____ Applicant (s)

Mr.Vellayani Sundararaju _____ Advocate for the Applicant (s)

Versus

Collector of Central Excise & Respondent (s)
Customs, Central Revenue Bldg.,
I.S. Press Road, Cochin & 3 ors.

Mr.K.Prabhakaran, ACGSC _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.S.Habeeb Mohamed, Administrative Member

The Hon'ble Mr. N.Dharmadan, 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. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

MR. N.DHARMADAN, JUDICIAL MEMBER

The applicant is aggrieved by Annexure-A office order dated 3.10.1991 passed by the Government transferring him from Cochin Collectorate to Trichy ignoring the interim order passed by the Madras Bench of the Central Administrative Tribunal in OA 575/91 dated 18.6.91.

2. Applicant joined the Central Government service in the year 1971. From 1971 to 1978 he worked at Mathura (U.P.) and at Gorakpur. Thereafter he was appointed as Communication Officer in the Department of Customs and Central Excise. From 1978 to 1984 he worked at Kutch in Gujarat State. After promotion as Assistant Director (Communication) the applicant was transferred to Cochin.

Out of the total service of 20 years under the Central Government he worked more than 13 years in various places outside Kerala. At present there are 11 Assistant Directors (Commn.) with senior time scale working in different centres of Communication Wing of Customs and Central Excise Department. The applicant is the seniormost officer eligible for next promotion and he is a member belonging to Scheduled Caste Community. In 1991 the 1st respondent made a request to 3rd respondent for sanctioning new post of Deputy Director (Commn.) in Cochin Collectorate taking into consideration the existing workload and expansion programme. But the Government without accepting the recommendations ordered restructuring of the telecommunication setup in the Customs and Central Excise Department as per Annexure-E dated 15.4.1991. As per the restructuring order the Cochin Collectorate of Central Excise and Customs was allotted one post of Assistant Director alone in Group 'A'. Hence, Annexure-F order was passed transferring 11 Assistant Directors including the applicant to different places. The applicant was transferred to Goa. But this order was subsequently cancelled as per order No.234/91 dated 12.7.1991. So much so all the transferred officers were allowed to continue in the respective places by adjustment. Meanwhile some of the employees of Telecommunication in the Collectorate of Central Excise and Customs challenged the restructuring order in OA 575/91 before the Madras Bench of the Central Administrative Tribunal and the Tribunal passed an interim order dated 18.6.91 directing the respondents not to implement Annexure-E restructuring order and also not to transfer any of the officers who were transferred consequent to Annexure-E restructuring order. Subsequently, by order Annexure-G, F.No.A-11019/80/91-Ad.IV(Pt) dated 4/9.10.91

the Government of India, Ministry of Finance, Department of Revenue, issued direction to the 3rd respondent to comply with the interim direction in O.A. 575/91. Inspite of the interim order Annexure-H was passed by which two senior officers M/s.V.A.Balasubramaniam and K.H.Narasinghani were promoted as Deputy Director (Commn.) but the applicant was not considered for such promotion, even though the applicant is fully eligible for promotion as Deputy Director under Annexure-I recruitment rules and he has made several requests to respondents 2 to 4 for promoting him as Deputy Director (Commn.). In fact the 2nd respondent under whose control the Telecommunication Wing of the Central Excise and Customs is functioning threatened the applicant through phone on several occasions that he will be transferred to far off place if he insists for promotion to the post of Deputy Director. Under these circumstances Annexure-A order was passed ignoring the interim order of the Madras Bench of CAT in OA 575/91. Applicant submitted Annexure-B representation against the transfer order on 31.10.1991. When the Government rejected the representation as per Annexure-C letter stating that it is not feasible to accede to the request of the applicant and in the light of Annexure-C order 1st respondent issued Annexure-D consequential order, the applicant filed this application under Section 19 of the Administrative Tribunals Act challenging Annexures-A, C and D. He also prays for a direction to the respondents to consider his case for promotion as Deputy Director (Commn.) as per Annexure-I recruitment rules.

3. In the counter affidavit the respondents have taken the stand that the applicant has been transferred

because he became surplus in Cochin Collectorate on account of the restructuring order. Two officers now working in Group-A posts in Cochin Collectorate are the applicant and one Shri T.L.Francis, Communication Officer. Since the applicant was working from 1984 as Assistant Director (Commn.) and Shri Francis has been working from 1990 as Communication Officer, the applicant was transferred in public interest. They have further submitted that there is no adequate work for retaining the second post of Assistant Director (Commn.) at Cochin Collectorate. Regarding the violation of the interim order in OA 575/91 the reply of the respondents can be stated in their own words as follows:-

".... The order dated 4/9.10.91 at Annexure-G is issued based on interim order dated 18.6.91 of the Hon'ble Central Administrative Tribunal, Madras Bench in OA 575/91. The final order in this O.A. has been passed by the Hon'ble Tribunal, Madras Bench vide order dated 16.12.91 wherein it has been directed 'in the result, the respondents are directed not to give effect to the scheme embodied in the letter dated 15.4.91 as far as Group 'C' posts in Trichy are concerned until it is properly reviewed'. This order cannot be applied in the case of the applicant as he belongs to Group 'A' cadre in Cochin Collectorate. The benefit of the Hon'ble Tribunal's order is applicable to Group 'C' officers of telecommunications cadre of Trichy Collectorate and that too till a proper review of their case is made."

4. In the rejoinder the applicant reiterated his case of violation of the interim order by the respondents as follows:-

"..... Annexure-A transfer order was issued on 3rd October, 1991. Whereas an interim order was given by the Hon'ble CAT, Madras Bench in OA 575/91 on 18.6.1991 directing the respondents not to effect any transfer orders or to implement Annexure-E restructuring till the disposal of the OA. This fact has been admitted by the respondents. Based on the above said interim order Annexure-G was issued. The above cited O.A. was disposed on 16.12.1991. Hence Annexure-A transfer order is naked violation and contempt of the interim order issued by the Hon'ble CAT, Madras Bench on 18.6.1991. The statement of the respondents that there is no

post of Assistant Director (Communication) at Cochin Collectorate to accommodate the applicant is a mis-representation deliberately made by the respondents to misled this Honourable Tribunal."

5. The respondents have admitted that the Madras Bench of the CAT has passed an interim order restraining them from implementing the order Annexure-E restructuring of the Telecommunication set-up in the Customs and Central Excise Department. This O.A. was finally disposed of on 16.12.1991. The full text of the judgment has not been produced either by the applicant or by the respondents. But the respondents indicated in their reply that the final order permitted them to proceed with the restructuring scheme in regard to posts other than Group 'C' in Trichy. There is no further explanation in the reply about the nature of the directions of the Tribunal in regard to the restructuring scheme and implementation thereof carving out only a portion of the same. Without examining the full text of the judgment we are not in a position to appreciate the argument of the learned counsel for the respondents that the respondents have full freedom to effect transfers and postings in implementation of the restructuring scheme proposed by the Government. There is no specific answer in the reply statement about the violation of the interim order and Annexure-A by which the applicant was transferred to Trichy on 3rd October 1991.

The Tribunal finally disposed of the case only on 16.12.1991. The Government have passed Annexure-G order on 4/9.10.1991 in the light of the interim order passed by the Tribunal. It reads as follows:-

"I am directed to refer to the interim order of CAT Bench Madras dt. 18.6.91 on the above subject and to say that incumbent becoming surplus as a result of the restructuring of the telecommunication organisation in terms of this Department's

letter F.No.A.11013/105/84-Ad.IV dt. 15.4.91 should not be transferred from their place of postings and additional posts created as the results of restructuring should also not be filled up till the pending final order of the CAT.

However, the inter-collectorate transfer of willing officer may be considered."

After the final disposal of the OA 575/91 if the respondents were given permission to effect transfers of surplus hands on account of restructuring they should have passed fresh orders in the light of the final orders revoking Annexure-G. No such order has been passed in this case.

6. When a specific question was asked to the Central Government Standing Counsel as to whether the impugned order Annexure-A is contrary to the interim order passed by the Tribunal in OA 575/91 he answered by stating that after the final order Annexure-G automatically goes and the transfer order Annexure-A becomes valid.

7. According to us an order passed in violation of interim order of the Tribunal has no validity and it is a still-borne order particularly when Annexure-G is in force. It cannot be enforced until Annexure-G is cancelled or superseded by subsequent order. The argument of the learned counsel for the respondents that today when the case is being heard there is no interim order in force and hence the transfer is valid cannot be accepted on the facts and circumstances of this case. As already stated, the transfer has been effected after the interim order of the Tribunal without taking permission. When they recognised the mistake they should have corrected the same either by moving the Tribunal for getting appropriate orders or they should have cancelled it. They cannot now seek shelter on the final decision of the Tribunal and contend that the order passed during the

currency of the interim order have become valid automatically after the final decision. It is a settled legal principle that the law that applies to a proceeding before a Court or Tribunal is the one which is in force at the date of consideration of the same. We have considered that principle in OA 745/89 and observed as follows:-

"11. Generally the law that applies to a proceeding before the court or Tribunal is the law which is in force on the date of its decision or consideration of the matter unless it is made clear by the repealing, re-enacting or modifying statute that the pending matter are governed by the old law or rule governing the matter at the time of its institution. The Supreme Court in Lakshmi Narayan Guin vs. Narayan Modak, AIR 1985 SC 111 said that a change in the new law during the pendency of an appeal has to be taken into account and will govern the rights of the parties was laid down by this court in Ram Sarup vs. Munshi (AIR 1963 SC 553) which was followed by this court in Mula vs Godhu (AIR 1971 SC 89)..."

But according to us this principle is not applicable to the facts and circumstances of this case.

8. The further contention of the learned counsel for the respondents that the applicant has the longest stay at Cochin and he has been transferred in public interest finding him surplus is also cannot be supported from the mere fact that the applicant is a senior-most Assistant Director (Commn.) and Shri Francis is only working as a Communication Officer from 1990. If at all a surplus officer is to be transferred it is the juniormost officer who is to be shifted. Respondents have stated that only one post of Assistant Director is available and the applicant has been transferred retaining his junior who is working as Communication Officer in the Group 'A' post. The case of the respondents in the reply that the Government decided to retain only one Group 'A' post in the

Telecommunication Wing of Cochin Collectorate is not correct. Annexures - I and II proceedings dated 1.1.92 and 27.2.92 show that there are 4 Group 'A' officers posts available in the Telecommunication Wing of the Cochin Collectorate even after the implementation of the restructuring scheme pursuant to Annexure-E. It is true that the post of Communication Officer is redesignated as Assistant Director (Commn.) and there is only one post at Cochin as Assistant Director (Commn.). Shri Francis, who has been working as Communication Officer in the Collectorate of Cochin from 29.7.1988 onwards, is in the junior time scale of Assistant Director (Commn.) and if Annexure-E restructuring is to be implemented he is to be considered for shifting from Cochin Collectorate as surplus hand. The retention of such a junior hand and transfer of the applicant outside Cochin particularly in the light of Annexure-G cannot be sustained. Even at the time of admission of this application on 29.1.92 this Tribunal expressed the same view and passed the interim order in the following manner:-

"In view of the fact that the Annexure-G order of the Govt. of India, Ministry of Finance, Deptt. of Revenue's letter dated 4/9.10.91 specifically provides that the incumbents who became surplus as a result of the restructuring should not be transferred from their place of posting, prima facie we are of the view that the Annexure-A order transferring the applicant violates the Annexure-G order. In the circumstance, the implementation of the Annexure-A order, in so far as the applicant is concerned, is stayed for a period of 3 weeks.

The respondents should indicate whether the applicant has actually been rendered surplus merely on account of restructuring, in which case the Annexure-E order should not be implemented."

9. The applicant also produced Annexures-J and K O.Ms. issued by the Ministry of Personnel, Public Grievance and Pension declaring the policy of the Government of India regarding the transfer of Government employees belonging to Scheduled Castes and Scheduled Tribes. The relevant portions of the Annexures-J and K are extracted below:-

"2. It has, however, been pointed out to this Department that the Scheduled Castes and Scheduled Tribes Officers, after appointment are subject to harassment and discrimination on grounds of their social origin. It has been pointed out that SC/ST officers are sometimes transferred to far-off places and also placed at insignificant positions. It has also been stated that these officers are not accepted at their places of postings by the concerned superior officers in some cases.

3. In this connection, it is emphasised that Government servants should desist from any act of discrimination against members of SC/ST communities on grounds of their social origin. It is also requested that Senior Officers, including the Liaison Officers of the Ministry/Department, should keep a close watch to ensure that such incidents do not occur at all. However, if any such incident comes to the notice of the authorities, action should be taken against the erring officials promptly."

(Extract of Annexure-J)

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"It is reiterated that in the matter of postings/placements of officers/staff, no discrimination should be shown against those belonging to SC/ST. Complaints in this regard should be given due consideration and should be brought to the notice of the Head of the Department for corrective action, wherever necessary. Senior officers, including Liaison Officers, should keep a close watch to ensure that incidents of harassment of SC/ST Officers and discriminatory treatment against them do not occur. Prompt action should be taken against the erring officials responsible for such lapses."

(Extract of Annexure-K)

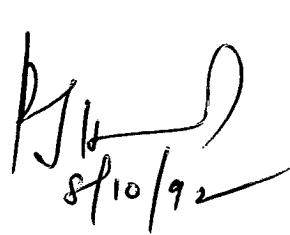
Relying on these policy statement and directives of the Government the applicant contended that Annexures-A, C & D are violative of the existing guidelines and they are to

be declared illegal. The respondents have no case that they have adverted to the claim of the applicant that he is a member of Scheduled Caste and he can be posted to the extent possible in the native place and avoid discrimination. The respondents have also not given any valid explanation in the reply statement as to why they have failed to take into consideration the policy statement while issuing the impugned order except stating that "no order regarding reservation for SC/ST in Group-A posts have been violated or byepassed. The various allegations contained in these paragraphs are denied."

10. The applicant has a further case that out of the 11 Assistant Directors (Commn.) he is the seniormost officer having the preferential right of promotion being a member of SC community but he has not been considered for promotion so far. He also seeks for a direction to respondents to consider him for promotion in accordance with law. Respondents have not given any answer to this claim of the applicant. But since this is a matter which is to be agitated separately and we are in this application mainly concerned with the legality of the impugned orders Annexures-A, C and D, we are not considering the prayers dealing with the right of promotion which the applicant can agitate separately.

12. In the result, we quash Annexures-A, C and D to the extent they affect the transfer of the applicant from Cochin Collectorate and allow the application without any order as to costs.


(N.DHARMADAN)
JUDICIAL MEMBER


(P.S.HABEEB MOHAMED)
ADMINISTRATIVE MEMBER