

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 331 of 2011

Thursday...., this the 16th day of June, 2011

CORAM:

Hon'ble Ms.K.Noorjehan, Administrative Member

K.B Mohandas
Superintendent of Central Excise
Service Tax Division
Central Excise Bhavan
Kathrikadavu, Cochin – 682 017

Applicant

(By Advocate – Mr. C.S.G Nair)

V e r s u s

1. Chief Commissioner of Central Excise & Customs
Central Revenue Buildings
I.S Press Road, Cochin – 682 018
2. Commissioner of Central Excise & Customs
Central Revenue Buildings
I.S Press Road, Cochin – 682 018
3. Chairman
Central Board of Excise & Customs
North Block, New Delhi – 110 001
4. Union of India
Represented by its Secretary
Department of Revenue
North Block, New Delhi -110 001

Respondents

(By Advocate – Mr.S.Jamal, ACGSC)

This application having been heard on 09.6.2011, the Tribunal
on 16.06.2011 day delivered the following:

ORDER

By Hon'ble Ms. K.Noorjehan, Administrative Member -

1. The applicant is aggrieved by Annexure A-8 impugned order by which he has been denied a posting to Air Cargo Complex/Unaccompanied Baggage Section (ACC/UB for short), Trivandrum for the year 2010. The applicant who joined the service on 17.11.1980 as Inspector of Central Excise was promoted as Superintendent of Central Excise with effect from 29.08.1997. He avers that there are two international air ports at Calicut and Trivandrum and the customs work in the ACC/UB is looked after by the Central Excise office. The tenure for posting in the ACC/UB is for 6 months and the posting is made on the basis of seniority and willingness given by the Superintendents and Inspectors during the course of annual general transfer. According to the existing instructions Superintendant is posted to Air customs for a period of 2 years and to Air Cargo Complex in Kerala for a period of 6 months and such a posting is made only once in their service. The applicant submitted his willingness for a posting to ACC during the 2010 annual gneral transfer as his turn based on his seniority arose only then. His name did not figure in the transfer order while the name of his junior Shri K.R Sathish was very much there. Therefore he sought certain information about posting to ACC/UB through RTI Act vide Annexure A-2. Vide Annexure A-3 he came to know that there is no vigilance case is pending against him. Under such

74

circumstances he submitted his Annexure A-4 representation followed by Annexure A-5 reminder to R2. Eventhough the applicant was granted 2nd ACP he was not paid the monetary benefits. Therefore he filed O.A 627/09 which was allowed. The respondents in the meanwhile issued one more posting order on 29.12.2010 to ACC/UB wherein five of his juniors were posted. The first respondent rejected the representation of the applicant vide Annexure A-8. The applicant avers that he is the recipient of 5 cash awards during the year 2010 for detecting tax evasion in Service Tax. Therefore he is highly aggrieved by Annexure A-8, impugned order rejecting his request for posting to ACC/UB. The counsel for the respondents handed over a confidential letter from the respondents explaining the reasons for issuance of the Annexure A-8 impugned order.

2. Heard the counsel for the parties and perused the documents. The applicant has produced Annexure A-2 which is the reply given by the CPIO in reply to few of the questions raised by the applicant under RTI Act. In this letter it is seen that three Superintendents who requested for a posting to ACC/UB have been denied the postings. In the impugned order the respondents have noted that the applicant is unfit for a sensitive posting to ACC/UB Trivandrum. From Annexure A-2, the reply obtained by the applicant under RTI Act it is seen that he is not the only one who is denied a posting to ACC UB. So the applicant has no case, that there is selective discrimination in his case alone. Annexure A-2/2 produced by the

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applicant shows that against him and another officer at Serial No. 3 a mention is made about a note received from the Vigilance Section which is kept in sealed cover. Thereafter it is left to the applicant to make his own inferences about his non-selection. Moreover it is the prerogative of the administration to choose officers in such a way that they are most suited for that particular work. Perhaps the applicant is good in detecting tax evasion in Service Tax where he has proved his excellence. The respondents may like to give him the same port folio as revenue to the department will be increased. In this juncture it is pertinent to refer to the dictum laid down by the Apex Court in various judgments in the matter of transfer which is an incident of service. The judgments delivered by the Hon'ble Supreme Court in the following cases hold up this view point.

- (i) AIR 2004 SCC 2165 in the case of State of U.P and others, Appellants v. Gobardhan Lal, Respondent with D.B Singh, Appellant V. D.K Shukla and others, Respondents.
- (ii) AIR 1991 SCC 532 in the case of Mrs. Shilpi Bose and others, Appellants V. State of Bihar and others, Respondents. In this case para 4 is extracted below:-

" In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to another."

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3. As a corollary to it, it is not the function of this Tribunal to direct the respondents to post the applicant to a place of his choice. The respondents have the prerogative to select those who fulfill the prescribed parameters, yardstick etc for a sensitive posting like in ACC/UB. The applicant has not alleged any malafides in the action of the respondents. He has failed to make out a case in his favour. The O.A is devoid of any merits and accordingly it is dismissed. No costs.

(Dated this the ^{16th} day of JUNE, 2011)


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER

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