

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATED THE TWENTY SEVENTH DAY OF SEPTEMBER ONE THOUSAND
NINE HUNDRED AND EIGHTY NINE

PRESENT

HON'BLE SHRI S.P. MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O.A. No. 377/89

K. C. Sreekumaran

Applicant

Vs.

1. The Collector of Central Excise
Office of the Collector of Central
Excise, Central Revenue Building,
Cochin-18 and

2. The Deputy Collector (P&E) office of
the Collector of Central Excise,
Central Revenue Building,
Cochin-18

Respondents

Mr. P. V. Mohanan

Counsel for the
applicant

Mr. P. V. Madhavan Nambiar, SCGSC

Counsel for the
respondents

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

When this petition came up for admission, the learned Senior Central Government Standing Counsel who was present in the court took time to ascertain the correct position. Accordingly, he filed a reply denying the allegations in the petition. The petitioner by filing rejoinder and additional rejoinder on 13.8.89 and 20.8.89 respectively, reiterated the statements in the petition and contended that he is entitled to a transfer and posting as Inspector Air Customs, Trivandrum. The SCGSC also submitted a statement

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on 17th August, 1989.

2. The grievance of the petitioner is against Annexure-I, Annexure-II and V by which an enquiry was contemplated against the petitioner for the alleged misconduct mentioned in the statements of imputation and consequently the Selection Committee refused to post the petitioner at Trivandrum as Inspector Air Customs.

3. The petitioner is working as the Inspector of Central Excise in Ernakulam Range. He approached the Tribunal on an earlier occasion by filing O.A. 261/89 challenging the order of postings to some of his juniors as Inspectors at the Airport, Trivandrum. That petition was heard and disposed of as per Annexure-III judgment with the following observations:

"Now that the chargesheet has been formulated it will be only fair to the applicant that his case is considered by that Selection Committee taking into account the contents of the chargesheet and other relevant materials pertaining to the chargesheet. Nothing more than that can be justified in favour of the applicant at this stage. I, therefore, allow the application only to the extent of directing the respondents to get the case of the applicant reconsidered by the Selection Committee by placing before them the chargesheet and all other relevant materials and to decide the case of posting of the applicant to the Trivandrum Airport on the basis of his seniority and fitness after taking into account such recommendations as the Selection Committee may make in review. I also direct that a decision about the applicant should be taken within a period of one month from the date of communication of this order. There will be no order as to costs."

4. After the above said judgment, the Selection Committee met on 2.6.89 and considered the case of the petitioner in

the light of the aforesaid judgment. The minutes of the meeting have been produced before us for perusal. Paragraph 2 & 3 read as follows:

"Selection Committee meeting was held on 21.4.89 to prepare a panel of Inspectors eligible for posting to Air Customs Pool, Trivandrum. Shri K. C. Sreekumar (petitioner) and Smt. E. K. Shailaja (petitioner's wife) Inspectors who had expressed willingness to be posted to Air Customs Pool, Trivandrum were not selected for posting by the Committee, because disciplinary proceedings were contemplated against them. However, the Central Administrative Tribunal has directed in O.A. 261/89 and 262/89 filed by Shri K. C. Sreekumar Inspector and Smt. E. K. Shailaja, Inspector respectively that their cases may be reconsidered for selection by the Selection Committee taking into consideration the contents of the chargesheets which were issued to the Inspectors after the Selection Committee had met on 21.4.89."

"Accordingly, the Committee reconsidered the cases of Shri K. C. Sreekumar and Smt. E. K. Shailaja, Inspectors. After going through the chargesheet and all other relevant materials and records, its findings as follows:

- i) Sri. K. C. Sreekumar - not selected
- ii) Smt. E. K. Shailaja - not selected "

5. From the above minutes, it is clear that the directions in the judgment Annexure-III have been duly complied with by the respondents. The petitioner and his wife were not selected because of the initiation of the disciplinary proceedings against them based on memorandum of charges dated 11.5.89 issued to both of them. On the basis of the statement of allegations issued to them, the learned counsel

of the petitioner vehemently contended that after the decision of the Tribunal in Annexure-III directing the respondents to reconsider the selection of the petitioner by placing before the Selection Committee the chargesheet considering the posting of and all other relevant materials and / the applicant to the Trivandrum Airport on the basis of seniority and fitness, nothing was reconsidered by the Selection Committee as directed by the Tribunal. According to him, the first respondent has shown hostile discrimination and the ^{also} petitioner was denied selection in the years 1987, 1988 and / in this year.

6. We feel that the petition is premature. The minutes of the meeting of the Committee quoted above clearly showed that the petitioner's case was duly considered and rejected because of the pendency of the enquiry. Before completing the enquiry proceedings the petitioner has no legal right to be considered for a posting as Inspector Air Customs Wing, Trivandrum which is a very sensitive post even according to the petitioner. He has stated in paragraph 4 of the petition as follows:

"The posts of Inspectors to Air Customs, Trivandrum even though carries same scale of pay of Inspector of Central Excise, is a tenure post for 2 years. It carries special responsibilities and duties such as checking of passengers, assessment of duties etc., It is a selection and post. The incumbents will be rewarded for this arduous duties. There is no statutory rules governing the field in the matter of selection and postings."

7. Under the above circumstances, we are of the view that the petitioner should prove his innocence before getting a posting as Inspector, Air Customs Wing, Trivandrum. In this view of the matter, the petitioner cannot challenge at this stage the Annexure-II memoranda of charges and Annexure-V decision taken on account of the pendency of this case is premature. the charges against him. Hence we hold that the challenge in/

8. The post of Inspector of Central Excise, Air Customs Wing, Trivandrum is admittedly a sensitive post and a posting can only be made by the respondents with proper care and caution. This aspect was dealt with the Tribunal in OA 264/89 which is produced as Annexure R-1 along with the counter affidavit filed by the respondents. The relevant portion reads as follows:

"It is the prerogative of the respondents who are responsible for efficient management of the International Airport to determine which of the persons are to be selected and deployed. We see nothing wrong in the action of the respondents keeping within a reasonable zone of seniority and considering the suitability of those who come within the zone. The applicant has not suffered any stigma by the non-inclusion of his name in the list of Inspectors who have been selected for a particular posting on the basis of their suitability. The fact that a particular person is not selected for posting in a particular assignment does not necessarily mean that he is inferior to others because his suitability for the existing posting may be better than that of others who have been selected for another posting. We also find that since the selection of suitable hands for the Air Customs, Trivandrum Airport is made by a Committee consisting of four senior officers, there is no question of any malafide involved or alleged in the non-inclusion of the applicant's name in the panel for posting at Trivandrum Airport."

The same principle is applicable in this case on all
fours by
force.

19. So the petitioner has no legal right to get a posting as Inspector of Central Excise, Air Customs, Trivandrum at present. More so because this is essentially a case in which the petitioner is challenging the transfer and posting by a Committee after evaluating the suitability to this sensitive post. Nevertheless, it is essentially a case of transfer. It is a well settled proposition that the transfer is ~~not a condition of service and the employees~~ ^{an incident of} are not entitled to any legal right to be posted to a place of his choice. The Government is bound to serve at any place to which he is posted in the normal course. In the exigencies of service, the Government can take appropriate decision for the posting of the employee by transferring them to various places according to the necessities and requirements of the service. Such decisions cannot be assailed by the Government servants unless it is motivated by irrelevant and extraneous consideration having no bearing with the administration and posting of such employee. So much so the Government servant has no legal right to a posting in a ~~specified~~ place of his choice as in the instant case. The Hon'ble Supreme Court said in B. Varadha Rao Vs. State of Karnataka and others (1986 (2) SIR 60) as follows:

"It is well understood that transfer of a Government servant who is appointed to a particular cadre of transferable posts from one place to another is

an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage. That a Government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of Government service and no particular post unless, of course, his appointment itself is to a specified, non-transferable post."

10. In the view that we have taken in this case, it is unnecessary for us to examine the other contentions raised by the learned counsel for the petitioner and decisions cited by him at the bar. Accordingly, we dismiss the petition, but with the observation that the respondents shall complete the enquiry now initiated against the petitioner within a period of three months from the date of receipt of a copy of the judgment and consider the claims of the petitioner for a posting as Inspector, Air Customs Wing Trivandrum.

11. There will be no order as to costs.

N. Dharmadan
(N. Dharmadan) 27.9.89.

Judicial Member

S. P. Mukerji
(S. P. Mukerji) 27.9.89.
Vice Chairman

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