

(23)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.450/87

Central Excise Non-Gazetted
Executive Officers' Union of
Bombay - II.

.. Applicants.

vs.

Union of India and Others

.. Respondents

Coram: Hon'ble Member(A) Shri M.Y. Priolkar
Hon'ble Member(J) Shri D.K. Agrawal

Appearances:

1. Mr. D.V. Gangal
Advocate for the
Applicants.
2. Mr. P.M. Pradhan
Counsel for the
Respondents.

JUDGMENT:
(Per M.Y. Priolkar, Member(A))

Date: 15-6-1990

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant which is the Union of Central Excise Non-Gazetted Executive Officers of Bombay II Collectorate, has questioned the transfer orders dated 2nd June, 1987 and 22nd June, 1987 issued by the Assistant Collector (Administration), Marine and Preventive Wing, Bombay and Collector, Central Excise, Bombay I, respectively, on the ground that the authorities who have passed these transfer orders are not competent to do so. Although in the original application certain other reliefs like promotions, confirmations, publication of seniority lists etc. were also sought, Shri D.V. Gangal the learned counsel for the applicant stated before us ^{at the hearing on 12-6-1990} ~~today~~ that he wishes to pursue only the

prayer for declaration that the orders dated 2.6.1987 and 22-6-1987 are bad in law.

2. The short point for determination in this case is, therefore, the competence of the authorities who have issued the transfer orders. Fundamental Rule (FR) 15(a) provides that

"The President may transfer a government servant from one post to another, provided that except

(1) on account of inefficiency or misbehaviour, or

(2) on his written request,

a government servant shall not be transferred substantively to, or except in a case covered by Rule 49, appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds a lien, or could hold a lien, had his lien not been suspended under Rule 14".

FR 6 provides for delegation of any powers conferred upon by these rules on the central government to any of its officers. Accordingly, power to transfer a government servant from one post to another has been delegated to all Heads of Departments (Sr.No.6A of Appendix 3).

3. Shri Gangal submitted that in terms of Supplementary Rule (SR) 310(C), it should be understood that the power to transfer is not delegated to any other authority subordinate to the "President", except the Head of Department. His contention was, therefore, that an officers of Bombay II Collectorate could be transferred only by his Head of Department, namely, Collector of Central Excise, Bombay II and

(28)

by no one else. The impugned orders having been issued by an authority other than Collector of Central Excise, Bombay II, Mr. Gangal argued that they should be held to be illegal and void. He also drew our attention to order dated 12.2.1958 of the Central Board of Customs and Excise providing inter alia that ordinarily, only temporary and quasi permanent employees should be permitted to be transferred from one charge to another. In exceptional cases, permanent persons may be transferred but they are liable to be placed at the bottom of the seniority list of permanent persons in that grade. Mr. Gangal also showed us what he states is a typical appointment letter, condition 5 of which reads as follows:-

"You are liable to be posted for service at any place in the Bombay Central Excise Collectorate II. Under no circumstances, your request for transfer to any other Collectorate will be entertained."

4. Shri P.M. Pradhan, learned counsel for the respondents argued that while previously there was only one Collectorate of Central Excise at Bombay, from 1-6-1959 that is subsequent to the Board's order dated 12.2.1958 relied upon by the applicant, it was divided into two separate Collectorates at Bombay and Poona and later on also, due to administrative exigencies following rapid industrialisation, there was further reorganisation into Bombay I, Bombay II and Pune Collectorates from July, 1979 and Bombay III Collectorate was also formed from September, 1983.

Mr. Pradhan stated that by the Ministry of Finance order dated 29-5-1979 (Annexure R-I to their written reply) it was specified as to which of the divisions of the then Bombay Collectorate ~~shall~~ would be placed in charge of the newly created Collectorates. That order also provided that cadres of Group 'C' (executive) which the applicant union represents will be common for all these Collectorates and will be controlled by the Collector of Central Excise Bombay I. The order also stated that officers posted in the existing Bombay/Pune Collectorates will normally not be transferred out of Bombay or Pune areas except on promotion and that also, if it was not found feasible to accommodate them in their parent Collectorates. This concession was not, however, to apply to those persons, who joined any of these Collectorates on or after 2-7-1979.

5. Mr. Pradhan argued that since all Collectors of Central Excise were already Heads of Department and now since the Collector Bombay I was also made the cadre controlling authority for the non-gazetted executive staff of all the newly created Collectorates, transfer orders dated 22.6.1987 issued by him of such staff cannot be considered to be without authority of law. The respondents have also averred in their written reply that orders dated 2.6.1987 cannot be said to be without authority as the decision of transferring the officers was taken by the cadre controlling authority

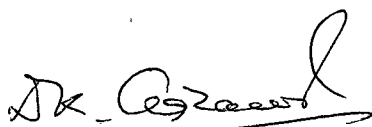
and the Assistant Collector looking after administration was only giving effect to the same and communicating the orders. We have no reason to disbelieve this statement, which is also not challenged by the applicant in his rejoinder; their only contention is that the Assistant Collector(Admn.), Marine and Preventive Wing being subordinate to Collector Bombay II cannot receive any directive/order from Collector Bombay I. The respondents have also brought to our notice the judgment dtd. 8-10-1986(Annexure R-4) of C.A.T., New Bombay Bench, holding in a more or less similar case that the Collector of Nagpur, who was made the cadre controlling authority for two reorganized Collectorates of Madhya Pradesh and Nagpur, was empowered to transfer the applicant in that case(Tr.A.No.25/86)from Nagpur to Indore.

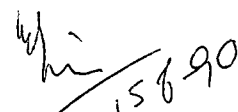
6. We have carefully considered the rival contentions raised on behalf of both parties. The transfer orders are not assailed on any grounds other than that of competence. Admittedly, all Collectors of Central Excise are Heads of Department, and Collector of Central Excise, Bombay I has been made the cadre controlling authority for the employees represented by the applicant Union, in addition to similar employees of the other reorganised Collectorates. The order dated 12.9.1979 of Ministry of Finance directs that the staff of these Collectorates will be arranged in the common seniority list of the

respective cadre on the basis of their length of service in the cadres in which they are serving subject to the maintenance of their interse seniority among the staff of the same Collectorate. Since Collector of Central Excise, Bombay I is a Head of Department and is also the cadre controlling authority for the non-gazetted Executive staff of all the reorganized Collectorates, the transfer orders issued by him should be held to be in conformity with the delegation in Sr.No.6A of Appendix 3 as also with the provisions of SR 310(C). The instructions of Ministry of Finance making Collector Bombay I the cadre controlling authority cannot be considered to be in conflict with the provisions of SR 310(C) or of Sr.No.6A of Appendix 3, as alleged by the applicant, but they are only supplementary to those provisions. As Head of Department, the Collector Bombay I is fully empowered to transfer employees belonging to the cadre controlled by him, which under the Finance Ministry's instructions dated 12.2.1979 include the employees represented by the applicant Union. Even on grounds of equity we are not able to appreciate the applicant's grievance, as with a centralised cadre and a common seniority list, the transfer of an incumbent from one of these Collectorates to another will not affect him in the matter of confirmation, seniority, promotion etc. Regarding condition No.5 of the appointment letter produced by Shri Gangal,

it was contended by Mr. Pradhan that the intention of this clause was that the appointment was initially in one Collectorate but there was no bar on transfer to other Collectorates under the same cadre controlling authority. While no doubt this clause could be more happily worded to remove any ambiguity, we agree that the interpretation given by Mr. Pradhan appears to us to be consistent with the objectives of the scheme of reorganisation of the Collectorates for more efficient functioning as also in conformity with the delegation of powers of FRs and SRs.

7. On the basis of the foregoing discussion, we do not see any merit in this application either on grounds of equity or of any legal infirmity in the impugned orders. The application is, accordingly, dismissed with no order as to costs.


(D.K. AGRAWAL)
Member (J)


(M.Y. PRIOLKAR)
Member (A)

Judgment ent dt- 15-6-90
served on P. No. 223
on dt. Nil
1/2/7/90