

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH, NEW BOMBAY

Tr. Application No.290/86.

Shri Rajendra Singh,
Civil Lines, Gondia,
District Bhandara.

... Applicant

Vs.

1. Union of India through its
Secretary, Ministry of Finance,
North Block, New Delhi.
2. Collector of Central Excise,
Saraf Chambers, Sadar,
Nagpur.
3. Department of Official Language,
through its Secretary, Ministry
of Home Affairs, New Delhi.
4. Collector, Central Excise,
Manekbagh, Palace,
Indore (M.P.)
5. Staff Selection Commission
(Western Region), Bombay.

... Respondents.

Coram: Hon'ble Member(J) Shri M.B. Mujumdar.

Oral Judgment:

(Per Shri M.B. Mujumdar, Member(J)) Date: 13-11-1987.

The Writ Petition No.2118 of 1985 filed by the applicant on 30th September, 1985 in the High Court of Judicature at Bombay, Nagpur Bench is transferred to this Tribunal under Section 29 of the Administrative Tribunal Act, 1985.

2. By an order dt.16-9-1985 passed by the Deputy Controller (P & E) of the Central Excise Collectorate at Nagpur, the applicant who was working as Senior Hindi Translator in the Nagpur Collectorate

was transferred and posted to Indore Collectorate with immediate effect. By the relieving order dt. 17th December, 1985, he was relieved w.e.f. 17.12.1985 of his post at Nagpur. He challenged that order by filing the Writ Petition in the High Court on 30th September, 1985. Though ~~that~~ the High Court was moved for interim stay, the High Court did not grant it. In spite of it the applicant has not joined his posting at Indore so far.

3. The respondents have filed as many as 3 affidavits challenging the claim of the applicant. I have just now heard Shri S.G. Aney, the Learned Advocate for the applicant and Mr.J.D. Desai for (Mr.M.I. Sethana) Counsel for the respondents. Shri Aney challenged the transfer of the applicant on a number of grounds.

4. The order of the Government of India Central Board of Excise and Customs dt.24th August, 1984 shows that the Board had decided that cadre control work of the Nagpur and Indore Collectorate would be distributed between the two collectors, as indicated in the letter. The Collector of Central Excise, Nagpur is have jurisdiction over Group 'B' and Group 'C', Ministerial cadres while Collector Central Excise-I will have jurisdiction over Group 'B' and Group 'C', Executive Cadres. It was not disputed that the applicant's post was in Group 'C'. However, it is his case that he does not belong to Ministerial Cadre and hence Collector of Central Excise of Nagpur had no authority to transfer him from Nagpur to Indore. For deciding this point, I shall have to consider whether 1983 Recruitment Rules for the Post of Junior Hindi Translator had come into force or whether the 1979 Recruitment Rules for the post of Senior and Junior Hindi Translators are still in force. This point has assumed importance

in this case because according to 1983 Rules the post of a Senior Hindi Translator is a non-ministerial one, while according to 1979 Recruitment Rules the post was a Ministerial one.

5. In order to show that 1983 Rules have come into force, Mr. Aney has relied on two letters which are annexed to the applicant's affidavit dtd. 29th October, 1985. It may be pointed out that a copy of the 1983 Recruitment Rules is produced on behalf of the Respondents. The title shows that these were model recruitment rules for the posts of Senior and Junior Hindi Translators. The first letter on which Mr. Aney has relied is the Ministry of Finance, Department of Revenue letter dt. 16th August, 1983. The subject of that letter is "Modelled recruitment rules for the posts of Senior and Junior Hindi Translators in the scale of 330-560, Rs. 425-700 and Rs. 550-800/900 in the sub-ordinate offices of the Government of India and Union Territories". Along with this letter a copy of the Office Memorandum dt. 21-7-1983 was forwarded for information and necessary action to all Heads of subordinate offices under the Department of Revenue. A copy of the Office Memorandum dt. 21.7.1983 is also produced on behalf of the applicant. By this office Memorandum the Ministries were requested to adopt the Rules with such minor modifications as may be considered unavoidable, taking into account all the peculiar requirements of the Board, Offices, if any. Mr. Aney was unable to show any document, letter, Memorandum or Notification by which the rules were adopted by the Ministry of Finance, with or without modifications. The respondents have stated in affidavit that these 1983 rules had not come into force at all. As the applicant was unable to show that the rules are adopted by the Ministry of Defence under which he is working, I am inclined to hold that the 1983 Rules have not come into force at all. Hence the position is clear that the applicant was in

Ministerial cadre in Group 'C'. In view of this position, Collector of Central Excise of Nagpur who has passed the transfer order had the authority to transfer the applicant from Nagpur to Indore.

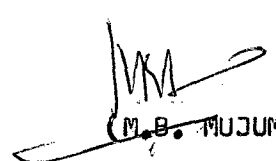
6. The next submission of Mr. Aney was that even according to 1979 Recruitment Rules the applicant could not have been transferred from Nagpur to Indore. He relied on the contents of Column 11 of the 1979 Recruitment Rules in respect of the posts of Senior and Junior Hindi Translators. Column 11 is entitled "Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer and percentage of the vacancies to be filled by various methods". Under that column against the entry of Senior Translator, it is mentioned, "By promotion failing which by direct recruitment". On the basis of this Mr. Aney submitted that the applicant could not have been transferred from Nagpur to Indore. But as already pointed out this column is regarding the method of recruitment and it has nothing to do with the transfer of a person holding the post of Senior Hindi Translator. Mr. Aney drew my attention to the contents under the same column against the entry of Junior Hindi Translator. The contents are "By transfer failing which by direct recruitment". Though there is some difference in the wording under that column regarding these two posts, the difference will not help the applicant to show that his transfer from Nagpur to Indore was invalid because the entries in column 11 are regarding the method of recruitment which have nothing to do with transfers.

7. The last submission of Mr. Aney was that Nagpur is in Region 'B' while Indore is in Region 'A' and hence the applicant could not have been transferred from Nagpur to Indore. But I have already referred to the letter of the Central Board of Excise and

Customs dt. 24th August, 1984. The letter shows that the Collector of Central Excise Nagpur was given authority as cadre controlling authority for Group 'B' and 'C' Ministerial cadres both at Nagpur and Indore. While the Collector of Central Excise Indore was the Cadre controlling authority, so far as the employees working in Group 'B' and Group 'C' executive cadres, both at Nagpur and Indore. Hence I find no substance in the argument that Collector of Central Excise at Nagpur had no authority to transfer the application from Nagpur to Indore. In this connection I may point out that in the affidavit of Mr. R.K. Audim, Deputy (P & E) filed on behalf of the respondents on 25.8.1986 it is stated that the applicant had requested for his posting at Bhilai or Raipur, both of which are in Indore Collectorate. However, respondent no. 4 rejected the request by the letter dt. 29.8.1985. His request shows that there is no substance in his argument that he could not have been legally transferred from Nagpur to Indore as they are in different region.

8. There were all the points which were urged before me I find no substance in any of these points. At the far end of his argument Mr. Aney submitted that the post of the Senior Hindi translator at Nagpur is lying vacant since the applicant was relieved and the respondents want to fill up the post expeditiously. If this is so it will be for the respondents to consider the case of the applicant for that post.

9. In result, the application is dismissed with no order as to costs.


(M.B. MUJUMDAR)
Member(J)