

(110)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH

Tr.511/86

Atul Dwarkanath Deshpande,  
Shri Navjeevan Co-op.Hsg.Society,  
Block No.6, 1st Floor,  
Opp. Central Railway Power House,  
Kopri,  
Thane(East)-400 063.

.. Applicant  
(Original Petitioner)

Vs.

1. Union of India, through  
The Secretary,  
Ministry of Finance,  
Department of Revenue,  
New Delhi - 110 001.
2. Collector  
Central Excise,  
Bombay-I,  
Central Excise Building,  
Churghgate,  
Bombay-400 020.
3. Collector of Central Excise  
and Customs,  
Government of India,  
P.M.C.Building,  
Hira Baug, Tilak Road,  
Pune-20.

.. Respondents.

Coram: Hon'ble Member(A) J.G. RAJADHYAKSHA  
Hon'ble Member(J) M.B. MUJUMDAR

Appearances:

1. Mr. Rammurthy,  
Advocate for the applicant.
2. Mr. J.D. Desai (for  
Mr.M.E.I.Sethna) for  
the respondents.

ORAL JUDGMENT  
(Per M.B. Mujumdar)

Date : 19-11-1987

Writ Petition No.715/85 filed by the applicant in the  
High Court of Judicature at Bombay is transferred to this Tribunal

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under Section 29 of the Administrative Tribunals Act, 1985.

2. On 5-4-1956 the applicant joined as Supervisor in the Jalgaon range of the then Bombay Central Excise Collectorate. The post was redesignated as Sub-Inspector with effect from 1-7-1959. In 1961 the applicant was confirmed as Sub-Inspector and on 2-12-1966 he was promoted as Inspector (Ordinary Grade) and posted at Bhivandi on officiating basis. In 1959, the Bombay Collectorate of Central Excise was divided into two separate Collectorates, viz., Bombay and Pune. At that time the applicant was working at Pune. It is stated by applicant that no option was given to the employees working in these Collectorates to get transferred from one Collectorate to the other. As the applicant's father was residing and ailing at Bombay he was requesting from 1966 for transferring him to Bombay. The request was finally acceded to in January, 1972. But before transferring the Applicant to Bombay, a declaration dtd. 12th January, 1972 was taken from him stating that, (i) he was prepared to forgo his entire seniority in the grade of Inspector (O.G.), (ii) he would not claim any travelling allowance and joining time on his transfer, (iii) his seniority in Bombay Central Excise Collectorate would be fixed below the last Temporary Inspector (O.G.) in case he <sup>was</sup> is temporary and since he was confirmed his lien should be kept in Poona Central Excise Collectorate till such time as he was confirmed in the Bombay Central Excise, Collectorate.

3. After the declaration was made, Establishment Order No.-3/1972 dtd. 14-1-1972 was passed by the Collector of Central Excise, Pune. The order reads as follows :-

"In pursuance of the orders contained in Central Board of Excise & Customs, New Delhi's letter F.No.6/71/70-Ad.III B,

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dated the 28th Dec, 1971, Shri Atul Dwarkanath Deshpande Inspector (O.G.) Kalyan Division of Poona Central Excise Collectorate is hereby transferred to Bombay Central Excise Collectorate with immediate effect, on the following conditions which are agreed to by Shri Deshpande as per his declaration dated the 12th Jan, 1972.

- (i) He is prepared to forgo his entire seniority in the grade of Inspector O.G.
- (ii) that he will not claim any travelling allowance and joining time on his transfer;
- (iii) that his seniority in Bombay Central Excise Collectorate will be fixed below the last Temporary Inspector (O.G.) & since he is confirmed in the grade of Inspector (O.G.) his lien in that grade will be kept in Poona Central Excise Collectorate till such time he is confirmed in Bombay Central Excise Collectorate".

4. By an order dtd. 31-8-1970 passed by the Collector of Central Excise Pune the applicant was confirmed with effect from ~~1-8-1969~~ <sup>8.10.1969</sup> However, in Bombay Collectorate he was confirmed with effect from 1-8-1975 by an order passed on 10th May, 1978. After his confirmation in Bombay Collectorate his lien in Pune Collectorate came to an end.

5. We have heard Mr. Rammurthy for the applicant and Mr. J.D. Desai for the respondents. We have also considered the contentions taken by the respondents in their written statement. However, after considering the arguments advanced before us we find that the scope of this application has become very limited.

6. The main grievance of the applicant is that the authorities should not have insisted upon him to give the declaration dtd.

12-1-1972 and his seniority should have been fixed by ignoring the declaration, on the basis of his length of service including the service in Pune Collectorate, irrespective of the date of joining in the Bombay Collectorate.

7. The applicant has produced at Ex. 'C', the relevant rules regarding transfer of non-gazetted staff from one charge to another within the same Department under the Board of Central Excise Instruction No. (V) therein is material in this case and it is as follows :

"(V) Ordinarily, only non-permanent (temporary and quasi-permanent) persons 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. It is possible that in the new charge there are several persons who are senior to the transferee, on the basis of length of service, but have not been confirmed. [On the other hand, it is also possible that the juniormost confirmed person in the new charge is far junior to the transferee. It will therefore, be necessary to fix the seniority of the permanent transferee, on an ad hoc basis, considering the length of his service, date of confirmation, etc. vis-a-vis the length of service etc., of the persons already working in the grade concerned, in the new charge. This should be done under the orders of the Board, before the transfer is effected"]

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From the above, the general rule appears to be that non-permanent persons should not be transferred from one charge to another. Though in exceptional circumstances permanent employees may be transferred they should be placed at the bottom of the seniority list of permanent persons in that grade. It is the case of the applicant that the respondents should have relied upon this provision and placed him at the bottom of the seniority list of the permanent persons in the grade of Inspectors(O.G.). In our opinion the applicant cannot be given the benefit of this provision because he was transferred on his request and it may be possible that some temporary Inspectors(O.G.) might have joined their services earlier than him. In case the applicant was put at the bottom of the seniority list of permanent persons then these persons were bound to suffer. In order to avoid injustice to such persons, further provision is made in instruction No.(V), which we have quoted above. We do not find from the record that the applicant's seniority was fixed on the basis of the latter part in the instructions which in our opinion was absolutely necessary. It appears that the applicant's seniority was not fixed on that basis because of his declaration dtd. 12-1-1972. In our opinion that declaration was contrary to the rules and therefore unwarranted. As already pointed out the applicant or persons like him do not appear to have been given an option for change of Collectorates. We are, therefore, inclined to direct the respondents to fix his seniority in view of the latter part of instruction No.(V) in Ex.'C' attached to the application with all the consequential benefits.

We therefore, pass the following orders :

- 1) The respondents are directed to re-fix the seniority of the applicant in accordance with the latter part

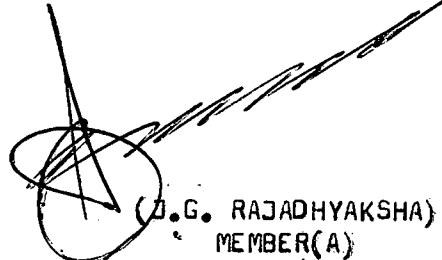
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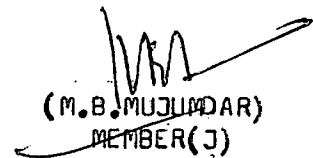
of Clause V of the Board's letter No.6/97/57-Admn-  
 III-A dt.12th February, <sup>1958</sup> 1987 (copy of which is  
 attached as Ex.'C' to the application).

- ii) [ While refixing the seniority the direction given in the letter from the Under Secretary to the Government of India, F.No.6/71/70-Ad.38 dt.28.12.1971 (which is attached as Ex.'A' to the application) that the applicant's seniority in the new charge will be fixed below the last temporary Inspector (O.G.) of Bombay Collectorate should be ignored. ] Similarly, while refixing the seniority, Clause III of the undertaking dt.12.1.1972 (which is attached as Ex.'B' to the application) given by the applicant should also be ignored.
- iii) While refixing the seniority the service rendered by the applicant in Pune Collectorate before his transfer to Bombay Collectorate should be taken into consideration.
- iv) After refixing the seniority, he should be placed at proper serial number in the seniority lists of the Inspectors (O.G.) prepared after 1972.
- v) After the seniority of the applicant is fixed, as directed above he will be entitled to all the consequential benefits. He shall be considered for promotion as Inspector (S.G.) and for further promotion as Superintendent on the basis of the revised seniority. If necessary, <sup>Departmental Promotion Committee</sup> a special ~~G.P.C.~~ should be constituted for the purpose of considering his case of promotions on due dates.

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- vi) As far as possible, respondents are directed to comply with the above directions within 4 months from the receipt of a copy of this order.
- vii) Parties to bear their own costs.

  
(J.G. RAJADHYAKSHA)  
MEMBER(A)

  
(M.B. MUJUMDAR)  
MEMBER(J)