

Before the Central Administrative Tribunal
Mumbai Bench

O.A. 904/96 & O.A. 905/96

Proceeded this the 30th day of April 1997

CORAM:

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

(1) Bhupender Singh Kesar Singh Negi
Shailesh Co-op.Hsg.Society,
102, Plot No.9, Sector 11
New Panvel - 410 206. .. Applicant in
O.A.904/96

(2) Pramod Marotrao Dhole
Ashiana AL-6/2-8,
Sector 5, Airoli,
Navi Mumbai - 400 708.
By Advocate Shri G.K.Masand with
Shri S.P.Inamdar .. Applicant in
O.A.905/96

-versus-

(1) Union of India
through
Commissioner of Central Excise
Mumbai - III,
4th Floor, Navprabhat Chambers,
Ranade Road, Dadar,
Mumbai - 400 028.

(2) Additional Commissioner of Central
Excise(Personnel & Vigilance)
4th Floor, Navprabhat Chambers,
Ranade Road, Dadar,
Mumbai - 400 028.

(3) Assistant Commissioner,
Central Excise Incharge,
(Central Preventive Unit)
Panvel, CGO Complex, CBD
Navi Mumbai - 400 614.

By counsel Shri S.S.Karkera

.. Respondents

-: O R D E R :-

(Per M.R.Kolhatkar, Member(A))

As in these two OAs, the facts are similar
they are being disposed of by common judgment. For
facility of reference facts in O.A. 904/96 are
referred to.

2. By circular dt. 6-7-1995, at Annexure A-3,
intention to prepare a fresh panel of Inspectors
with Special Pay to be posted in Internal Audit
Excise
Branch in Bombay-III/Commissionerate was notified.

The names of officers who had completed 5 years of service and who were willing to work in the audit section were to be sent. It is not disputed that the posting as Inspector Internal Audit does not amount to promotion but in terms of circular dt. 1-11-1976 which appears at Annexure A-17 of O.A.905/96 it is a tenure post and carries a special pay of Rs.50/-, (since increased to Rs.110/-). Thus the selection and posting in the Internal Audit branch confers a financial benefit on the Govt. servant. Accordingly the applicant was selected and by the establishment order dt. 6-2-1996, at page 17, the applicant was posted to Internal Audit with immediate effect. The applicant, however, did not join and made a representation on 8-2-1996, at page 19. In the representation it was stated that he is aware that if he is not relieved by 9-2-1996, his order of posting as Inspector Internal Audit will be cancelled but since he is engaged in the investigation of an important case involving high govt. revenue (Rs.10 crores) he requested for extension of time to join the internal audit wing by about two months when the investigation was expected to be completed. Extension for joining upto 15th April '96 was granted on 28-2-1996 at page 22 and it is seen from the material in O.A.905/96 at page 18 that this was further extended upto 30th April, 1996.

2. The contention of the applicant is that he was not relieved to join the special pay post but he received an order dt. 12-7-96 at page 23 ^{Received an order} posting him to Ambernath Division, by the same order applicant in O.A.905/96 was posted to Review

Section(HQ). Transfer of applicant in O.A. 904/96, was, however, changed vide subsequent order dt.26-7-96 by which the applicant was posted to Valuation(H). An order was also issued on 23-8-1996, at page 12, stating that the order for posting of the applicants to the Internal Audit Branch is cancelled.

3. The applicant has challenged the order posting him as Inspector Valuation branch and also the order cancelling his posting in the Internal Audit Branch. His contention is that he was posted to a post carrying a special pay that he was retained in public interest to complete the investigation of an important case and if he could not joint earlier it was not his fault. According to him the respondents are estopped from cancelling his order posting him in the Internal Audit branch carrying a special pay, that extension in any case was allowed upto 30-4-1996 and it was not his fault that he was not relieved and therefore he has sought the relief of quashing the two orders in question and directing the respondents to allow the applicant to resume the duty in the post of Inspector Central Excise in Internal Audit Branch and directing ^{the} respondents to pay the special pay of Rs.110/- p.m. even during the period during which he had to work in the investigation cell.

4. Respondents have opposed the O.A. According to them the applicants were expected to join the posts in the Internal Audit branch and they were actually relieved on 7-2-1996 but the applicants themselves made a representation and in response to the representation they were given extension of time to join upto 30-4-1996. They took no action thereafter to get relieved but adopted dilatory tactics to remain

in the special investigation cell for the reasons best known to them. So far as concerns the cancellation of the transfer of the applicant in O.A.904/96 from Ambernath it was in the applicant's interest so that applicant could retain the Govt. quarters. But so far as the order cancelling the transfer to Internal Audit Branch is concerned the same was issued after taking into account all circumstances including dilatory tactics adopted by the applicants. The connected departmental file was also made available for the perusal of the Tribunal.

5. The contention of the applicant in rejoinder is that they had no interest in adopting dilatory tactics. They had applied for a post which carried a special pay. They have also pointed out that the order of cancellation of the posting of the applicants to Internal Audit Branch has been issued after the order of transfer. Therefore, the same can be taken to be a malafide order because the logical sequence should have been first the cancellation of the order posting the applicants to Internal Audit Branch and thereafter the transfer order should have been issued.

6. In my view there is no substance in the contention that the logical sequence of the orders should have been that the order cancelling the order of posting in respect of Internal Audit Branch should have been issued first and thereafter the transfer order could have been issued. Transfer orders get modified as they have been modified in the present case and the mere fact that the department issued the order cancelling the posting in the Internal Audit Branch later cannot be said to be malafide. In fact

the order can be said to have been issued by way of confirmation after the transfer order had worked itself out. In any case the allegation of malafides is not sustained by any material available.

7. The contention of the applicant that he has a right to be posted to the Internal Audit Branch irrespective of his conduct cannot be accepted. The applicant was at the most on the select panel and the order dt. 6-2-96 made it quite clear that if the applicant fails to join by 9-2-96 the order of posting to Internal Audit Branch will be cancelled and no further representation would be entertained. It is not disputed that the applicants were being relieved but it was the applicants themselves who made a representation for extension of time to join. Normally in such cases it would have been for the immediate superior officer of the applicants to have moved a proposal to retain the applicants longer in public interest and the fact that the applicants themselves chose to make a representation would indicate that the applicants had some interest in remaining with the special investigation unit. The applicants were aware that the extension was granted upto 30-4-1996. Thereafter applicants made no move to get themselves relieved. If the applicants bonafide wanted to get themselves relieved, they ought to have made a representation in the first week of May '96 showing their keenness to join the Internal Audit Branch. They made representation regarding their intention to join Internal Audit Branch only after they got their orders of transfer in/middle of July '96. This would substantiate the respondents' contention that the applicants for their own reason were not keen to join Internal Audit Branch and it was only after they

received transfer order that they began to send representations. In my view the applicants have no vested right to a posting in Internal Audit Branch which they can choose to join at their sweet will. They ought to have joined Internal Audit Branch promptly after expiry of the extended period viz. 30-4-1996. When they failed to take any action to get themselves relieved they indicated by their conduct that they were not keen to join and the action of the respondents cannot be said to be barred by promissory estoppel. There was an assurance of a post carrying special pay but the same was conditional, the applicants failed to fulfil the condition and ~~respondent~~ posted others on the panel in their place. Applicants have not shown that acting on the promise they ~~changed~~ ^{change} ~~adhered~~ ^{change} their position. Therefore the basic ingredients of the doctrine of promissory estoppel are absent. If the applicants suffered detriment to the extent they lost the post with a special pay, it was entirely thanks to their conduct.

8. In O.A.905/96, challenge to transfer on ground of tenure in earlier post not being complete is made. It is not shown that earlier post ~~were~~ ^{was} a tenure post and the tenure if any, in such cases is not a statutory tenure but tenure in terms of guidelines and transfer can be made in the light of exigencies of administration.

9. In my view the OA's have no merit. The same are dismissed with no order as to costs.