

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 868/96

Date of Decision : 8th Feb., 2002

S.Taneja Applicant

Shri G.K.Masand Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Shri V.D.Vadhavkar Advocate for the
for Shri M.I.Sethna Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Shri S.K.Agarwal, Member (A)

- (i) To be referred to the reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other Ma
Benches of the Tribunal ?
- (iii) Library *yes*

S.L.Jain
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.868/96

Dated this the 8th day of Feb., 2002.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Shri S.K.Agarwal, Member (A)

Subodh Taneja,
8/165, Sector VII,
CGS Qtrs., Antop Hill,
Mumbai.

...Applicant

By Advocate Shri G.K.Masand

vs.

1. Union of India
through Secretary,
Govt. of India,
Ministry of Finance,
New Delhi.
2. Chairman,
Central Board of Excise
and Customs,
North Block, New Delhi.
3. Commissioner of Customs (G),
New Custom House,
Ballard Estate,
Mumbai.
4. Dy.Commissioner of Custom,
Personnel & Estt.Deptt.,
New Custom House,
Mumbai.

...Respondents

For Shri M.I.Scunia

B-5/1

..2/-

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for the declaration that the impugned order No.171/96 dated 21.5.1996 be set aside and the order No.86/96 dated 14.3.1996 be declared as valid and effective with a direction to the respondents to refix the seniority of the applicant in accordance with their own order dated 14.3.1995 (Annexure-'V') and after refixing the seniority, he be placed at proper serial No. in the respective seniority list and be considered for further promotion as Superintendent/Appraiser as and when such promotions are made in future on the basis of the revised seniority.

2. The applicant was appointed as Inspector, Custom & Central Excise in Nagpur Collectorate (now Commissionerate) vide order dated 10.2.1976 and in pursuance of the said order, he joined duty on 19.2.1976. He was placed in the respective seniority list of the Cadre so maintained by the Nagpur Collectorate. He applied in September, 1979 for transfer from Nagpur Collectorate to Bombay Custom House, which was permissible as per CBEC Circular (Board Circular) No.6/97/57-Ad. III-A dated 12.2.1958, request was allowed with some conditions and he reported for duty and joined as Preventive Officer with Bombay Custom House on 31.3.1980. Circular No.6/97/57 Ad.III-A dated 12.2.1958 is as under :-

Pragna

" Transfer of non-gazetted staff from one charge to another within the same Department under the Board.

In supersession of their letter F.No.18/62/56-Ad.VII/IX dated 29.12.1956, the Board have decided that the following instructions should be followed in future in regard to the transfers of non-gazetted staff from one charge to another within the same Department :-

i) Transfers of staff within a period of three years of first appointment in the Department may be allowed without any loss of seniority.

ii) In the case of persons transferred after a period of three years of their first appointment in the Department the benefit of past service should be allowed upto the period of three years only, for the purpose of determining their seniority in the new charge e.g. an Upper Division Clerk transferred after he has put in a service of 4 years may count only three years of his service for seniority.

iii) Direct recruits coming on transfer will be shown against the direct recruitment quota and promotees against the promotion quota."

Though in the said order (Annexure III) of the Bombay Collectorate, it has been stated that the seniority of the applicant will be fixed below the last temporary Preventive Officer in the Bombay Custom House, however, when the applicant came to know about the Rules so framed by the Board and circulated as per circular dated 12.2.1958 and of several orders of the different Benches of the C.A.T., he made a representation before the Commissioner of Customs, New Custom House, Bombay, i.e. Respondent No.3 claiming benefit of the seniority of the past services so rendered by him in Nagpur Collectorate from where the applicant was transferred to Bombay Custom House (Annexure-IV). The Respondent No.4 as per Office Order No.86/96 dated 14.3.1996 issued from File No.S/5-606/95 Estt., was pleased to refix his seniority taking into consideration his past service upto three years so rendered by him in Nagpur Collectorate as Inspector of Central Excise.

[Signature]

3. Estt. Office Order No.86/96 is as under :-

" In pursuance of Ministry's instructions vide Circular No.S/97/57-Ad.III-A dtd. 12.2.1958 and Board's decision vide letter F.No.A-23020/8/92-Ad.III-A dated 30.9.92 in respect of some staff of Delhi Central Excise Collectorate the seniority of Shri Subodh Taneja, Preventive Officer who has joined this Commissionerate on Inter-Commissionerate transfer basis w.e.f. 31.3.80 is refixed, taking into consideration his past services of 3 years rendered by him in the Nagpur Central Excise Commissionerate as Inspector of central Excise (i.e. w.e.f. 18.2.1976) below Shri A.I.Khan, Preventive Officer and above Shri S.S.Salian, Preventive Officer (i.e. Sr.No.552 and Sr.553 respectively) in the seniority list of preventive Officers as on 1.1.86 circulated under Circular No.75/97 dtd.29.7.87 vide F.No.S/2-28/86.

Consequent to refixation of his seniority, Shri Subodh Taneja, Preventive Officer will not be entitled to the benefit of notional promotion in terms of the Ministry's instructions vide F.No.23020/8/92 Ad.III A dtd.30.9.92.

This issues with the concurrence of the Commissioner of Customs (I), Mumbai.

This disposes of the representation of Shri Subodh Taneja, Preventive Officer dated 13.10.95.

(G.N.Deshpande)
Addl.Commissioner of Customs"

4. On or around 27.5.1996 the applicant received order bearing No.171/96 dated 17.5.1996 signed and issued by the Respondent No.4 informing the withdrawal of the order No.86/96 dated 14.3.1996 (Annexure-V) and the Memorandum issued on 21.5.1996 by the Respondent No.4. The applicant requested the Respondents No.3 & 4 for supply of Ministry's letter No.A-23024/5/96 Ad.III-A dated 22.4.1996 on the basis of which the impugned order has been issued, but his request has been turned down. It appears that the order passed by Commissioner of Customs, Bombay Order No.86/96 dated 14.3.1996 was reconsidered by the Board. Hence, this OA.

5. The claim of the applicant is being resisted by the respondents alleging that it is misconceived and discloses no cause of action. On the request of the applicant for Inter-Commissionerate transfer to Mumbai Customs on compassionate grounds, in terms of the Board's letter F.No.A-22015/15/80-Ad.III A dated 1.3.1980 and Nagpur Central Excise Commissionerate Estt. Office Order No.27/80 dated 18.3.1980, Shri Subodh Taneja, i.e. the applicant, Inspector of Central Excise, Nagpur was allowed to join the Mumbai Customs on 31.3.1980 as Preventive Officer on the following terms and conditions :-

"(i) That the seniority of Shri Subodh Taneja will be fixed below the last temporary Preventive Officer Gr.I (OG) in the Mumbai Custom House, i.e. he will be treated as a fresh entrant in the cadre of Preventive Officer Gr.I (OG) in the new charge.

(ii) No transfer travelling allowance and joining time, etc, will be admissible to him as a result of his transfer.

(iii) Shri Subodh Taneja will not be considered for further confirmation and promotion in the Nagpur Commissionerate; and

(iv) No lien on the post will be retained in parent office as he is not confirmed in any grade in Nagpur Central Excise Commissionerate."

On joining the Mumbai Commissionerate on the above terms and conditions, Estt. Office Order No.152/80 dated 16.4.1980 was issued. On the basis of the above, his seniority was fixed by treating him as a fresh entrant in the cadre of Preventive Officer-I (OG). After receipt of his representation dated 17.10.1995, his case was considered and in view of Board's

P. J. M.

Circular No.6/97/57-Ad.III.A dated 12.2.1958, the order was passed. The said policy decision was superseded by another instructions contained in the Board's letter F.No.A 22015/2/72-Ad.III.A dated 13.1.1972. ~~The applicant has relied on~~

6. The applicant has relied on an order passed by C.A.T. Patna Bench in OA.NO.601/93 decided on 30.7.1995 and Ernakulam Bench in OA.No.1178/94 decided on 9.3.1995, wherein it has been held that to allow the benefit of past services in cases of Inter-Commissionerate transfer effected prior to 20.5.1980 in terms of 1958 Circular be allowed.

7. 1958 instructions were not in knowledge of the Board at the material time and this fact was brought to the notice of the Board by the Commissioner of Customs, Cochin pointing out that there is a communication from the Board office dated 13.1.1972 whereunder it was categorically advised that 1958 Circular of the Board was not to be operated by the Board at that time. In view of this, the Board's order dated 30.9.1992 was withdrawn and the Board had not granted any benefit of 1958 Circular to any inter-commissionerate transferee. Hence, the Board held that there is no scope to grant any benefits of 1958 Circular to the applicant. Order in OA.NO.601/93 filed by Damodar Singh, S.L.P. has been preferred and the order has been implemented with reference to the Petitioner only and it was not decided to implement it in respect of others. Having these aspects and

Board's communications the Estt. Office Order No.86/96 dated 14.3.1996 was withdrawn by issuing Estt. Office Order No.171/96 dated 17.5.1996 and the applicant was also informed accordingly by a Memorandum dated 21.5.1996. Hence, prayed for dismissal of the OA. along with costs.

8. The claim of the applicant is based on CBEC circular (Board Circular) No. 6/97/57-Ad. III-A dated 12.2.1958. The applicant who was serving as Inspector, Custom and Central Excise in Nagpur Collectorate (Now Commissionerate) since 19.2.1976, in September 1979 applied for transfer which was allowed and he joined as Preventive Officer with Bombay Custom House on 31.3.1980. Till 31.3.1980 above referred circular was operative.

9. The claim is resisted by the respondents on the ground that the applicant was working as Inspector, Customs and Central Excise in Nagpur Collectorate while on transfer he joined as Preventive Officer with Bombay Custom House. Hence, it is not a transfer of Non-Gazetted staff from one charge to another, but it is a transfer of Non-Gazetted staff from one charge to other charge in another cadre. Thus the respondents argued that working as Inspector, Custom and Central Excise in Nagpur Collectorate and joining as Preventive Officer with Bombay Custom House being two different charges. As such the said circular is not applicable in the case of the applicant. The heading of the relevant circular is as under:

Transfer on Non-gazetted staff from one charge to another within the same Department under the Board.

S. Y. N.
..8/-

In supersession of their letter F.No. 18/62/56-Ad. VII/IX dated the 29th December 1956, the Board have decided that the following instructions should be followed in future in regard to the transfers of non-gazetted staff from one charge to another within the same Department:-

On perusal of the said circular we are of the considered opinion that the post of Inspector, Custom and Central Excise in Nagpur Collectorate is different post than as Preventive Officer with Bombay Custom House. The applicant has never worked as Preventive Officer in Nagpur Collectorate (Now Commissionerate). It is true that Central Excise and Custom are though two departments but are under one Ministry and at the Highest level, the posts are being filled by common feeder cadre. It does not mean that the post of Inspector Central Excise and Preventive Officer can be treated as one common cadre. As such to apply the said circular in the case of the applicant is not justified one.

10. The learned counsel for the respondents relied on an order passed by this Bench in OA 361/98 decided on 30.3.2001, Smt. Fatima C. Fernandes V/s Union of India and others, wherein the applicant who was Inspector, Custom and Central Excise was transferred from Goa to Bombay Commissionerate and her claim was rejected though her transfer was effected on 13.5.1985. The date in respect of the applicant in the said case is of the year 1985 and on the said date the circular dated 12.2.1958 was not operative. As such the said order is not relevant for decision of this case.

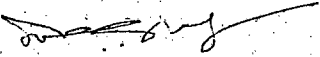
J.Y. /

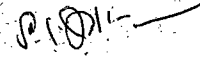
11. The learned counsel for the respondents relied on the order passed in OA 1050/95 alongwith other OAs decided on 19.2.1998 Manohar Satyavan Naik V/s Union of India and others. On perusal of the said order we are of the considered opinion that the applicant in the said case joined as Preventive Officer in Goa Custom House in May 1977 was transferred on his own request as per order dated 18.6.1992 and joined the service as Preventive Officer Bombay on 25.6.1992. Thus the facts clearly makes out that the transfer was in the same cadre. Further perusal of the order makes it clear that the Bombay Custom House and Goa Custom House were not independent units, but they were amalgamated. As such the said order also do not help the applicant.

12. Reliance is also placed on an order passed in OA 601/93 by CAT Patna Bench in the case of Damodar Singh V/s Union of India and others decided on 20.7.1995. The said order was implemented by the respondents but as the facts are not similar in the present case and in the said case, The said authority does not help the applicant. In the said case the applicant was Inspector, Custom and Central Excise and after a request of his own for transfer on compassionate ground he joined another unit in the same capacity.

13. In our considered view the applicant is entitled to make a grievance as there is no estoppel against law, but on facts he is not entitled to any relief.

14. In the result we do not find any merit in the OA. It is liable to be dismissed and is dismissed as such. No order as to costs.


(S.K. Agarwal)
Member(A)


(S.L. Jain)
Member(J)

MRJ/NS

order/Judgement despatched
to Applicant/Respondent (s)
on 18.2.2002 ^{at 8.2.2002}


213