

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH.

ORIGINAL APPLICATION NO.:477/99

Dated this Thursday the 23rd day of March 2000.

Shri A.S. Uppal

Applicant ,

Shri S.S. Karkera

Advocate for the
Applicant.

VERSUS

Union of India & Anr.

Respondents.

Shri M.I. Sethna

Advocate for the
Respondents.

CORAM :

Hon'ble Shri B.N. Bahadur, Member (A)

- (i) To be referred to the Reporter or not ? *Yes*
- (ii) Whether it needs to be circulated to other Benches
of the Tribunal ? *No*
- (iii) Library. *Yes*

B. N. Bahadur

(B. N. BAHADUR)
MEMBER (A)

H

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application No.477/99

Dated this Thursday the 23rd Day of March, 2000.

Coram : Hon'ble Shri B.N. Bahadur, Member (A)

Shri Arjan Singh Uppal,
Working as Asstt. Commissioner
(Legal), O/o Commissioner of
Central Excise, Nagpur and residing
at C/o Shri Ahivaran Singh at 72/
Central Pool, Seminary Hills,
Nagpur.

.. Applicant.

(By Advocate Shri S.S. Karkera).

Vs.

1. Union of India, through
the Member (P & V),
Central Board of Excise and Customs,
Ministry of Finance,
North Block, New Delhi-110 001.

2. The Commissioner,
Central Excise, Civil Lines,
Nagpur - 440 001.

.. Respondents.

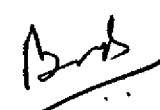
(By Advocate Shri M.I. Sethna).

ORDER

(Per : Shri B.N. Bahadur, Member (A))

The applicant in this case, Shri A.S. Uppal challenges what he calls the illegal and arbitrary action of Respondents in transferring the applicant from the post of Assistant Commissioner at Nagpur to the post of Assistant Commissioner at Shillong, through the impugned order dated 27.5.1999 (Exhibit A). The applicant contends that, after a span of postings under the Commissionerate of Central Excise at Rajkot, he was transferred to the Commissionerate of Customs, Mumbai in May, 1992. He was again transferred to Collectorate of

...2.



Central Excise, Mumbai in June, 1996 and 4 months thereafter transferred from Mumbai office to the office of Respondent No.2 at Nagpur vide order dated 7.10.1997 (Exhibit B).

2. In view of this, he faced problems in that he was bound as per rules to vacate government accommodation in Mumbai, but had to retain the same in the interest of his childrens education. This action of transferring him, he claims is arbitrary and against guidelines issued for transfer of Group A Officers of Indian Central and Excise Service. He cites the requirements of 8 years stay etc. by quoting the guidelines. Applicant also cites the cases of one Kawatkar who was transferred from Nagpur to Mumbai as also the case of two other officers making, in short making the point that his case was overlooked though more deserving than those of these other officers.

3. The applicant is thus before us with the prayer that Respondents be directed to consider the pending request of his transfer from Nagpur to Mumbai, and that it be held that his transfer from Nagpur to Shillong was illegal.

4. The Respondents have filed a written statement denying all allegations made in the application, and requesting for its dismissal. The Respondents have described in detail the relevant aspects of the guidelines relating to transfer of Group A Officers making the point that normally the tenure of the posting of Officers in the 4 metropolitan cities is of 4 years, and that the stay in the city is counted for this purpose and not the

...3..



office / offices in which an officer works in that city. It is stated that the applicant was shifted to Nagpur after he had completed 4 years in Mumbai.

5. It is further averred in this statement that the officer was posted to Shillong keeping in view the consideration that as per existing instructions of Government, an officer who is posted to North East can retain Government Accommodation at his previous place of posting. However, Respondents state that it is not possible to keep him back in Mumbai now, and in any case it was the right of the Respondents to transfer out Officers in public interest on an all India basis. The statement further seeks to justify the transfer orders of Shri Kawatkar and ors. which are referred to by the applicant by giving reasons in the case of the 3 officers cited.

6. I have heard Learned Counsels on both sides and have considered the papers in the case, including the rejoinder filed by the applicant.

7. The Learned Counsel for the applicant argued that the applicant has been subjected to frequent transfers and that he has been shifted without completing his tenure for 5 years. He made the point that posting in the Customs & Excise sides in Mumbai should be considered as separate postings as per guidelines and that guidelines have been violated. He further alleged that a number of transfers of other officers had been cancelled and that the applicant's shift has been made with a view to favouring to some other officers. It was argued that the

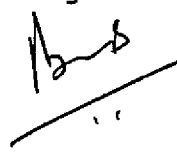
B.S.

...4..

representations of the applicant were not considered and that he had not asked for a Shillong posting. The points made in the rejoinder were also reiterated by the Learned Counsel.

8.....The case was argued on behalf of the Respondents with reliance being placed on the facts and averments made in the written statement filed by Respondents. It was stated that the applicant had completed over 4 years of service in the city of Mumbai and almost 8 years in the Zone and that guidelines had also been followed in his case. The Learned Counsel also stated that the representations of the applicant had been considered, and since in all the representations the grievance pointedly made related to the problem of accommodation in Mumbai, the posting to Shillong was specially made in order to bestow upon the applicant the benefit of his being able to retain accommodation in Mumbai City. Thus it was contended that the representations of applicant had been considered, and in fact the applicant's interest in so far as is related to his children's education has been protected.

9.....In the first place, it is seen from the facts that this is not a case of violation of guidelines in regard to tenure of stay. The facts clearly show that the applicant, as indeed stated by him was posted in Mumbai City with effect from 1992 to 1996 Guidelines provide for 4 years tenure in Metropolitan cities extendable to 5 years. Thus the extension not being a right, there is in fact adherence to guidelines. There is no justification in the argument made by Counsel for applicant that tenures in Excise / Customs Wings should be counted separately. In any case this aspect relating to guidelines also does not entail a right before a Tribunal, in view of settled law in this regard.



...5..

10.....What will have to be seen, as per settled law, is whether any statutory rule has been violated by the order of transfer or whether the transfer entails any malice or is arbitrary or perverse in nature. Upon consideration of the total facts of the case, and the arguments made before me, I am not convinced that any such flaw or infirmity exists in the present case. The point made by applicant that his representation should have been answered before his transfer to Shillong does not hold water and, in fact, there would be no reason to doubt the contention made by the Respondents in their written statements, and reiterated by their Learned Counsel, that the posting to Shillong has been made with due regard to the difficulty of the applicant regarding accommodation in Mumbai City. We have no reason to disbelieve this averment by the Respondents.

11. On the basis of the above discussions there is no reason to conclude that the Respondents have acted with any element of malice or bias against the applicant. Beyond this, it would not be possible for this Tribunal to sift out facts, and sit on the case like Appellate Authority. Thus I see no grounds for any interference by the Tribunal.

12. In view of this above discussions this application is dismissed with no order as to costs.

B.N. Bahadur

(B.N. Bahadur) 23/3/2000

Member (A).

H.