

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 499/2001

Date of Decision : 3rd Sept., 2002

L.M.Singh & Ors.

Applicant

Shri G.K.Masand

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri V.D.Vadhavkar for
Shri M.I.Sethna

Advocate for the
Respondents

Shri V.S.Masurkar for
intervenors.

CORAM :

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

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

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

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.499/2001

Dated this the 3rd day of September 2002.

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

1. Leela Mohan Singh
2. Rajender Singh
3. V.K.Verma
4. Avinash Kumar Pandey
5. Kamlesh Gour
6. Rajiv Arora
7. Sundeep Krishna
8. Yogesh Kumar Arora
9. Bhoopanand Sharma
10. Priya Ranjan
11. Sandeep Kumar Singh
12. Susheel K.R.Reddy
13. Satbir Singh
14. Gurcharan Singh
15. G.N.Srinivas
16. Pramod Kumar Arora
17. Balwant B.Vhatkar
18. Neeraj P.Chaudhary
19. Om Prakash Meena
20. Chandrashekaran B.Nair

All the applicants working as
Preventive Officers at Jawahar
Custom House, Nhava Sheva,
Dist.Raigad, Maharashtra.

...Applicants

By Advocate Shri G.K.Masand

vs.

1. Union of India
through the Secretary,
Ministry of Finance,
Dept. of Revenue,
North Block, New Delhi.
2. Chairman,
Central Board of Excise
& Customs, Deptt. of Revenue,
North Block, New Delhi.
3. Chief Commissioner of Customs,
Mumbai Custom House,
Ballard Estate, Mumbai.
4. Commissioner of Customs,
Jawahar Custom House,
Jawaharlal Nehru Port Trust,
Nhava Sheva, Dist. Raigad,
Maharashtra.

...Respondents

By Advocate Shri V.D.Vadhavkar
for Shri M.I.Sethna and Shri
V.S.Masurkar for interveners.

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O R D E R

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

The applicant's have filed this OA. seeking the relief of declaration that they having been offered appointment as Preventive Officers at Jawahar Custom House, same being accepted by them, thereafter they were posted and worked as Preventive Officers at Jawahar Custom House at Nhava Sheva, Dist. Raigad, they are not liable to be eased out or transferred to Bombay Custom House, save and except with their consent and on the basis of inter collectorate transfer as earlier held by the respondents themselves. They have also sought a direction against the respondents not to give effect to the Office Order dated 13.7.2001 in so far as it seeks to transfer the applicants from Jawahar Custom House to Floating Section of Mumbai Custom House and to retain them at Jawahar Custom House. Further relief sought is that the respondents be restrained from transferring the applicants out of Jawahar Custom House at Nhava Sheva, Dist. Raigad in the posts presently held by them, i.e. Preventive Officers, save and except with their consent and from giving effect to the order dated 13.7.2001.

2. Applicants are working as Preventive Officers at Jawahar Custom House, JNPT, Dist. Raigad, which was established in or about the year 1989 with the commissioning of modernised Port known as Jawaharlal Nehru Port at Nheva Sheva in Dist. Raigad. Initially the said Jawahar Custom House was manned by transfer of staff from Bombay Custom House. It is alleged that the staff of Bombay Custom House was reluctant to work at Jawahar Custom House, the respondents had decided to sanction separate staff for

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manning the Jawahar Custom House. In pursuance of the said decision, separate staff was sanctioned vide letter No. F.No.A11013/50/88 Ad.IV dated 7.6.1990. The Staff Selection Commission conducted a combined test for appointments of Excise Inspectors, Income Tax Inspectors, Assistant Enforcement Officers, preventive Officers and Examiners. After preparation of merit. list of successful candidates, names of 13 candidates were recommended for appointment as Preventive Officers at Bombay Custom House. Thereafter, a further list recommending the names of candidates for appointment as Preventive Officers at Jawahar Custom House was issued by the Staff Selection Commission in 1990 and in pursuance of which applicants were appointed as Preventive Officers for working at Jawahar Custom House. In clear terms, it is stated that the applicants were appointed to posts at Jawahar Custom House. A total lack of infrastructure, absence of transport facility, area affected by Malaria, and Reluctance of the staff of Bombay Customs House to go to Jawahar Customs House are said to be the reasons which compelled the respondents to take a decision to appoint the applicants only for Jawahar Customs House as Preventive Officers.

3. The Department in the guise of policy went all out to ensure that the newly recruited Preventive Officers for Jawahar Custom House remained struck up at this place which was quite remote at that time. A request for transfer on medical grounds to Bombay Custom House by Preventive Officer, N.P.Choudhary was turned down quoting the policy and according to which transfer

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could be effected only on the basis of inter collectorate transfer which is on record in the concerned file. In the year 1993 a number of Preventive Officers of Jawahar Custom House requested for transfer to Bombay Custom House but on account of said policy, none was transferred and even the respondents did not reply to their request. Keeping in view the action of the respondents as stated above, the applicants settled there but respondents in 1996, 1997 and 1999 the respondents were envisaging complete reversal of their earlier transfer policy and on representation made by the Preventive Officers individually as well as collectively to the Chief Commissioner (G), the said policy was not put in action. In the year 1999 on coming to know about the fresh move, a number of Preventive Officers again represented to the Chief Commissioner but no reply was given by the respondents. Applicants along with others constrained to file OA.No.1087/99 seeking the reliefs similar to the present OA. after serving an advance copy to the Office of Chief Commissioner, Mumbai Customs House. The respondents had informed the applicants not to pursue with the said application and that the necessary relief would be granted departmentally. In view of the matter, applicants did not seek any notice to be issued to the respondents and allowed the said OA. to be adjourned from time to time and when the applicants received the complete assurances that no transfer order would be issued in respect of Preventive Officers of Jawahar Customs House, in July,2000 a decision was taken by the applicants of the said OA. not to press the said OA. and seek leave to withdraw the same.

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Accordingly, the Tribunal was informed and the Tribunal passed the order dated 27.7.2000 accordingly. The officers of Bombay Customs House were not inclined to go to Jawahar Customs House, hence from time to time the tenure is being changed by the competent authorities from six months to two years, from 5 years to any other date and even the officers of Bombay Customs House approached the Tribunal challenging the orders transferring them to Jawahar Customs House. The respondents were ordered to take sympathetic view and as a result thereof, the said officers were transferred back to Bombay Customs House. The Respondent No. 3 is the Cadre Controlling Authority. The respondents have passed the order dated 13.7.2001 and the applicants are kept in the Floating List. Hence, this OA. for the above said reliefs.

4. The Respondent No.3 has filed the written statement stating that he is neither a necessary nor a proper party, OA. is misconceived and abuse of process of law. It is further stated that Half Yearly General Rotation order for the Preventive Officers of Custom Zone with the approval of Commissioner of Customs General and Chief Commissioner of Customs Mumbai was passed. The earlier being the cadre controlling Authority has issued the said order which is being impugned. Out of 28 officers transferred, 20 have impugned the order. The officers were recruited in the department in the normal course in the year 1991-92 against vacancies that were created afresh after the opening of Nhava Sheva Port/Jawahar Custom House (JCH). Though recruitment is against particular vacancy but thereafter they are

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utilised for work/posting at any place within the jurisdiction of the Cadre Controlling Commissioner - Commissioner of Customs (C) Mumbai is the Sole Cadre Controlling Commissioner for all Preventive Officers of Mumbai Customs Zone which includes JCH Commissionerate. Official posted on sensitive posts deserves to be rotated two/three years to avoid developing vested interests. The applicants who are working since last 10 years at JCH are transferred.

5. Admitting the fact of meeting the requirement initially from the available strength of Mumbai Custom House, due to increase in work load of JCH the Board sanctioned additional staff to meet the enhanced requirement. As the requirement was basically for JCH, sanction of post was accordingly granted for JCH (Ex.A) vide letter dated 26.12.1990 (Ex.B) these sanctioned posts would be under the cadre control of Commissioner of Customs (G) Mumbai. The specific vacancies in the offer of appointment is a procedural requirement and standard administrative practice. Ex.B - specified all cadres except those of drivers & sepoy will be common with those of Mumbai Customs House. This is being followed in the form of common seniority list for POs of MCH & JCH issued by P & E Department of MCH. The applicants are considered for Airport Posting for a tenure of two years.

6. It is further stated that the contention regarding M.P.Chaudhri's representation cannot be verified in absence of details. The dismissal of OA.NO.1087/99 is admitted which reflects that the decision was in favour of respondents. Hence, prayed for dismissal of OA. along with costs.

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7. The Caveator resisted the claim of the applicants stating that the applicants are within the Administrative control of Mumbai Custom House headed by Chief Commissioner of Customs, Mumbai for the purpose of appointment, posting and transfer, seniority and promotion. They were appointed by Mumbai Custom House and were posted to Jawahar Custom House on vacant posts as such their claim that they form different and distinct entity as Jawahar Custom House is not sustainable in law. Office Order No.170/91 dated 23.4.1991 and office order No.50 dated 15.2.1991 and Office Order No.80/91 dated 8.3.2001 clearly establishes that they are liable to be transferred and posted any where within the jurisdiction of Chief Commissioner of Customs, Mumbai. The seniority list published by the official respondents on 16.6.1997 as on 1.1.1997 & 30.1.2001 as on 1.1.2001 for the post of Preventive Officer from time to time the names of all the applicants find place in the list. Except the applicants and other 19 officers - remaining officers who were transferred by the impugned order dated 13.7.2001 are the Caveator Association. They have further stated that an order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a Court of Law in exercise of its discretionary jurisdiction unless the Court finds that either the order is malafide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order. Referring to the case of State of M.P. & Ors. vs. S.S.Kourav & Ors. stated that :-

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"the Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the court or Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background foundation. In this case, we have seen that on the administrative grounds the transfer orders came to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place."

Referring to the scope of judicial review stated that :-

"Interference only in cases of malafides or infraction of any professed norm or principle-where career prospectus remain unaffected and no detriment is caused, challenge to the transfer must be eschewed Head Note-E : Transfer-Malafides-whether the impugned transfer order is malafide-Procedure for determining Held, the court will look into the records only and not enter into a roving inquiry."

They also claimed that similar grounds are also rejected in OA.724/2002 in case of Satish M.Tainikar vs. Union of India decided on 30.1.2001. There is no formation called Nhava Sheva. In fact, it is Jawaharlal Nehru Port Trust Customs House. The Government is competent to transfer the applicants to any other department of Mumbai Customs Zone particularly when the postings were and are freely interchangeable within the Mumbai Custom Zone for all the cadres and JNPT Custom House is part and parcel of Mumbai Custom Zone right from it's inception. Other staff of JNPT viz. Examining Officers, Ministerial Staff, POs etc. who are recruited against the vacancies at JNPT have been rosting with the staff of Mumbai Custom Zone. The Custom Department being sensitive department, the public interest demands that the officers should be transferred from one place to another so that they do not create vested interest and rights.

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8. The offer of appointment in respect of Rajiv Arora, who is Applicant No. 6 is placed on record and perusal of the same makes it clear that the applicant was offered the post of Preventive Officer for Nhava Sheva. It is stated at the Bar that similar offer of appointments were issued to other applicants also. The appointment order is placed on record by the interveners and on perusal of the order dated 8.3.1991 (Ex.-'C-3), it is clear that the applicant is posted as Preventive Officer in respect of sanction of staff for Jawahar Customs House at Nhava Sheva subject to verification of Degree Certificate, Caste Certificate and Character antecedents w.e.f. 20.2.1991.

9. During the hearing the Bench specifically asked the learned counsel for the official respondents whether after issue of offer of appointment and till the passing of the order Ex.'C-3, whether there was any correspondence between the office and the applicants, it is stated that there exists no such correspondence.

10. The learned counsel for the interveners has placed on record the order dated 26.12.1990 passed by the Government of India, Ministry of Finance, Department of revenue and argued that the cadre of Preventive Officers is common with those of Bombay Custom House, posting will be by direct recruitment or promotion from Bombay Customs House personnel as the case may be. The

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latter will ordinarily be kept for a minimum period of 5 years or till they are promoted. An exception is only in respect of Drivers and Sepoys. Term V is as under :-

" Officers working in J.N. Custom House will be eligible for posting at Sahar Airport on the same basis as the personnel of Bombay Custom House."

On the basis of the above term, it is stated that the applicants are liable to be posted at Sahar Airport on the same basis as the personnel of Bombay Customs House. It is a correspondence between the Government and the Collector of Customs, Bombay. Even inspite of issue of this letter dated 26.12.1990, the applicants were neither informed by the respondents nor the said term was incorporated in the Establishment Office Order No. 80/90 dated 8.3.1991. It suggests only eligibility and not the terms of appointment or liability of transfer or a transfer policy.

11. It is true that the applicants' names are on the seniority list of Preventive Officers of Customs House Bombay as on 1.1.1997 showing the Preventive Officers promoted upto 31.12.1990 and final seniority list dated 28.1.2001. The learned counsel for the interveners argued that as there is a common seniority list and the cadre controlling authority is the Bombay Customs House, the applicants are liable to be transferred. He further stated that if the applicants are over looked in case of

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promotion, they would take the shelter of seniority list as there is no separate seniority list of J.N. Customs House, Nhava Sheva, hence the case of the applicants in no way is different than the case of Customs Officers at Bombay Customs House. The existence of one Seniority List and one Cadre Controlling authority, in no way relevant to the matter in issue. Similarly, one seniority list, if the applicants are over looked in promotion, they are entitled to agitate the matter is entirely a different issue not connected with the transfer.

12. I am not going to consider the inconvenience caused to the applicants in view of the order dated 13.7.2001, as it is entirely a matter within the jurisdiction of departmental authorities. At present, only the point to be considered is whether the applicants are liable to be transferred from J.N. Customs House Nhava Sheva to any other station. It is true that a Government servant is liable to be transferred, as transfer is one of the incident of service.

13. The learned counsel for the interveners and official respondents relied on Para 10 of the Offer of Appointment which is as under :-

"He/She should also note that he/she has to conform to the Rules, discipline and conduct prevailing in this office and those imposed by Govt. on all their employees."

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Perusal of the same leads me nowhere particularly keeping in view the circumstances that the applicants are being posted for Nhava Sheva Customs House.

14. In addition to it, the facts as alleged by the applicants cannot be ignored which are noted below :- (1) In case of Shri N.P.Choudhary, a request for transfer to Bombay Customs House was turned down quoting the policy according to which transfer could be affected on the basis of inter-collectorate transfer. (2) The respondents failed to reply the representations of the applicants made in 1993 for their transfer to Bombay Customs House. (3) In 1999 applicants along with others filed OA.No.1087/99 seeking the same relief as in the present OA. which was withdrawn, as the applicants were assured by the respondents and the said transfer orders were not at all passed. (4) Letter dated 26.12.1990 issued by Government of India, Ministry of Finance, Department of Revenue Term No. 3 makes it incumbent that the promotee will be kept ordinarily for a minimum period of 5 years or till they are promoted, makes it clear that inclusion of Term 5 year was introduced only keeping in view that at the relevant time officers were not inclined to be posted there. Any transfer to Nhava Sheva was not liked by the officers at Bombay Custom House, this being the background and reason to include the Nhava Sheva in the offer of appointment and posting order.

15. The learned counsel for the official respondents brought to my notice that interveners (mentioned at page 30 of the OA. at Sr.No.6,8,10,12,13,15 and 17) have been relieved by the respondents to join at J.N.Customs House, Nhava Sheva before relieving the applicant. The only material point which is to be considered is whether the applicants are liable to be transferred or not. It is for the respondents how to deal with such interveners' posting.

16. The learned counsel for the official respondents argued that transfer order can be challenged if there is violation of the norms of policy, the transfer is malafide or not in public interest. In the present case neither malafides nor transfer policy is challenged. There cannot be any dispute regarding principles on the basis of which a transfer order can be challenged. But in the present case, the question is entirely different which is whether the applicants are liable to be transferred or not. Hence, said argument deserves to be rejected and is rejected.

17. The learned counsel for the official respondents argued that transfer order passed by the official respondents is in public interest as the efficiency of the officers deserves to be decided before their promotion by posting them at various places. The said fact can be considered when question of applicants' liability to be transferred exists and it is held that applicants are liable to be transferred.

18. Vide Establishment Order No.478/91 PAD dated 20.12.1991 some Preventive Officers were transferred and they have moved the Tribunal vide OA.No.925/94 challenging the said order. The said OA. was decided on 23.12.1994 stating the fact that all the officers 15 in number have been transferred back to Bombay in the Shift Order No.31/95. Thus, it can be safely said that till 1994 there was no inclination of the officers to go to J.N.Customs House.

19. The applicants have submitted the rejoinder admitting the fact that Cadre Controlling Authority is the Commissioner (G) Mumbai Custom House but denying the right of the said Authority regarding transfer of the applicants beyond the jurisdiction of Jawahar Custom House, as the applicants were specifically "recruited for" vacancies for Jawahar Custom House. It is further stated that the principle of non-retention of staff at one place of posting, lest any vested interest develops, is followed scrupulously at Jawahar Custom House to the extent that almost all the staff at the level of Preventive Officer posted for round the clock duties are roated on daily basis and almost fifty percent of the Preventive Officers are shifted/roated/ transferred every month. In fact, at Jawahar Custom House, no preventive officer is posted at one place for more than three months. They were specifically selected, recruited and posted at Jawahar Custom House due to the fact that after the commissioning of J.N.Port, the policy makers had keeping in mind the nature of the job and duty hours of Preventive Officers, consciously

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intended to man the incipient Custom House with a distinct set of Preventive Officers. Letter from the Ministry dated 26.12.1990 deserves to be read along with D.O. letter No.D.O.F.No.S/S-283/89 Estt dated 26.9.1990 particularly para 2,3,5 which was sent by Shri V.K.Gupta, Collector of Customs, Mumbai to Shri K.K.Dwivedi, Member (Personnel), Central Board of Excise and Customs, Mumbai. There was no need to mention that eligibility condition for posting at Sahar Air Port separately, if there was common cadre. Omission of Shri D.P.Meena to represent regarding his posting at Mumbai Customs House does not in any way infringe upon the right of redressal of the applicants. As the Cadre of preventive Officers at Jawahar Customs House is distinct and separate from the cadre of Preventive Officer at Mumbai Custom House, no one can be transferred from one place to another except on his own consent. The applicants have given the details of file regarding Shri N.P.Chaudhri, also stated about their representation to the department, explained the reasons for withdrawal of OA.1087/99 and its effect, OA.925/94 filed by the Preventive Officers of Mumbai Custom House. The decision of State Bank of India vs. Aanjan Sanyal and others (2001(3) Supreme 426 and State of Madhya Pradesh vs. S.S.Kaourav & Ors. - JT 95 (2) SC 458) are explained and stated that the said authorities helps their case.

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20. It is a fact that the post is sanctioned for Jawahar Customs House, separate list was issued for appointment as Preventive Officer at Jawahar Customs House by the Staff Selection Commission and in pursuance of which the applicants were appointed as Preventive Officers. The respondents, inspite of submissions of complete particulars in respect of Shri N.P.Choudhary who was a Preventive Officer at Jawahar Lal Nehru Customs House and sought transfer on medical ground was turned down by the respondents saying that it is an inter-collectorate transfer, failed to explain it. The evasive reply of the respondents in this respect leads me to draw an inference against the respondents.

21. It is true that the respondents attempted to transfer Preventive Officers from Jawahar Lal Nehru Customs House to Bombay Customs House which was agitated from 1996 and onwards. OA.No.1087/99 in this respect was filed which was withdrawn. It is true that the OA. was not decided in favour of the applicants but the fact remains that the transfer order was either not implemented or not passed, so such Preventive Officers continued at Jawahar Customs House. This fact can also be not lost sight on that. Previously the Preventive Officers working at Bombay Customs House were reluctant to go to Jawahar Customs House so the period was changed from time to time. It is also worth mentioning that when Airport posting was specifically mentioned for posting of Preventive Officers of Jawahar Customs House, the posting of other sections at Bombay Customs House was not mentioned.

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22. Mere fact that there is a common seniority list for Preventive Officers at Mumbai Customs House and Jawahar Lal Nehru Customs House and Cadre Controlling Authority is one cannot be a ground for transferring the applicants to Mumbai Customs House on the ground that it is a half yearly general rotation order. The transfer of 28 officers out of which only 20 officers have impugned the order does not help the respondents for the reasons that every one has its own grievance and the applicants who come before the Tribunal, their case is to be decided on merits, 8 officers who have not raised their grievance can not take away the consideration of the grievance of the applicants or cannot affects the right of the applicants in any way. The specific vacancy in the offer of appointment at Jawahar Custom House can be considered in favour of the respondents but it can not be considered in favour of the respondents that it is a procedure requirement and standard administrative practice. Cadre controlling authority is the same but it does not give a right to the said authority to transfer the applicants when such a right does not exist.

23. Issue of Notification under Indian Port Trust 1908 that Nhava Sheva shall be a major Port w.e.f. 28.5.1982 and under Section 1 of Major Port Trust Act, 1963 is entirely not concerned with the matter. The learned counsel for the applicant argued that only the Ministry failed to issue a Notification under Customs Act declaring Jawahar Lal Nehru Customs House as a Commissionerate and which has resulted litigation. Whatsoever may be the reason, failure of the respondents in issuing the notification does not affect the rights of the applicant.

24. The judicial pronouncement, relied on by the respondents cannot be of any help to the respondents as question of authority to transfer is in dispute in the present case.

25. When the respondents are rotating the applicants even at Jawahar Lal Nehru Customs House also, question of sensitive posts and transfer being necessity cannot be considered as such transfer cannot be held to be in public interest.

26. In the result, impugned transfer order dated 13.7.2001 is hereby quashed and set aside. It follows that the applicants are not liable to be eased out and transfer to the Mumbai Customs House Save and except with their consent and on the basis of inter-collectorate transfer policy.

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(S.L.JAIN)

MEMBER (J)

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