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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 664/92

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DATE OF DECISION 24.7.1992.

Shri K.G. Chandanshive Petitioner

Shri A.L. Kasturey Advocate for the Petitioners

Versus

Secy., Min. of Fin. & Another Respondent

Shri P.M. Pradhan Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. T.C. REDDY, MEMBER (J).

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No

T. Chandanshive
MEMBER (J).

mbm*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY

C.A.664/92

Sri K.G.Chandanshive,
 Asst. Collector of Customs,
 Nhava Sheva, Dist. Raigad

.. Applicant

Vs.

The Secretary,
 Ministry of Finance,
 Department of Revenue,
 Govt. of India,
NEW DELHI-110 001

The Under Secretary,
 Govt. of India,
 Ministry of Finance,
 Department of Revenue,
 North Block,
NEW DELHI-110 001

.. Respondents

Coram:Hon'ble Shri T.C.Reddy, Member(J)

Appearance:

Shri A.L.Kasurey, Counsel for the Applicant

Shri P.M.Pradhan, Counsel for the Respondents

ORAL JUDGEMENT:

DATED 24.7.1992

I PER: Hon'ble Shri T.C.Reddy, Member(J) I

This is an application filed under Section 19 of the Administrative Tribunal Act to set aside the transfer order dated 9.5.92, transferring the applicant from Nhava Sheva to Bombay.

2. The facts giving rise to this OA, in brief are as follows:

3. The applicant was promoted as Appraiser on 2.9.68 and continued to serve in that capacity at Bombay Customs till the end of February, 1988. Thereafter, he was promoted as Assistant Collector on 25.2.1988 and was allotted to Belgaum Central Excise Collectorate and was posted to its

T - C. *[Signature]*

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Divisional Office at Gulbarga. The applicant served for about 3 years and 3 months at Gulbarga. Then the applicant was transferred at his own request on 31.5.1991 from Gulbarga to Nhava Sheva Customs near Bombay. Thereafter, the applicant made a representation dated 30.9.91 for a change to Bombay Customs from Nhava Sheva. The applicant was ultimately transferred by the respondents from Nhava Sheva to Bombay as per the order dated 9.5.92. As already indicated above, the said order is questioned in this OA.

4. A short counter is filed by the respondents opposing this OA and it is maintained in the said counter, that the said transfer from Nhava Sheva to Bombay had been effected as per the request of the applicant and there are no merits in this application.

5. Today, we have heard Shri AL Kasurey, Counsel for the applicant and Shri FM Pradhan, Standing Counsel for the respondents. There is nothing on record to show that the applicant had withdrawn the said representation dated 30.9.1991 to transfer him from Nhava Sheva to Bombay. It is only when the said representation of the applicant dated 30.9.1991 for his transfer from Nhava Sheva to Bombay was pending, the said transfer of the applicant from Nhava Sheva to Bombay ~~had been effected~~. So, the respondents have acted in transferring the applicant from Nhava Sheva to Bombay as per the request of the applicant. So, as the applicant had put in request application dated 30.9.91 for his said transfer from Nhava Sheva to Bombay, and, as the applicant had never made any attempt to withdraw the said request, it is not open for the applicant to question the said transfer. As a matter of fact, the applicant wanted transfer from Nhava Sheva to Bombay and after

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having made the authorities to act on his representation in transferring the applicant from Nhava Sheva to Bombay as per his own request, the applicant cannot go back as the same had been effected. It is not open for the applicant to blow hot and cold. Hence, this OA is liable to be rejected at the admission stage.

6. It is the contention of the Learned Counsel for the applicant that the applicant did not exercise option for his transfer when the respondents called the concerned officers to exercise their option for transfer and in view of this position, that it has to be understood that the request of the applicant dated 30.9.91 had been withdrawn. Of course, the applicant did not exercise his option for transfer when called for by the respondents in the month of December, 1991, which circular had been issued on 13.12.91 and ^{when no info} time had been given to exercise options till the end of January, 1992. As the applicant's representation dated 30.9.91 for his request transfer from Nhava Sheva to Bombay was pending, it was the bounden duty of the applicant to inform the respondents that the said request dated 30.9.91 had been withdrawn by him. When such request was not withdrawn by the applicant, the respondents, naturally would be under the belief that the applicant wanted transfer from Nhava Sheva to Bombay and so would have acted under the said belief. So, the contention of the learned counsel for the applicant that the request of the applicant dated 30.9.91 for his transfer from Nhava Sheva to Bombay should be deemed to have been withdrawn cannot be accepted.

7. A copy of the order dated 9.5.92 (impugned order) is appended to this OA. In the transfer order, it is stated that the officers whose names appear at S.Nos.91, 92, 93, 94, 98, 103, 105, 108, 110, 111, 116, 117, 128, 129 and 131

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have been transferred at their own request. In the said para, the name of the ~~Applicant~~ does not figure. So, it is the contention of the learned counsel for the applicant that the request of the applicant had never been considered along with those who have been transferred on request and so, the said transfer of the applicant is bad in law. As already pointed out, ~~that~~ the applicant has not withdrawn his request for transfer dated 30.9.91. Though the sr.nos. mentioned above were transferred to distant places, the applicant herein had been transferred to Bombay only which is very near to Nhava Sheva. So, the name of the applicant might not have been mentioned in the said transfer orders along with those who have been transferred on request. Unless the respondents have considered the request of the applicant and transferred him, we are unable to understand as to why the applicant would have been transferred from Nhava Sheva to Bombay, as he had been transferred to Nhava Sheva only in the month of June, 1991. So, considering the fact that the transfer from Nhava Sheva to Bombay is within a short-time, the applicant's name along with others seems to have been considered and the said transfer ~~has been~~ effected. So, the said contention of the learned counsel, ~~that the applicant's name is missing among those who have been transferred on request~~ cannot be accepted.

8. Shri Kasturey, Learned Counsel for the Applicant drew our attention to Para 5 of the guidelines of Group 'A' Officers of the Customs and Central Excise service. Para 5 of the said guidelines reads as follows:

"5. Officers who have less than two years of service left before superannuation would not ordinarily be transferred on the ground of their already having completed 4 years of stay if it is practicable to retain them in the same station."

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9. The learned counsel for the applicant contended on the basis of the said instruction, the transfer of the applicant is affected ~~on the grounds~~ before two years of the superannuation age of the applicant and so the transfer is not valid. In this case, the applicant is due to retire within ten months. If the applicant had not made the request for transfer, certainly there would have been some force in the contention of the Learned Counsel for the applicant. As already pointed out, as the transfer of the applicant had been effected on the request of the applicant, we are unable to understand how the applicant can take advantage of para 5 referred to above. So, the contention of the Learned Counsel has no force.

10. Shri Kasturey further argued that the action of the Respondents in transferring the applicant is with malafide intentions. We have carefully gone through all the records and material placed before us. Absolutely no malafides ~~are~~ can be attributed to the respondents in effecting the transfer and they seem to have acted bona fide on the basis of the applicant's representation dated 30.9.91. The learned counsel for the applicant had filed an affidavit dated 23.7.92 wherein, it was stated that one Shri GR Meena, Assistant Collector figuring at Sr.No.12 of Exb.D was transferred from Nava Sheva to Raipur and although quite young, his case was considered on his representation by the respondents and his transfer was cancelled whereas, the applicant, who has 10 months to retire was not considered for cancellation of transfer order and so the action of the respondents in not retaining the applicant at Nava Sheva is discriminatory. It is difficult to say that the action of the

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respondents is discriminatory in cancelling the transfer of the said Shri GR Meena and in not cancelling the transfer order of the applicant, as the applicant stands on a different footing from that of the said Shri GR Meena.

11. So, we see no merits in this OA and hence, it is liable to be rejected and it is accordingly rejected. ^{had been) by the order dated}
The transfer order dated 7.5.92 ~~was~~ stayed ~~25-6-92~~ ^{by} ~~25-6-92~~
As we had rejected this OA, the order dated ~~25-6-92~~ ^{by} ~~25-6-92~~ ^{by} ~~25-6-92~~
staying the order of transfer stands vacated. ^{Temporary}

12. Parties shall bear their own costs.

T. Chandrasekhar Reddy
(T. CHANDRASEKHARA REDDY)
Member (Judl.)