

(4)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 57/93
Transfer Application No.

Date of Decision : 8.6.1995

Shri V.R.Suryavanshi

Petitioner

Shri S.S.Kulkarni

Advocate for the
Petitioners

Versus

Union of India & Ors.

Respondents

Shri M.I.Sethna

Advocate for the
respondents

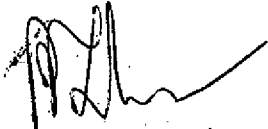
C O R A M :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri P.P.Srivastava, Member (A)

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to
other Benches of the Tribunal?


(P.P.SRIVASTAVA)
MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

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OA.NO. 57/93

Shri V.R.Suryavanshi ... Applicant
V/S.
Union of India & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri S.S.Kulkarni
Advocate
for the Applicant

Shri M.I.Sethna
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 8.6.1995

(PER: M.S.Deshpande, Vice Chairman)

By this application the applicant challenges the fixation of his seniority while effecting his transfer to Pune Division by the order dated 10.7.1992.

2. The applicant was working at Indore and as it is apparent from the order dated 10.7.1992 (Annexure-I) he came to be transferred from Indore to Pune as per orders on inter-collectorate transfer vide Board's letter dated 20.5.1980 with the understanding that his seniority will be at the bottom of the temporary Inspectors in the combined seniority list of inspectors of Bombay-I/II/III/Pune and Aurangabad and so his request for fixing his seniority from the date of appointment in Indore could not be acceded to. There is no dispute before us that the applicant came to be transferred from Indore to Pune on his own request on compassionate grounds. The submission on behalf of the applicant is that he was governed by the Board's order dated 12.2.1970 and particularly



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clause (v) of that order which may be reproduced

here :-

"(v) Ordinarily, only non-permanent (temporary and quasi-permanent) persons should be permitted to be transferred from one charge to another. In exceptional cases, permanent persons may be transferred, but they are liable to be placed at the bottom of the seniority list of permanent persons in that grade. It is possible that in the new charge there are several persons who are senior to the transferred, on the basis of length of service, but have not been confirmed. On the other hand, it is also possible that the juniormost confirmed persons in the new charge is far junior to the transferred. It will therefore be necessary to fix the seniority of the permanent transferee, on an ad hoc basis, considering the length of his service, date of confirmation, etc. Vis-a-Vis the length of service etc. of the persons already working in the grade concerned, in the new charge. This should be done under the orders of the Board, the transferer is effected."

under

This was the provision / earlier instructions dated 29.12.1958 in regard to transfer of non-gazetted staff from one charge to another within the same department. The later instructions which were issued on 20.5.1980 on the subject of delegation of powers to the Heads of Departments for permitting inter-collectorate transfers of Group 'C' officers dealing with the cases of requests received for inter-Collectorate transfers from the Group 'C' officers on really compassionate grounds may be considered on merits. However, the transfers wherever considered necessary may be effected on the following conditions. Clause (i) requires that both the Collectorates should agree to the transfer and clause (ii) which is material requires that :-

"(ii) the transferee will not be entitled to count the service rendered by him in the former Collectorate for the purpose of seniority in the new charge. In other words, he will be treated as a new entrant in the Collectorate to which he is transferred and will be placed at the bottom of the list of the temporary employees of the concerned cadre in the new charge."



The learned counsel for the applicant urged that these subsequent instructions would not supersede the earlier instructions which we have quoted above. It is, however, obvious that both the instructions were in the nature of administrative instructions and they may be altered by issuing administrative instructions in the absence of rules. No rule as framed under Article 309 has been brought to our notice. However, the learned counsel referred to the decision of this Bench of the Tribunal, Atul Dwarkanath Deshpande vs. Union of India & Ors., Tr.511/86 decided on 19.11.1987. That was a case which arose on account of the division of the Bombay Collectorate into two separate Collectorates, viz., Bombay and Pune and at that time a declaration was sought from the applicant therein. The Tribunal observed after quoting clause (v) of the earlier rules at page 5 that :-


"In our opinion the applicant cannot be given the benefit of this provision because he was transferred on his request and it may be possible that some temporary Inspectors (O.G.) might have joined their services earlier than him. In case the applicant was put at the bottom of the seniority list of permanent persons then these persons were bound to suffer."

However, it was clear that the declaration given by the applicant was quashed as nonest because that was not necessary ^{under} the instructions issued as ^{the} transfer was a sequel to the division of the Collectorate. This decision would not therefore be of any assistance to the applicant.

3. Reliance was also placed on the decision of Madras Bench of this Tribunal reported in CBEC Digest, April, 1990 rendered in OA.NO. 401/89, R.A.Nadarajah vs.

Union of India which has been placed at Annexure-II of the petition. There the question for consideration was whether the services rendered by the applicant in the Division from which he was transferred could be taken into consideration along with the services rendered in the Division to which he was transferred for the purpose of promotion and the Tribunal observed that administrative principle as adumbrated in T.A.65/87 would indicate only that he will be treated as a fresh entrant in that Collectorate but that does not mean he would be deprived of his right of promotion and the total service rendered in both the Collectorates could be counted for determining whether the applicant could fall within the zone of consideration. That decision does not touch the issue which we have before us.

4.1 Considering the position relating to the instructions, no exception could be taken to the impugned letter dated 10.7.1992 rejecting the prayer made by the applicant. We, therefore, see no merit in the application. It is dismissed.


(P.P.SRIVASTAVA)
MEMBER (A)


(M.S.DESHPANDE)
VICE CHAIRMAN

mrj.