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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1059/94

Transfer Application No:

DATE OF DECISION: 29-3-95

Shri C.D.Ephrem

Petitioner

Shri M.S.Ramamurthy

Advocate for the Petitioner

Versus

Union of India & Ors.

Respondent

Shri M.I.Sethna

Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Shri

1. To be referred to the Reporter or not ?

2. Whether it needs to be circulated to other Benches of Na
the Tribunal ?


(P.P.SRIVASTAVA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY

DA. NO. 1059/94

(9)

Shri C.D.Ephrem

... Applicant

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri M.S.Ramamurthy
Advocate
for the Applicant

Shri M.I.Sethna
Advocate
for the Respondents

JUDGEMENT

Dated:

29.3.95

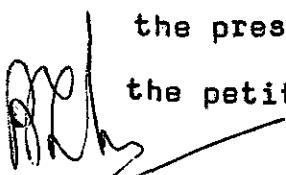
(PER: P.P.Srivastava, Member (A))

The applicant who was working at the Air Cargo Complex, Sahar, Bombay has been transferred from Customs Department to Excise Department vide order dated 28.6.1994. The applicant submitted a representation against his transfer order dated 15.7.1994. However, the same was rejected by the respondents vide their letter dated 21.7.1994. The applicant has brought out that he is more than 57 years of age and is retiring in the month of June, 1995 and therefore at this stage transferring him from Customs Department to Excise Department would not serve any purpose for the administration as he would not be able to contribute much in a short time of service which is left for him. The applicant came to be promoted to Group 'A' on 3.1.1990 and (he) was posted to Nhava-Sheva Customs (Jawahar Custom House) in Raigad District where he joined on 30.1.1990. From there he was transferred to Bombay Custom House on 23.5.1991. The applicant suffered a Heart attack on 23.1.1993 and after recovery from the heart attack



he requested the respondents to post him near his home, i.e. Kalina, Santacruz as he found it difficult to commute to Customs House. The request of the applicant was accepted and he was posted in the Air Cargo Complex, Sahar which is nearer to his residence. The applicant has brought out that he has all the time worked in the Customs Department from the beginning of his service and at the fag end of his service it would be difficult for him to work usefully in the Central Excise Department. He has also brought out that in terms of the guidelines issued by the respondents, an officer having less than 2 years' service left for superannuation would not ordinarily be transferred on the grounds of their already having completed the tenure, if it is practicable to retain/post them in the same station/Collectorate. The applicant has also brought out that the transfer is arbitrary, capricious and whimsical and that the transfer is against the guidelines which have been laid down by the respondents and therefore it is bad in law.

2. The respondents have brought out that the applicant being a Group 'A' officer has an All India liability of transfer as a part of his service and being a Group 'A' officer he can be transferred from Customs to Excise and vice versa. Since the applicant is a Group 'A' officer since 1990, according to the guidelines he is liable to be transferred to Excise Department after two years working in the Customs Department. The respondents have also brought out that the applicant has been transferred from Customs to Central Excise within the city of Bombay itself and therefore there is no change in residence and the usual inconveniences which accompany a transfer like shifting of residence and education of children are not involved in the present transfer. All that is being ordered is that the petitioner will be required to go to in the office of



Central Excise situated at Parel, Bombay. Since the Headquarter of the applicant remains Bombay, there is no justifiable cause for him to be aggrieved about the transfer. The respondents have further brought out that the applicant joined Bombay Customs House on 23.5.1991 and by the time he was transferred, he had completed two years in the Customs House. Criteria as per the guidelines is of 2 years Customs post and 2 years Excise post. The respondents have further brought out that since the number of officers in Group 'A' in the Central Excise is less than that in Customs side, it is not possible for administrative reasons to rotate all the officers who have completed two years at one go. The respondents have further brought out that there is no illegality in the transfer order and the transfer is within the frame work of guidelines.

3. I have heard both the counsel and perused the record. Counsel for the applicant has brought to my notice a decision reported in (1992) 20 ATC 66 of the Central Administrative Tribunal, Jodhpur Bench wherein it has been held that in absence of any apparent administrative reason or public interest, an order of transfer made in violation of administrative instructions cannot be sustained. The case being referred to was decided in the year 1992 and involved transfer of husband from one place to another in violation of the Government instructions that husband and wife should normally be posted at the same station. The counsel for the respondents have referred to the case of Union of India & Ors. vs. S.L. Abbas decided by the Supreme Court in 1993 in which the very same question was considered. The Hon'ble Supreme Court has held that the order of transfer can be questioned in a Court or Tribunal only where it is passed mala fide or where it is made in violation of the

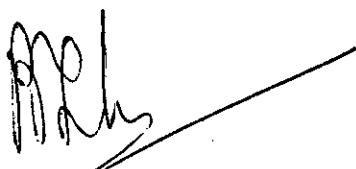


statutory provisions. The Supreme Court has also held while considering the question of guidelines for transfer as under :-

"Who should be transferred where is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the government employee a legally enforceable right."

The contention of the counsel for the respondents is that the ratio laid down by the Jodhpur Bench of the Tribunal has been over-ruled by the Supreme Court in Abbas's case quoted above.

4. In view of the decision of the Supreme Court in S.L.Abbas's case, I am of the view that the transfer order could only be challenged in case it is vitiated by malafides or is violative of any statutory provisions. In this case, although it has been mentioned in the application that the transfer is malafide, no foundation has been laid nor any effort has been made to show as to how the transfer is visited by malafides. The applicant has also not been able to show any statutory provisions which have been violated in the present case. The case of the applicant is solely based on violation of the guidelines that an officer should not be transferred at the fag-end of his career and when less than two years are left for his retirement. On the other hand, the



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respondents have justified the transfer on the grounds that Group 'A' officers are required to undergo a transfer after two years of working in Customs Department to Central Excise and vice versa.

5. I am, therefore, of the view that the transfer order of the applicant from Customs Department to Central Excise with the Headquarter remaining at Bombay cannot be termed illegal. I, therefore, see no reason to interfere with the transfer order passed by the respondents in this case. OA. is dismissed and there will be no order as to costs.



(P.P. SRIVASTAVA)

MEMBER (A)

mrj.