

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

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Original Application No. 942/94
Transfer Application No.

Date of Decision : 28.7.95

V.D. Kharat and 10 others.

Petitioner

Shri V.M. Bendre, with Shri J.G. Gadkari

Advocate for the
Petitioners

Versus

Union of India and others.

Respondents

Shri Suresh Kumar for
Shri M.I. Sethna


Advocate for the
respondents

C O R A M :

The Hon'ble Shri B.S. Hegde, Member (J)

The Hon'ble Shri

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?


(B.S. Hegde)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 942/94

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V.D. Kharat and 10 others.

... Applicants.

V/s.

Shri S.D. Mohile
Principal Collector
Central Excise, Bombay
Central Excise Building,
M.K. Marg, Churchgate,
Bombay.

Shri D. Chakraborty
Collector,
Central Excise Bombay I,
Central Excise Building,
M.K. Marg, Churchgate,
Bombay.

Shri N. Obhrai
Collector,
Central Excise, Bombay II
9th Floor, Piramal Chambers
Jijibhai Lane, Parel-Lalbaugh,
Bombay.

Chairman
Central Board of Excise & Customs
North Block,
New Delhi.

Union of India
Through Secretary Revenue
Ministry of Finance
North Block
New Delhi.

... Respondents.

CORAM: Hon'ble Shri B.S. Hegde, Member (J)

Appearance:

Shri V.M. Bendre with Shri J.G. Gadkari
for the applicant.

Shri Suresh Kumar for
Shri M.I. Sethna, counsel
for the respondents.

JUDGEMENT

Dated: 28.7.95

{ Per Shri B.S. Hegde, Member (J) }

The applicant in this O.A. has
prayed for the following reliefs:

- a) This Hon'ble Tribunal be pleased to direct the respondents not to insist upon a separate Association for the different Collectorates,

and interfere with the Organisation of employees which action is violation of Article 14 and Article 16 of the Constitution of India and also the relevant Rules of Central Civil Services (Recognition of Services Associations) Rules 1993.

- b) The Hon'ble Tribunal be pleased to direct that the Applicant Association be continued to be recognised as they have completed all the requirements of Clause 6 of the said Central Civil Services (Recognition of Service Associations) Rules 1993.
- c) That this Hon'ble Tribunal may be pleased to hold that the transfer orders issued at Annexure No.8, 8a , 9 and release order at Annexure No.11 are malafied, illegal and unjust.

Parties may re-call that at the time of admission of the O.A. after hearing both counsel the Tribunal has observed that prayer (a) and (b) pertain to Union and the Counsel for the applicant conceded that prayer (a) and (b) is not pressed. The only prayer is that the Transfer order issued by the respondents at Annexure 8, 8(a) , 9 and 11 are in order and the respondents is justified in issue of such transfer order.

2. The main contention of the applicant is that the transfers are issued as far as the applicants are concerned in order to brake the union and is contrary to the established practice.

3. The respondents in their reply denied the contention of the applicants and urged that there is no allegation of malafies except stating that the transfer order was issued in order to brake the Union.

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The transfer orders are issued in administrative exigencies and It is not open to the applicants to challenge the same by filing a petition before the Tribunal. It is evident that the Applicant Association is misusing the Judicial Forum for inter-Union rivalry and the entire strategy is to create an impression as if these transfer orders have been malafide made so that the applicant union is thereby made to suffer. The present application discloses no cause of action and deserves to be dismissed in limine.

4. During the course of hearing the learned counsel for the applicant stated that except Shri A.K. Dalvi all others are transferred from Collectorate II to I. Shri A.K. Dalvi has been transferred from Collectorate II to III alongwith others on account of administrative exigencies. As a matter of fact so far as Annexure 8 is concerned it is not a transfer order. The transfer of Drivers from Collectorate II to M&P Wing which is part and parcel of the collectorate II. However there is no allegation of malafide or illegality in the order passed by the respondents. It deals with only the formation of Association. The contention of the applicants are that the respondents wants to brake the Association. This appears to have no basis because after admission the applicant does not cared to amend the O.A or stating that the transfer order is malafide. It is made clear from the appointment letter that the applicant can be transferred from collectorate II to M&P Wing which are inter changeable. M&P wing comes under Bombay Collectorate II. The respoddents states that except Dalvi all are transferred back to parent

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department. Therefore the prayer made by the applicants are not sustainable and required to be dismissed. Further transfer from M & P Wing to Collectorate II is not a transfer, it is only a placement and vice versa transfer to Collectorate II is on account of Administrative exigencies. Therefore, the applicants contention that the transfer order was only to brake their Union and of malafide intention is not tenable. In the appointment order it was clear that they are liable to be posted at any place in Bombay Central Excise Collectorate II and under no circumstances their request for transfer to any other Collectorate will be entertained. As stated earlier except Shri Dalvi all the applicants have been transferred back to the parent department i.e. Collectorate II. Therefore the contention of the applicants that the transfer order issued was of malafide intention and the same is contrary to service conditions is found to be untenable. In so far as Shri Dalvi is concerned he has been transferred back from Bombay Collectorate III to II vide its order dated 24.7.95.


5. In the light of the above facts and circumstances, I do not see any merit in the O.A. and the order passed by the respondents is found to be in order. So far as persons referred to in Annexure 9, the respondents have given specific reasons for their transfers other than Collectorate II in the exigencies of service. Immediately after the expiry of exigency of service respective applicants have been transferred back to parent department. It is a well known

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fact that transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. In view of the consistent stand taken by the Apex Court regarding transfer, stating that the Court should not interfere with the transfer order which is made on public interest and for administrative exigencies, unless the transfer order is illegal on the ground of violation of statutory rules or on ground of malafides. I do not find any such ground in the transfer order issued by the respondents in this case. Since all the applicants who have agitated in this O.A. have been transferred back to their parent department therefore, the issue of transfer has become infructuous.

6. In the result, I do not find any justification in interfering in the matter which has become infructuous. Accordingly the O.A. is dismissed. No order as to costs.


(B.S. Hegde)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Review Petition No. 110/95 in
Original Application No. 942/94

V.D.Kharat and 10 others. ... Applicants.

V/s.

Union of India and 3 others. ... Respondents.

CORAM : Hon'ble Shri B.S. Hegde, Member (J)

Tribunal's order on Review Petition by Circulation.

Dated: 6.11.95

This Review Petition has been filed by the applicant seeking review of the judgement dated 28.7.95 in O.A. 942/94.

2. I have seen the Review Petition and I am satisfied that the review petition can be disposed of by circulation under Rule 17(iii) of the CAT(Procedure) Rules, 1987 and I proceed to do so.

3. The main contention in the review petition is that the observations made in the judgement is totally unteanable and misconceived as the circumstances of the attempts of breaking the union and the allegation of malafide supported by facts .

4. In so far as the Review Petition is concerned the scope of the review application is very limited and the review application is maintainable only if there is an error apparent on the face of the record or some new evidence has come to the notice which was not available even after exercise of due diligence or any other sufficient reason. The review Petition cannot be utilised for rearguing the case traversing the same ground again.


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5. On perusal of the Review Petition makes it clear that none of the ingredients referred to above, have been made out to warrant a review of the aforesaid judgement. The points raised in the review petition are not germane issue ^{to be} decided by the Tribunal and no new facts have been brought to my notice calling the review of the judgement.

6. In the circumstances, I am of the opinion, that neither an error on the face of the record has been pointed out nor any new facts have been brought to my notice calling for the review of the judgement, keeping in view of the provisions of the order 47 Rule 1 read with section 115 of the CPC, the grounds raised in the review application are more germane for an appeal against the judgement and not for review of the judgement. The review petition is therefore, dismissed.


(B.S. Hegde)
Member (J)

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