

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1387/94
~~Transfer Application No.~~

Date of Decision : 20.6.95

G.S. Tandel & Others

Petitioner

Shri M.S. Ramamurthy

Advocate for the
Petitioners

Versus

Union of India & Others

Respondents

Shri M.L. Sethna with Shri Sureshkumar

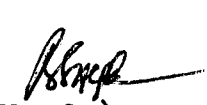
Advocate for the
respondents

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)

BOMBAY BENCH

Union of India & Others ... Respondents

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to dispose of the interim orders; accordingly, they have been directed to file a detailed affidavit urging the Tribunal to vacate the interim orders; accordingly, they have been directed to file a detailed affidavit in the matter. Accordingly, the Respondents have filed a detailed affidavit urging the Tribunal to vacate the interim order passed on 9-1-1995. I have heard both the counsel on merits and considered various points urged by them elaborately from time to time, and ultimately the case was finally heard on 8-6-1995 and the case is reserved for orders.

2. The learned counsel for the Applicants Shri Ramamurthy challenged the transfer orders on the following grounds that the Exhibit 'A' order issued by the Respondents vide dated 17-10-1994 and 23-12-1994 are not a promotion order but only a posting order. Secondly, there is a clear mandate vide Respondents' circular dated 30-5-1979 that officers posted in Bombay and Pune Collectorates will not normally be transferred out of Bombay and Pune areas except on promotion, that too if it is not possible to accommodate them in their parent Collectorate. The said rule is to apply to all persons appointed in Bombay/Pune Collectorate prior to 2-7-1979. In this connection, he heavily relied upon the circular letter no. 97/79 dated 30-5-1979. In para 3, which leads as follows :-

"The cadres at Group 'B', 'C' and 'D' levels for the Central Excise Collectorates, Bombay I and Bombay II and Pune will be common and will be controlled by the Collector of Central Excise Bombay I. However, the officers posted in the existing Bombay/Pune Collectorates will normally not be transferred out of Bombay or Pune areas except on promotion and that also, if it is not found feasible to accommodate them in their

parent Collectorates. This concession will not, however, apply to those persons who join any of these Collectorates on or after 2-7-1979".

His main contention is that all the Applicants belong to Bombay II Collectorate and they were all granted proforma promotion as Superintendents of Central Excise while they were on deputation at Sahar airport, as Air Customs Officers. Further, in the light of the aforesaid circular, so far the inspectors who have been promoted as Superintendents, and they have not been sent out of Bombay if there are sufficient vacancies in Bombay to be accommodated. That being the situation, they have made representations to the Principal Collector who seems to have assured the Union representatives that transfer orders will not be given effect to and the same was kept in abeyance and the matter was discussed with the Member (Personnel) when he was stationed in Bombay in the month of November 1994. Nevertheless, they issued the transfer orders referred to above. Since the Applicants were granted proforma promotions as Superintendents, Central Excise while they were on deputation at Sahar airport, on completion of deputation period, they were to be repatriated to the same Collectorate. Finally, the Applicants have been relieved on 20-9-1994 and the Applicants were directed to report to the Collector of Central Excise, Bombay II. It may be recalled that the Applicants were working as Inspectors of the Central Excise. While they were working as Inspectors, they were selected and posted at Sahar airport as Air Customs Officer on deputation. The deputation was for a period of 3 years. While on deputation, they got proforma promotion as Superintendent, Central Excise Group 'B'.

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On promotion, they were directed to join Central Excise Collectorate as Superintendent before completion of deputation period against which they filed O.A. 829/89 before the Tribunal in which interim orders came to be passed restraining the Respondents from repatriating the Applicants before completion of the deputation period and were given proforma promotion vide its orders dated 16-10-91 and 15-7-92 respectively in which the Central Excise Collectorate was not a party to the proceedings. After completion of the deputation period, they have been relieved from Sahar airport asking the Applicants No. 1 to 3 on 20-9-94 to join duties in their parent department and the Applicant No. 4 has been relieved on 26-10-94 and thus joined the parent department. Thereafter, the Applicants No. 1 to 3 have been posted to Pune Collectorate vide Exh. 'A' dated 17-10-94 and the Applicants no. 1 and 2 have been relieved from their parent department on 30-11-94 and Applicant No. 3, Shri Kulkarni has been relieved from his office on 9-1-95 to take over charge at Pune. Applicant No. 4, Shri Gupte has been relieved on 26-12-94. Though they made representations dated 18-10-94, the same was rejected by the Principal Collector on 29-11-94; thereafter, the aforesaid transfer orders were issued.

3. As is expected, on repatriation from deputation, they have been posted back to Bombay Collectorate. It is the contention of the Applicants that there is no need for the Applicants to be shifted from Bombay II Collectorate to Pune Collectorate and it has been done vindictively and in retaliation to Applicants having gone to the Tribunal. Further, a number of juniors have been accommodated under

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the impugned orders by Bombay I Collectorate arbitrarily and the Applicants have been posted out of Bombay. They have been promoted in 1991 and 1992 and on repatriation from deputation, they also have been posted to Bombay II Collectorate and hence further transfer is not valid in view of the 1979 circular. So far no senior officer is posted out of Bombay when vacancies are existing in the parent department at Bombay etc.

4. The Respondents in their reply denied most of the contentions of the Applicants and the Applicants 1 and 2 have been relieved on 30-11-94 and directed to join duty at Pune as per the transfer and posting order issued on 17-10-94. The Applicant No. 3 has been relieved on 9-1-1995 and therefore the contention of the Applicants that the orders were kept in abeyance is not correct and also the representation made by them were duly rejected by the competent authority and thus the petition is totally misconceived and not maintainable and is required to be dismissed at the admission stage itself as they suppressed the material facts at the time of obtaining interim relief. They further contend that a combined seniority is maintained by Bombay, Pune, Aurangabad Collectorate and while on deputation, the Applicants were considered for promotion as Superintendents Grade 'B' as they were on deputation outside the cadre, they were considered for proforma promotion as laid down under FR 30 (1). They were allowed to complete the remaining term of their deputation at the Sahar Airport in lower cadre and not in higher cadre of Superintendent. All the while in the application, they are mentioning that they were allowed to complete their tenure but they are not mentioning the cadre in which they

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have worked. While issuing proforma promotion they were told as back as 16-10-1991 itself that they should take their new places of posting by 11-11-1991 possibly, etc; however, the applicants did not avail of that opportunity and continued to work in the Airport. On completion of tenure period they were relieved by the concerned authority and joined the parent department; while joining back, they joined as Superintendent because of their proforma promotion, therefore, the posting order issued by the Respondents vide its order dated 17-10-1994 and 23-12-1994 respectively to Pune Collectorate are to be treated as on promotion.

5. It is an undisputed fact that they joined as Superintendent after their repatriation from Sahar airport as Air Customs Officer. Though the Applicants have been promoted as Superintendents in 1991 - 1992, they did not assumed the charge of Superintendent but continued to work as Air Customs Officer i.e. in lower cadre at the Sahar airport and on their repatriation they assumed the charge of Superintendent and since there were not sufficient vacancies in the parent department, they were transferred to Pune Collectorate.

6. The learned counsel for the Applicants Shri Ramamurthy vehemently emphasised that all the Applicants have joined the Collectorate prior to 2-7-1979 and they should be given the same treatment as was given to their colleagues who have joined alongwith the Applicants and urged that till today, the Respondents have not transferred any person outside Bombay provided there is a vacancy existing at Bombay Collectorate. The Respondents' counsel urged that it is incorrect to state that transfers and postings are dependent upon seniority, such transfers and

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are being effected keeping in view the exigencies of service, hence there is no ill will or malice in the transfer orders of the Respondents and no such allegations made in the petition. He further states that the circular dated 2-7-1979 can be treated as Rule and the Applicants have been posted outside provided there are no vacancies existing ^{at} Bombay. In this connection, he draws my attention to subsequent transfer orders issued by the Respondents in the year 1995 posting people from Bombay to Pune, Bombay to Bombay and promotion and transfer orders, where in the Respondents have posted some of the employees in Bombay itself; this by itself does not help the cause of the Applicants, because it is not their contention vice that vacancy, someone else has been appointed.

7. The circular has made it clear that normally the officers will not be transferred out of Bombay except on promotion. Under any stretch of imagination, the Applicants cannot state that they were not on promotion and since they have assumed the office only in the year 1994 after completion of tenure period at Sahar airport till then they were on proforma promotion and worked in lower cadre at the Sahar airport. On their promotion to the higher cadre, it is open to the competent authority to post and transfer the officers according to exigencies of service. The question of seniority and juniority hardly arises in the case of postings and transfers. Pursuant to the proforma promotions offered by the Respondents, the Applicants have given their option stating that they were inclined to continue on proforma promotion at the Sahar airport and they can be relieved only after

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completion of their tenure period. That being so, the Respondents cannot force the Applicants to come back on intimation of promotion order. The Applicants themselves suo moto remained at the airport despite promotion order and if they had agreed to come back to the parent department at that point of time, they may not have been probably transferred out of Bombay keeping in view the contents of the circular dated 30-5-1979 referred to above. Having reverted back to parent department on promotion, the Respondents are at liberty to post them as they deem fit. The contention of Shri Ramamurthy is that by virtue of 1979 circular which has the effect of rule making power and the Applicants have been promoted in 1991-1992 and reverted back to parent department after completion of tenure period. It cannot be said that they are promoted in the year 1994 and therefore the postings order issued by the Respondents as against the Applicants are illegal and contrary to article 14 of the Constitution. Considering the pleadings and the citations made at the Bar, I am of the view, that the said contention is not sustainable and it is not open to the Applicants to contend that they have been promoted in 1991, not in 1994. It is true that from 1991 to 1994 they were on proforma promotion. It is an administrative discretion of the Respondents to appoint the officers on promotion if there is no vacancy existing in Bombay and to post them elsewhere. In the absence of any malafide ^{if} or ~~the~~ action taken by the Respondents to transfer is not contrary to rules, the posting orders issued by the Respondents cannot be faulted with and it is not open to the Applicants to contend that they cannot be transferred out of Bombay. Because the word 'normally' is used in the circular, that does not mean that they

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will not be appointed outside Bombay on promotion.

Shri Ramamurthy further alleged that the circular dated 30-5-1979 referred to by the Respondents would have the effect of rule making power since the Respondents have strictly adhered to it till now. In support of his contention, he draws my attention to the Supreme Court decision AIR 1978 SC 284 Railway Board & Others v/s P.R. Subramaniam and Others wherein the Court has held that "the decision of the Railway Board contained in Ex. R-9 letter dated 2-3-1962 embodying rules of general application to a particular class of non-gazetted railway servants, has the force of a rule made under Rule 157 of the Code." Accordingly, he urged that the circular of the Department dated 30-5-1979 should be treated as a rule by virtue of which no senior member of the Group 'B' officers have been transferred out of Bombay. Again, he has cited another decision of the Supreme Court AIR 1973 SC 303 Union of India v/s K.P. Joseph & Others wherein the Court observed that "Generally speaking, an administrative Order confers no justifiable right, but this rule, like all other general rules, is subject to exceptions. In the case of Sant Ram Sharma, the Supreme Court has held that "although Government cannot supersede statutory rules by administrative instructions, yet, if the rules framed under Art. 309 of the Constitution are silent on any particular point, the Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules already framed etc." With respect to the learned counsel for the Applicants, I am of the view, that both the cases cited by the learned counsel for the Applicant are not relevant to the issue referred to herein. Accordingly, the said contention of the learned counsel is rejected.

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8. As against this, the learned counsel for the Respondents draws my attention to the decision rendered by the Supreme Court in Union of India & Others v/s S.L. Abbas 1993 (25) ATC SC 844 contending that it is not open to the Tribunal to interfere with the orders of transfer if it does not involve issue of malafide or contrary to rules. In the said decision, the Supreme Court has held that the order of transfer is an incident of Government service. 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/Tribunal cannot interfere with it. He has also cited another Apex Court judgement in State of M.P. v/s S.S. Kourav & Others 1995 SCC (L & S) 666 wherein the Court reiterated that the Courts/Tribunals are not appellate forum to decide transfers on administrative ground.

9. For the reasons stated above, I am of the view, that the transfer orders issued by the Respondents vide dated 17-10-1994 and 23-12-1994 cannot be faulted with.

10. In S.L. Abbas' case referred to above, the Apex Court has held that executive instruction/circular issued by the Government are in the nature of guidelines and they do not have any statutory force. Therefore, even if the Respondents do not adhere to the guidelines, decision taken by the Respondents in transferring the Applicants does not vitiate. The Apex Court in State of M.P. v/s S.S. Kourav further reiterated that the Administrative Tribunal is not an appellate authority sitting in judgement over the orders of transfer. It cannot substitute its own judgement for that of the

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authority competent to transfer. Therefore, even assuming that the Respondents have not adhered to the guidelines even then in the light of the above, the transfers effected by the Respondents cannot be faulted with. In the facts and circumstances of the case, I find that there is no merit in the O.A. and the same is dismissed with no orders as to costs.


(B.S. Hegde)
Member (J)

ssp.