

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 457/98

Date of Decision: 16.7.1998

S.V.Pendharkar

.. Applicant

Shri S.S.Karkera

.. Advocate for  
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri M.I.Sethna with Shri V.D.Vadhavkar

Advocate for  
Respondent(s)

CORAM:

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,

The Hon'ble

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

(2) Whether it needs to be circulated to *NO*  
other Benches of the Tribunal ?

*R.G.Vaidyanatha*  
(R.G.VAIDYANATHA)  
VICE-CHAIRMAN.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 457/1998.

Thursday, this the 16th day of July, 1998.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman.

S.V.Pendharkar,  
96, Vaibhav Apartment,  
Agar Bazar, S.K.Bole Road,  
Dadar(W),  
Mumbai - 400 028.

... Applicant.

(By Advocate Shri S.S.Karkera)

V/s.

1. Union of India through  
The Chief Commissioner,  
Office of the Central Excise,  
New Central Excise Building,  
Mumbai.
2. The Commissioner,  
Officer of the Commissioner of  
Central Excise, Bombay-I,  
Central Excise Building,  
M.K.Road, Opp. Churchgate  
Station, Mumbai - 400 020.
3. Commissioner of Central Excise,  
Mumbai - IV, Nav Bharat Chambers,  
VI floor, Ranade Road, Dadar,  
Bombay - 400 028.

... Respondents.

(By Advocate Shri M.I.Sethna along  
with Shri V.D.Vadhavkar).

O R D E R

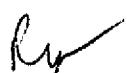
¶Per Shri Justice R.G.Vaidyanatha, Vice-Chairman

This is an application challenging the order of transfer. The respondents have filed their reply. I have heard the learned counsel appearing on both sides.

2. Few facts which are necessary for the disposal of the application are as follows.

The applicant is working as Inspector in the office of the Commissioner, Central Excise, Mumbai-IV. Under the impugned order dt. 1.5.1998 the applicant has been

...2.



transferred on deputation to Marine & Preventive Wing of Customs Preventive Commissionerate. The applicant's case is that this is a case of transfer on deputation and it is not permissible in law unless the consent of the employee is taken. According to <sup>him</sup> the respondents have never called for or taken consent of the applicant for the impugned transfer on deputation. The applicant, is therefore challenging the impugned order of transfer as illegal and contrary to law.

3. According to the respondents, the impugned order of transfer is from one wing of the Central Excise Department to another wing and it is not a case of transfer on deputation. Therefore, the respondents have stated that it is a simple case of transfer and it is not liable to be interfered by this Tribunal by exercising judicial review.

4. At the time of arguments, it is conceded that if the order of transfer is on deputation as understood in service law then the transfer must be with the consent of the candidate. In this case, it is also common ground that applicant's consent or willingness was not taken for the impugned order. Therefore, the question is whether this is a case of transfer on deputation or not. If it is held to be a transfer on deputation then of course the order of transfer is bad since consent or willingness of the applicant is not taken. The Supreme Court has pointed out in the case of State of Punjab and Ors. v/s. Inder Singh and Ors. (1997) 8 SCC 372 that a transfer on deputation cannot be made without the consent of the



employee. The same view is taken by a Bench of this Tribunal in a case reported in 1995(2) ATJ 123 ( S. Mitra V/s. Union of India.), wherein the Tribunal has ~~also~~ stated that there is no dispute on the question of law viz. that transfer on deputation cannot be made without the consent or willingness of incumbent.

5. A serious question which was canvassed before me is whether the impugned transfer is really a transfer on deputation or it is merely a transfer from one wing to another wing of the same department.

Both counsels relied on the Circular issued by the Ministry of Finance dt. 16.6.1986. This circular gives the necessary instructions as to how Superintendents and Inspectors should be posted to Marine & Preventive Wing of the Bombay Preventive Collectorate. It provides that the said posts in the said Preventive Collectorate should be filled up by transferring Officers from Bombay & II Collectorate. Now it is stated at the bar that Bombay has 7 (seven) collectorates and therefore now officers are taken from all the 7 collectorates for being posted to the Preventive Wing. The learned counsel for the respondents pointed out that this Circular does not mention anything about deputation, but it speaks only about transfers from other Collectorate to the Preventive Collectorate. It does not prescribe any conditions of taking any willingness or consent of the official to be transferred. But the learned counsel for the applicant placed reliance on clause (a) of the Circular where in the last sentence it is mentioned that after the tenure



in the Preventive Wing the officials will revert back to their parent collectorate. The learned counsel for the applicant contended that since the words of "revert back to their parent Collectorate" <sup>are mentioned, it is a</sup> it means that in the case of transferring officials from one Collectorate to another Collectorate on deputation basis. In my view, this interpretation cannot be accepted since the Circular does not refer to deputation at all and further the Circular does not use the words revert back to the parent department, which would have been the normal words if it was the case of transfer on deputation. This is a case of inter-Collectorate transfer viz. from Bombay Collectorate-II to Preventive Collectorate as per this Circular in the same Central Excise Department. Therefore, it cannot be said that this is a case of regular deputation as is understood in service jurisprudence. It may be on the basis of dictionary meaning any person sent to work in another office may mean it as a case of deputation. But in service jurisprudence working on deputation has a special connotation as it could be seen from the rules in Appendix - 5 of Swamys F.R.S.R., where the rules on deputation provide for deputation allowance. In the present case it is common ground that the officials posted to Preventive Wing from other Collectorates do not get any deputation allowance as is normally given to officers sent on deputation to a different department.

Then reliance was placed on a Deputy Collector's letter dt. 14.1.1994 where also the words used are that after the tenure the officers are repatriated to their parent collectorate. In my view, whatever I have said about reverting to parent collectorate with respect to the earlier circular of the Ministry of Finance would

apply here also.

Now coming to another important Circular dt. 27.11.1997 issued by the Chief Commissioner of Central Excise at Mumbai to other Collectorates at Mumbai under which he has given some guidelines or instructions as to how inter-collectorate transfers are done. No doubt, it has used the word "deputation" as far as sending officers to the Preventive Wing. As rightly argued by the learned counsel for the respondents, the officer has used the words loosely in an ordinary english meaning and not in the strict sense of the word deputation as is understood in service jurisprudence. No doubt, in this Circular the Chief Commissioner has mentioned about taking consent of willing officers for being sent to Preventive Wing. Let us for a moment accept that transferring the applicant is contrary to the instructions given by the Chief Commissioner in the Circular dt. 27.11.1997. It may be recalled that in the Circular of the Ministry of Finance, there were no such conditions of taking consent of an officer to be sent to the Preventive Wing. This Circular of 27.11.1997 is a local circular issued by the Chief Commissioner to other Commissioners at Mumbai and it cannot override the general instructions issued by the Ministry of Finance. It may be, for the purpose of convenience, the consent of the officials are taken so that it is better always to send willing officers instead of sending unwilling officers. It was pointed out at the bar that the Commissionerates of Mumbai - III and Mumbai - IV had called for options from Officers, but no officers were willing to give willingness and therefore it was decided to transfer officials as per their seniority. That is why the

General Circular of the Ministry of Finance does not mention taking consent of officers. Therefore, the local circular issued by the Chief Commissioner cannot be given much weight particularly when it is not in conformity with the circular issued by the Ministry of Finance. Even granting for a moment that the transfer of the applicant is contrary to the guidelines of the Chief Commissioner as per Circular dt. 27.11.1997, The order of transfer cannot be interfered with by this Tribunal by exercising judicial review as pointed out by the Apex Court in Shilpi Bose's case reported in 1991(17 ATC 95). The Supreme Court has pointed out that the transfer is an incident of service and should not be interfered with by Courts or Tribunals. The Supreme Court has observed in para 4 that even if transfer order is passed in violation of Executive instructions or orders, the Courts ordinarily should not interfere with the order, instead the affected party should approach higher authorities in the Department. Therefore, in my view, this is not a fit case where the interference of the Tribunal is called for. It is not a case of transfer being mala fide or transfer being contrary to any statutory rule.

6. The learned counsel for the Respondents brought to my notice another decision of the Apex Court reported in 1995(29 ATC 553) (State of M.P. and Anr. V/s. S.S. Kourav and Ors.) where there <sup>was</sup> is a ban on transfer without Governor's approval. In a particular case the consent of the Governor had not been taken, inspite of that the Supreme Court observed that this is not a ground for interference by Courts or Tribunals.

7. After hearing both sides and going through the materials on record, I am not inclined to interfere with the impugned order of transfer. It is open to the applicant to make a representation to the Chief Commissioner and to draw his attention to the Circular dt. 27.11.1997 and request him to modify the order of transfer. It is open to the Chief Commissioner to consider the representation and pass appropriate orders according to law. But this is certainly not a matter <sup>trv</sup> ~~to~~ this Tribunal to interfere.

8. In the result, the O.A. is rejected at the admission stage. The ex-parte ad-interim order of stay granted on 10.6.1998 and continued from time to time is hereby vacated. In the circumstances of the case, there will be no order as to costs. At this stage the applicant's counsel prayed for continuation of the interim order of stay for two weeks. After hearing both sides, the oral request for continuation of stay order is rejected.

Remainder

(R.G. VAIDYANATHA)  
VICE-CHAIRMAN.

B.