


3-12-07

Mr. R. P. Sharma Counsel for applicants
Mr. Kunal Rawat Counsel for respondents.

Arguments heard


order reserved

Tanzen Lal
(Tanzen Lal)
Administrative Member


(M. L. Chaudhary)
Judicial Member

4-12-2007

order pronounced today
in the open court by the
afore said Bench


4/12/07.
C.O.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Jaipur, the 4th day of December, 2007

ORIGINAL APPLICATION NO. 553/2003

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER

Bal Chand Khatik son of Shri Govardhan Lal Khatik, aged about 35 years at present working as Inspector, Central Excise, Headquarters, Jaipur, Resident of C-27, Customs Colony, Sector No. 7, Vidhyadhar Nagar, Jaipur.

By Advocate: Mr. R.P. Sharma

.....Applicant

Versus

1. Union of India through Secretary to the Government, Ministry of Finance, Department of Revenue, New Delhi.
2. The Chief Commissioner, Central Excise, Near Race Course Circle, Vododara.
3. The Commissioner, Commissionerate, Customs & Central Excise, Opposite Gandhi Garden Chowk Bazar, Surat.
4. The Commissioner (Cadre Control) Customs and Central Excise Commissionerate, Jaipur-1, New Central Revenue Building, C-Scheme, Jaipur.

By Advocate: Mr. Kunal Rawat (Sr. Standing Counsel)

.....Respondents

ORDER**PER HON'BLE MR. M. L. CHAUHAN**

The applicant has filed this OA against the modification of the order dated 18.08.2003 (Annexure A/1) whereby applicant was confirmed w.e.f. 18.08.2003 instead from 24.03.1992.

2. Few relevant facts, which may be quoted are that the applicant was initially appointed as Inspector of Central Excise & Customs in Vadodara/Ahmedabad/Rajkot/Surat Central Excise & Customs Commissionerate vide Memorandum dated 09/24.03.1992. One of the conditions, which was incorporated in the offer of appointment was that he would be on probation for two years and will have to pass the departmental examination within two years from the date of his appointment. The applicant had joined pursuant to the said offer of appointment memorandum dated 09/24.03.1992. It is the case of the applicant that he had passed the departmental examination within the stipulated period as per the offer of appointment memorandum. Therefore, he was exempted to pass the departmental examination when he was transferred to Jaipur Customs & Central Excise Commissionerate on Inter Commissionerate Transfer basis. It may be stated here that the

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applicant was transferred to Jaipur Customs & Central Excise Commissionerate in view of the Establishment order No. 41/1996 dated 07.03.1996 (Annexure R/2). Immediately after joining the post of Inspector in Jaipur Commissionerate, he made a representation dated 25.06.1996 (Annexure R/9) to transfer him back to Surat Commissionerate as he does not want to lose his four years of seniority in Surat Commissionerate. The said request of the applicant was rejected vide letter dated 28.08.1996 (Annexure R/10) that his case for transfer to the office of Central Excise & Customs Commissionerate, Surat, cannot be considered as he has not been confirmed in that office. There is also a letter dated 18.09.1996 (Annexure R/11) from Deputy Commissioner (P&V), Central Excise & Customs, Surat addressed to Deputy Commissioner (P&V), Customs & Central Excise, Jaipur to the fact that whether the applicant is willing for his transfer to Surat Commissionerate as a fresh recruit as his repatriation could not be done because he is not confirmed in the Surat Commissionerate. The applicant has further pleaded that in seniority list dated 31.12.2001 of Inspectors, Customs & Central Excise, Jaipur, his name was shown at sl. No. 452 whereas the other Inspectors in the same grade whose names

were figuring at sl. No. 453, 460, 463, 476, 477, 479, 480 and 481 have all been confirmed but the the applicant was not confirmed till date. Therefore, the applicant being aggrieved by the inaction of the respondents in not issuing his confirmation order made another representation dated 15.05.2002 (Annexure A/9). The applicant has further stated that this Hon'ble Tribunal vide order dated 30.10.2002 (Annexure A/11) in OA No. 454/2002 directed the respondents to dispose of the representation of the applicant by a speaking order within four weeks from the date of receipt of the applicant's representation. Accordingly, the respondents have passed the impugned order dated 18.08.2003 (Annexure A/1) whereby he was confirmed w.e.f. 18.08.2003. The grievance of the applicant is that he shall be deemed to have been confirmed w.e.f. 23.03.1992 after the expiry of probation of two years in terms of appointment letter (Annexure A/2).

3. Notice of this application was given to the respondents. The respondents have filed reply. The facts, as stated above, are not disputed. The respondents have, however, stated that the grievance of the applicant that he should be confirmed w.e.f. 24.03.1992 from the date of joining is without any basis.

The respondents have categorically stated that the applicant was transfer on his request to Central Excise & Customs Commissionerate Jaipur in terms of Central Board of Excise and Customs, Ministry of Finance Department of Revenue, New Delhi's Instruction F. No. A-22015/34/80-Ad.III B dated 20.05.1980 under Customs & Central Excise Commissionerate Jaipur's Establishment Establishment order No. 41/1996 dated 07.03.1996. It is further stated that the applicant joined in Customs & Central Excise Commissionerate Jaipur on 30.04.1996 on Inter-Commissionerate transfer basis. It is further stated that the applicant was confirmed by the DPC w.e.f. 18.08.2003. The respondents have categorically stated that since the seniority is not fixed on the basis of confirmation, therefore, there is no effect on the seniority of applicant in the grade of Inspector pertaining to Jaipur Commssionerate. It is also categorically stated that after confirmation w.e.f. 18.08.2003, the placement of applicant in the seniority list of Inspectors, Customs & Central Excise, Jaipur will not be changed and the placement will be same, which was fixed after joining in Customs & Central Excise, Commissionerate, Jaipur on 30.04.1996.



4. We have heard the learned counsel for the parties and have gone through the material placed on record.

5. The admitted facts are that the applicant joined the Commissionerate of Surat as Inspector on 02.04.1992 and in terms of offer of appointment, the applicant was placed on probation for two years and it was stipulated in the offer of appointment that applicant will have to pass the departmental examination within two years, which he had passed it. Admittedly, the applicant was not confirmed till his repatriation/transfer vide order 07.03.1996. It may be relevant to state here that the applicant was transferred to Jaipur Commissionerate on his own request vide his representation dated 02.12.1994 (Annexure R/5 with the reply filed by the respondents) whereby the applicant has given seven reasons for his transfer to Jaipur and further requested that it will be his obligation towards education of his younger brother and arrangement of his father's livelihood in the adverse days of all the three members, who are staying in separate position and to meet with this requirement., if he may be posted to Jaipur Central Excise Commissionerate. The said request of the applicant was accepted vide Establishment order No. 41/1996

dated 20.03.1996 on certain terms & conditions. At this stage, it will be useful to quote those terms & conditions, which thus reads as under:-

- "(i) That their seniority will be fixed below the last temporary Inspector of Central Excise in Jaipur Commissariat. They will be adjusted against direct quota recruitment.
- (ii) They are not entitled to count the services rendered by them in the combined cadre of Surat/Vadodara/Rajkot/Ahmedabad/CH Kandla Commissariat.
- (iii) They will not be considered for further confirmation/promotion in the combined cadre of Surat/Vadodara/Rajkot/Ahmedabad/CH Kandla Commissariat.
- (iv) No transfer traveling allowance and joining time will be admissible to him as a result of this transfer.
- (v) If they are confirmed in any grade in the combined cadre of Surat/Vadodara/Rajkot/Ahmedabad/CH Kandla Comm't, they will have lien in Surat Commissariat, till they are confirmed in Jaipur Commissariat."

6. Thus from the terms & conditions, as incorporated above, it is evident that the appointment of the applicant as Inspector in Jaipur Commissionerate was as a fresh recruit and on account of his transfer, he was not required to retain lien indefinitely in Surat Commissionerate even if he would have been confirmed in Surat Commissionerate. Further condition No. (iii) of order dated 20.03.1996 specifically bar the applicant's confirmation at Surat Commissionerate. The

applicant once has accepted such transfer on his own request on the aforesaid conditions, it was not permissible to him to rake up the issue again by making another representation dated 25.06.1996 (Annexure R/9) that he do not want to lose his four years of service, which he has rendered at Surat Commissionerate. Be that as it may, the said request of the applicant was turned down vide letter dated 28.08.1996 (Annexure R/10) with the reply. Thus according to us, the applicant cannot agitate this issue at this belated stage. In case the applicant was aggrieved by his non confirmation before his transfer to Jaipur Commissionerate, it was open for him to agitate this matter at that time. From the material placed on record, it is evident that applicant has never raised his grievance regarding his confirmation till 2002 when he had made representation. It may be stated that before his transfer to Jaipur Commissionerate, the applicant has submitted his declaration, which is in the following terms:-

'DECLARATION'

1. I will not be entitled to count the service rendered by me in the former commissariat for the purpose of seniority in the new charge. In other words, I will be treated as a new entrant in the Commissariat to which I am transferred and will be placed at the bottom of the list of the temporary



employees of the concerned cadre in the new charge.

2. On transfer, I will not be considered for promotion/confirmation in the old office.
3. If I am a permanent employee, I will retain my lien in the old charge till I am confirmed in the new charge.
4. I will not be entitled to any joining time and transfer traveling allowance.
5. I do agree for posting anywhere in the jurisdiction of Jaipur Commissariat."

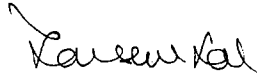
7. Thus in view of what has been stated above, we are of the view that the applicant is stopped from raising this issue at this belated stage on account of his own acts & conducts. Further, as can be seen from condition No. 5 of the order No. 41/1996, the relevant portion has been reproduced herein above, the confirmation of the applicant in Surat Commissionerate even in the year 1994 will not materially change the position of the applicant as for all intends and purposes, the applicant was the employee of Jaipur Commissionerate after his transfer and on the basis of these terms & conditions, he cannot be repatriated to Surat Commissionerate even if he had his lien in Surat Commissionerate. Further repatriation of the applicant to Surat will also adversely affect other Inspectors who have been

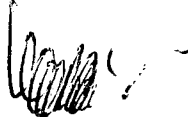
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appointed, in Surat Commissionerate after 20.03.1996. Even on this ground, the applicant cannot be granted relief.

8. Thus viewing the matter from every angle, we are of the view that the applicant has not made out any case for our interference. Firstly on account of his own acts & conduct whereby he has accepted his posting at Jaipur as fresh recruit and also that cause of action in favour of the applicant has arisen in the year 1996 whereas this OA has been filed before this Tribunal in the year 2002-2003.

9. For the foregoing reasons, the OA is dismissed with no order as to costs.


(TARSEM LAL)
MEMBER(A)


(M.L. CHAUHAN)
MEMBER (J)

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