

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH.

Original Application No.590/2003.

Jaipur, this the 4th day of January, 2005.

CORAM : Hon'ble Mr. M. L. Chauhan, Member (J).
Hon'ble Mr. A. K. Bhandari, Member (A).

Shree Kishan Goyal, S/o Shri Sita Ram Goyal, aged about 38 years,
R/o 1047, Jariyo Ka Rasta, Johri Bazar, Jaipur.

... Applicant.

By : Shri Dharmendra Jain proxy counsel for
Shri Manish Bhandari counsel for applicant.

Vs.

Union of India through the Controller General of Accounts, Ministry of Finance, 7th floor, Lok Naik Bhawan, Khan Market, New Delhi 110 003.

... Respondent.

By : Shri Bhanwar Bagri counsel for respondent.

: O R D E R :

Per M. L. Chauhan, Judicial Member.

The applicant has filed this OA thereby inter-alia praying for the following reliefs :-

"8.i) by an appropriate order or direction, the impugned order dated 13.8.2003 (Annexure A/1) may kindly be quashed and set aside so far as it posts the applicant at pay & Accounts Office, Commissionerate of Customs (Prev.), CBEC, Jamnagar (Gujarat).

ii)...

iii) ..

iv)....."

2. Briefly stated, the applicant while working on the post of Senior Accountant was promoted to the post of Junior Accounts Officer vide order dated 13.06.2000

and on account of this promotion he was posted at CPWD, Bikaner. Unfortunately, the father of the applicant died on 18.09.2000. As the applicant being the only son of his father, he has family responsibility to look after his old mother who is the patient of Thyroid and also his wife who is heart patient, made a representation to the authorities for his reversion to the post of Senior Accountant and posting at Jaipur. Taking into account the hardship being faced by the applicant, the competent authority accepted the request of the applicant vide order dated 15.12.2000 and he was reverted to the post of Senior Accountant and posted at M/o Mines, Jaipur. The applicant has placed on record the copy of the order dated 15.12.2000 as Annexure A/2. While reverting the applicant, one of the condition which was incorporated in the reversion order dated 15.12.2000 was that he will be considered for promotion as Junior Accounts Officer (JAO, for short) when his turn comes as per his option for posting at Jaipur. Pursuant to the aforesaid order of reversion the applicant had joined on 26.12.2000 at his old department i.e. PAO, GSI, Jaipur. Subsequently the respondents called option for placement under promotion scheme and the applicant again opted for his forthcoming posting at Jaipur office. Prior to the promotion of the applicant to the post of JAO, the applicant also made a representation to the authorities against his posting at Jamnagar, Gujarat thereby ventilating his difficulties.

2.1 It was further pointed out in the representation that on earlier occasion his reversion to the post of Senior Accountant from the post of JAO was subjected to

the condition that his name for promotion will be considered as JAO when his turn comes as per his option for posting at Jaipur only. It was further stated that in case it is not possible for the respondents to consider his request for posting him as JAO at Jaipur, he shall not be able to have his family in distress and shall be constrained to forego the offer of promotion on the compelling reasons. A copy of the said representation has been placed on record as Annexure A/3.. However, the respondents vide impugned order dated 13.08.2003 (Annexure A/1) again promoted the applicant to the post of JAO and posted him at Jamnagar, Gujarat.

3. The grievance of the applicant in this OA is that the impugned order thereby promoting and transferring the applicant to Jamnagar, Gujarat, is illegal, arbitrary and contrary to the condition placed at Item No.4 of the order of reversion dated 15.12.2000 whereby by reverting the applicant from the post of JAO to that of Senior Accountant it was specifically recorded in that reversion order that the case of the applicant for promotion as JAO will be considered when his turn comes as per his option for posting at Jaipur only. According to the applicant the respondents are now estopped from posting the applicant as JAO outside Jaipur and as such the impugned order dated 13.08.2003 (Annexure A/1) deserves to be quashed and set aside.

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4. When the matter was listed for admission on 16.12.2003, this Tribunal while issuing the notices to the respondents also passed Ex-parte stay order thereby staying the operation of the impugned order dated 13.08.2003 (Annexure A/1).

5. In the reply, it has been stated that the applicant is liable to be transferred as JAO despite the existence of the option clause (4) in order dated 15.12.2000. Further the transfer of the applicant was justified on the ground that the respondents have framed a revised transfer policy recently in March 2003, in view of certain administrative difficulties arising due to accommodating the candidates at the stations of their choice and it was pursuant to that policy decision the applicant was posted on promotion at Jamnagar, Gujarat.

6. Thereafter the applicant filed an additional affidavit thereby intimating that the post of JAO is lying vacant in the office of Salt Commissioner which falls vacant due to transfer on promotion of Shri Nathu Singh Choudhary and as such, he can be accommodated at Jaipur on promotion as JAO. In the additional affidavit it has been further stated that in Delhi number of similarly situated employees like the applicant, have been accommodated at Delhi itself and the same accommodation has been allowed in Lucknow. Thus, the applicant can be accommodated at Jaipur.

7. In reply to the additional affidavit, it was

stated that against the vacancy of Shri Nathu Singh Choudhary, one Shri L. P. Sivadia, Assistant Accounts Officer, has been posted against Jaipur vacancy because he is much senior to the applicant and has opted for Jaipur station. Regarding averment made by the applicant that similarly situated employees like the applicant have been accommodated in Delhi and Lucknow, in the reply to the additional affidavit it has been stated by the respondents that posting and transfers depend upon availability of vacancies and candidates. If it is possible to accommodate a candidate at Delhi or Lucknow station, it does not imply that this should be done in applicant's case also. There is no vacancy to accommodate applicant at Jaipur station. He has been posted on promotion at Jamnagar station. His request for refusal of promotion at Jamnagar station has also not been accepted. Since the respondents in their reply to additional affidavit have not specifically denied the averment made that the similarly situated employees have been accommodated at Delhi and Lucknow Station, the respondents again filed second additional reply thereby taking the objection that the applicant has not given details of any specific instance where candidates were adjusted on promotion at Delhi station. In the absence of specific details, all that the respondents can state is that they have been posting candidates from Delhi also to outstations. However, if subsequently vacancies arose at Delhi Station during the period pre-appointment formalities were yet to be completed, the candidates were accommodated against those vacancies in some cases

because they were the senior most candidates. Alongwith this second additional reply, the applicant also annexed a copy of the decision rendered by the Principal Bench in the case of V. K. Dhawan vs. Controller of General of Accounts & other, in OA NO.2112/2003 decided on 21.10.2003, in order to emphasize that the Principal Bench did not cancel the request of the applicant therein for cancellation of transfer from Delhi to Bhuvneshwar on medical grounds. The applicant filed rejoinder to the second additional reply thereby stating that even at Delhi it is an admitted position of the fact now that Shri M. P. Sharma, A. R. Jangani and Salabh Kumar were accommodated in the same manner. Apart from that even two female employees, viz., Kulkendra Malik and Vina Anand were also adjusted in the same manner. It is, however, surprising that now the respondents are trying to justify their action on the ground that those employees were senior most candidates as if the order of transfer depends on the seniority of the employees. It was further stated that the respondents have deliberately fill up the post which falls subsequently vacant at Jaipur by posting Shri L. P. Sivadia and the applicant is ready to forego his promotion and is still willing to continue on the post on which he was working before this promotion at Jaipur. It was further stated the element of seniority is made a ground for carrying out the order of transfer or accommodation of the employees even after trasnfer is nothing but an afterthought of the respondents because neither Shri S. K. Srivastava nor any other employee is senior most,

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rather this cannot happen because all those employees were given promotion along with the applicant and the seniority of those employees have to be determined qua from the date of their promotion to the higher post because all the employees were given promotion only in the month of May 2003. Therefore, the question of seniority does not arise.

8. However, during the pendency of this OA, on the representation made by the applicant, when it was made known to this Tribunal that the applicant can be adjusted at Ajmer, respondents issued another OM dated 10.12.2004 whereby the respondents issued an offer of transfer to the applicant to Ajmer on the following two conditions, which are in the following terms :-

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(a) It would be possible for this office to accommodate him at Ajmer station against one vacancy of Junior Accounts Officer which is expected to become available shortly at that station. It is however made clear that the vacancy is of the year 2004-05 and therefore Shri Goyal's seniority as Junior Accounts Officer will be fixed with reference to this vacancy.

(b) Shri Goyal has to serve at Ajmer station for three years, as laid down in clause (4) of this office circular no. A32014/1/2002/MF.CGA(A)/Gr A/Vol.III/Policy/316, dated 20.3.2003. His request, if any, for transfer back to Jaipur station on completion of three years will be considered under clauses (5) and (6) of the circular dated 20-3-2003. Consequently, if any vacancy arises at Jaipur station during three years, other candidates will be considered for posting against this vacancy in accordance with the circular dated 20-3-2003."

It was also made clear in that OM that in case

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the applicant is willing to be considered for promotion at Ajmer station in terms of (a) and (b) above, he may send his acceptance immediately, so that necessary order may be issued with the permission of the Hon'ble Tribunal.

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

10. Learned counsel for the applicant submitted that he is willing to accept offer of promotion to the post of JAO thereby his posting at Ajmer on future vacancy. However, the applicant's sole grievance which still survives is regarding second condition imposed vide order dated 10.12.2004, whereby it has been specifically stipulated that Shri Goyal has to be served at Ajmer as laid down in Clause 4 of the Circular dated 20.03.2003 and his request for transfer back to Jaipur Station on completion of three years will be considered under Clause 5 and 6 of the circular dated 20.03.2003.

10.1 We have considered the submissions made by the learned counsel for the applicant. We are of the view that condition (b) as reproduced above, of OM dated 10.12.2004 should not be adhered to strictly in view of the peculiar circumstances of this case. At this stage, we would like to notice that the applicant who was promoted to the post of JAO and posted at Bikaner vide order dated 13.08.2003 accepted such promotion but unfortunately due to family circumstances and death of his father on 18.09.2000 and he being the only son in

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the family made a genuine request to the respondents for his reversion on the post of Senior Accountant in case he was posted at Jaipur. Such request of the applicant was accepted by the respondents and vide order dated 15.12.2000 the applicant was reverted from JAO and posted as Senior Accountant in M/o Mines, Jaipur, subject to the condition mentioned therein. At this stage, it would be useful to quote para 4 of the office order dated 15.12.2000 which is in the following terms :-

" OFFICE ORDER No.353(A)/2000

In pursuance.....

1....

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4. He will be considered for promotion as JAO when his turn comes as per his option for posting at Jaipur."

On the basis of this clear cut promise extended by the competent authority that in future the applicant will be considered for promotion as JAO when his turn comes as per his option for posting at Jaipur, it was not legally permissible for the respondents to consider his case for promotion for the post of JAO against the vacancy arising out of Jaipur. Be that as it may there is nothing in the revised transfer policy to suggest that condition No.4 imposed in order dated 15.12.2000 cannot be fulfilled. At this stage it would be useful to quote Para 5, 6 & 7 of the reply filed by the respondents, which will have bearing in this case, is

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in the following terms :-

"5. That recently in March, 2003, the Respondent had to frame a revised transfer policy in view of certain administrative difficulties arising due to accommodating the candidates at the stations of their choice. There were certain stations where vacancies existed but the candidates were not available for promotion at those stations whereas on the other hand, there were other stations where candidates were available but vacancies were not available. This resulted in continuing of the vacancies for a long time. There was danger of posts being declared abolished if they were not filled up. Keeping these aspects in view, revised transfer policy was framed vide circular dated 20.03.2003 wherein it was decided to enforce all-India transfer liability in cases where it was not possible to accommodate candidates at the places of their choice. A copy of the circular dated 20-3-2003 is enclosed as Annexure to this reply. Attention of the Hon'ble Tribunal is invited to para 1 and its sub-para (1) of this circular.

6. That it is because of the revised transfer policy as indicated above, the applicant has been posted on promotion at Jamnagar station. The revised transfer policy supersedes clause (4) of order dated 15.12.2000 (Annexure A-2 to the OA).

7. That the post of Junior Accounts Officer is a Group "B" non gazetted post and carries all India transfer liability."

11. We have given the due consideration to the submissions made by the respondents in the reply affidavit. We are not convinced with the stand taken by the respondents that the transfer of the applicant on promotion at Jamnagar, Gujarat, is in conformity with the revised transfer policy formulated in March 2003. As can be seen from Para 5 of the reply affidavit the transfer policy was formulated so that vacancy does not remain unfilled at a particular station whereas on

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the other hand, there was surplus candidates as against the sanctioned cadre strength. It is also clear from Para 5 that the employee will have to be transferred which carries all India transfer liability in cases where it was not possible to accommodate candidates at the places of their choice. From the material placed on record it is clear that subsequently the post of JAO fell vacant at Jaipur due to transfer on promotion of Shri Nathu Singh Choudhary. Thus it was permissible for the respondents to accommodate the applicant as JAO at Jaipur station-subsequently, keeping in view the conditions stipulated at Item No.4 of the order dated 15.12.2000 (Annexure A/2) and also that the posting of the applicant at Jaipur subsequently would not have violated the new revised transfer policy. But the respondents in order to defeat the claim of the applicant and assurance given to him when he was reverted on earlier occasion from the post of JAO to Senior Accountant vide order dated 15.12.2000, posted one Shri L. P. Sivadia vide order dated 23.03.2004 on the plea that he was senior to the applicant as JAO. Such a plea taken by the respondents is highly untenable and cannot be legally accepted. It is well established principle that transfer is not made on the basis of seniority but it has to be made on administrative exigencies and public interest. The applicant has sought his reversion from the post of JAO on the condition stipulated in order dated 15.12.2000 whereby one of the condition was that he will be considered for promotion as JAO when his turn comes as per his option of posting at Jaipur. The applicant has

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accepted his reversion to the post of Senior Accountant on the basis of assurance given by the respondents that he will be considered for promotion as JAO when his turn comes as per his option of posting at Jaipur. He sought reversion thereby putting himself to disadvantageous position. It is not the case of the respondents that assurance given by order dated 15.12.2000 was not given by the competent authority. Once the applicant has accepted his reversion from the post of JAO to that of Senior Accountant and especially acting to his disadvantage, the respondents cannot wriggle out from such assurance and the principle of promise estoppel is clearly attracted in the instant case. Further the respondents cannot on the plea of the revised policy scuttle the claim of the applicant that promise so extended to the applicant cannot be fulfilled on the ground that the revised transfer policy carries all-India transfer liability and the applicant cannot be accommodated at Jaipur, especially when it has been stipulated in the revised policy that employee can be accommodated at the place of his choice irrespective of all-India transfer liability if he can be so accommodated.

12. We have already stated that the revised transfer policy formulated in March 2003 also stipulated that a person can be accommodated at a place of his choice where it is possible to accommodate, so, irrespective of all India transfer liability. When the post of JAO become available subsequently at Jaipur, it was not permissible for the respondents to act contrary to the

promise extended to the applicant and thereby taking plea that one Shri L. R. Sivadia has a preferential claim being senior to the applicant to be posted at Jaiur. Thus, according to us, the action of the respondents is arbitrary, more particularly, when the applicant has specifically stated that it has been practiced ^{by} with the respondents to accommodate the persons who are similarly situated to that of the applicant to accommodate at the same station as was done by them even at Delhi and Lucknow. The applicant has also given the name of such persons in his rejoinder. Be that as it may since now the applicant is willing to accept his promotion as JAO against future vacancy at Ajmer and his only grievance is that the condition as imposed at Para 2 (b) of the order dated 10.12.2004 is arbitrary and he may be adjusted at Jaipur when the vacancy may subsequently become available at Jaipur without insisting of completion of 3 years tenure, we are of the view that in the facts and circumstances of the case, the applicant has made out a case for posting at Jaipur as and when vacancy of JAO arises in future.

13. In view of the facts and circumstances of this case and in view of the observations made by us in the earlier part of the order whereby the applicant has not been fairly treated in the matter of adjusting him at Jaipur on his promotion as JAO, we are of the view that the applicant has legitimate grievance regarding his posting at Jaipur as and when the post become available in near future without insisting on tenure. At this

stage it may also be stated the contention of the learned counsel for the applicant that Shri L. P. Sivadia was adjusted against the vacancy of Shri Nathu Singh Choudhary vide order dated 23.03.2004 just to defeat the claim of the applicant cannot be outrightly rejected. It may be stated that Shri L. P. Sivadia was transferred vide order dated 23.03.2004. Learned counsel for the applicant has categorically stated that despite his transfer on the post of JAO at Jaipur Shri L. P. Sivadia has not joined till date. Further learned counsel for the respondents on instructions received from the departmental officer has stated that Shri L. P. Sivadia has joined on 03.01.2005 i.e. one day before when the matter was listed for final hearing on 04.01.2005. Thus, from the facts as stated above, it is clear that for practically more than 9 months Shri L. P. Sivadia did not join at Jaipur on the post of JAO and the post of JAO at Jaipur remained vacant practically for more than 9 months. Even when the offer of appointment to the applicant to Ajmer on promotion against future vacancy given vide order dated 10.12.2004, the post of JAO at Jaipur was still available and it appears that Shri L. P. Sivadia was allowed to join at Jaipur one day prior to the date when the matter was listed for final hearing just to defeat the claim of the applicant. Thus, we are of the view that the applicant has not been given fair treatment by the respondents regarding his promotion to the post of JAO and thereby posting him at Jaipur.

14. Under these circumstances, we are of the view

that at least in future the applicant has got a preferential claim to be posted at Jaipur as and when vacancy of JAO arises in future and the respondents will not insist upon the condition as incorporated in the offer of appointment as stipulated in Para 2(b) of OM dated 10.12.2004.

15. With these observations the present OA is allowed. The respondents may consider the posting of the applicant as JAO at Ajmer against the future available vacancy in terms of Para 2 (a) and till then the applicant shall be permitted to work against the post of Senior Accountant at Jaipur. It is further clarified that the applicant shall have a preferential claim for his posting at Jaipur on transfer subsequently as and when the post of JAO fallen vacant at Jaipur without insisting on the condition of completion of 3 years tenure as stipulated in Para 2 (b) of the offer of appointment to the post of JAO as stipulated in OM dated 10.12.2004.



(A. K. BHANDARI)
MEMBER (A)



(M. L. CHAUHAN)
MEMBER (J)