

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No.708 of 2005

Jabalpur this the ~~27th~~ day of ^{August} July, 2006

Hon'ble Dr. G.C. Srivastava, Vice Chairman
Hon'ble, Mr. A.K. Gaur, Judicial Member

Ajit B Awasthi S/o Dr. Bhawani Prasad Awasthi,
Aged 55 years Assistant Commissioner
Central Excise and Customs Indore
Office of Commissioner of Central Excise
And Customs Indore, Manik Bag Palace Indore,
Resident of Flat No.V/5 Central Excise
Colony Residency Area Indore

Applicant

(By Advocate – Shri Akash Sharma)

Versus

1. Union of India,
Secretary Ministry of Finance
Department of Revenue North block
New Delhi Pin 1100001
2. The Commissioner Central Excise Indore
Office of Commissioner of Central Excise
And Customs Indore,
Manik Bag Place Indore Pin 452001

Respondents

(By Advocate – Shri S.A.Dharmadhikari)

ORDER

By Shri A.K. Gaur, Judicial Member :-

By means of this OA, the applicant has challenged the validity of order dated 26.7.2005, bywhich the representation of the applicant against the transfer order dated 21.6.2005 has been rejected. The applicant had earlier filed OA No.588/05 before this Tribunal. The aforesaid OA was disposed of by directing the respondents to decide the applicant's representation against the transfer order dated 21.6.2005. It is contended on behalf of the applicant that he was transferred to Shillong vide order dated 21.6.2005 in mafide and arbitrary manner. Vide order dated 29.6.2005 (Annexure-A-2), the

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Tribunal had directed the respondents to pass a detailed, reasoned and speaking order on the representation of the applicant within a month and had also directed that till then the place of posting of the applicant shall not be disturbed. The representation of the applicant has been rejected vide order dated 26.7.2005 (Annexure-A-1) without granting personal hearing in an arbitrary manner. Applicant has contended that the impugned order is contrary to provisions of para 2.1 (g) of the transfer policy (Annexure-A-3) and is therefore arbitrary and bad in law. Para 2.1 (g) of the policy is being reproduced hereunder :-

“2.1(g) All annual transfer orders shall be normally issued by 30th April and in any case not later than 31st May of the year....”

It is argued on behalf of the applicant that the respondents have issued impugned transfer order dated 21.6.2005, much later than prescribed date of 30.4.2005 and as such the transfer order is contrary to the said policy. It is also argued that the applicant had earlier filed OA No.882/2003 (Annexure-A-5) before this Tribunal in which the order of penalty imposed upon the applicant was quashed and the Tribunal had remanded the matter to the respondents from the stage of issuance of dissenting note to the applicant. The respondents have deliberately delayed to implement the Tribunal’s order dated 12.1.2005 and issued the transfer order to the applicant by transferring him from Indore to Shillong. The respondents have preferred a writ petition No.1441/2005 (Annexure-A-6) in the Hon’ble High Court of M.P. Indore Bench, against the order passed by the Tribunal, which was ultimately dismissed as withdrawn on 13.7.2005.

2. According to the applicant, he has not completed term of four years at Indore, since his transfer to Indore from the post of Junior Departmental Representative in CESTAT Mumbai in April 2003. Learned counsel for the applicant drew our attention to paragraph 6.4 of the OA, wherein it has been mentioned that “An officer shall not serve for more than 14 years in an area... The tenure shall not be less than 4 years in a Class B city”, copy of the Transfer policy is filed

Annexure-A-3. Our attention was also invited to paragraph 6.5 of the OA, which is being reproduced hereunder :-

“ prior to issue a new guide lines i.e. transfer policy of 2005, CBEC had issued Circular no.50 1990, according to which the zones were made according to jurisdiction of Chief Commissioner and Central Excise Commissionerates falling in the State of Maharashtra fell within jurisdiction of Chief Commissioner Bombay and Central Excise Commissionerate of Indore fell in Vadodara zone under charge of Chief Commissioner Vadodara. In 1997, Central Excise Commissionerate Indore was transferred under jurisdiction of Chief Commissioner Jaipur till January 2002. As per new transfer policy Chief Commissionerate of Jaipur zone comes under North Zone where as Central Excise Commissionerate falls under West zone. Therefore the humble pleas of the applicant is that the period of 5 years spent in Indore Commissionerate under Chief commissionerate of Jaipur by the applicant may kindly be counted as the period spent in North Zone. Similarly the period of 8 months spent as JDR in CESTAT Mumbai cannot be counted in west zone. Thus total period of duration in West zone of the applicant comes only to 9 years and not 14 years.... As per placement Policy 2005, both conditions namely tenure of 14 years as well as expiry of tenure of four years should be satisfied. Without admitting but assuming that the applicant has completed tenure of 14 years in West zone, the applicant submits that as the applicant has not completed four years at Indore since his last transfer, the respondent has rejected his representation in arbitrary manner and in goes contravention of Transfer policy 2005.”

The main argument canvassed on behalf of the applicant is that the order of transfer is malafide and the same has been passed in violation of guidelines.

3. The respondents have filed their counter reply and refuted all the allegations contained in the OA. It is, submitted on behalf of the respondents that by means of order dated 21.6.2005, the applicant was transferred from Indore commissionerate to Central Excise Shillong. Accordingly he was relieved by the Commissioner of Central Excise and Customs-Indore on 27.6.2005. The applicant refused to accept the relieving order and challenged the same by means of filing of OA No.588/05. The competent authority has considered the representation of the applicant and found that there was no merit to accept his



request as per the provision of new Transfer Policy issued by the Department and the request of the applicant has been rejected vide speaking order dated 26.7.2005. According to the respondents, the applicant has spent more than 14 years in West and is liable to be transferred out of that area as per provisions contained in para 5.3 of the new Transfer Policy

4. We have heard the counsel for the parties and carefully perused the records.

5. It is urged that the stay of the applicant in Indore from 1997 to 2002 should be counted as stay in North area, since Indore was under Jaipur Zone during that period and has now been included in the North area. In our considered view as per para 5.3 of the new transfer policy, an officer cannot serve for more than a total of 14 years in an area during his tenure. Since the applicant has served for more than 14 years in West area, Indore cannot be placed in north area to enable the applicant to over stay in west area. Such an argument on behalf of the applicant cannot be countenanced.

6. The learned counsel for the applicant has challenged the validity of the transfer order mainly two grounds (i) that the transfer order is malafide (ii) the transfer order has been passed in violation of guidelines issued by the department. No doubt, learned counsel for the applicant has argued that order of transfer is malafide, but he has utterly failed to disclose the specific instance of malafide. It is settled principle of law that order of transfer can only be interfered with (i) When there is malafide (ii) The order of transfer has been passed by the incompetent authority (iii) The order of transfer has been passed in violation of statutory rules, and in support of this, the learned counsel for the respondents has relied on the decisions of **State of UP Vs. Goverdhan Lal** reported in 2005 SCC (L&S) 55, and **Union of India and Ors. Vs. Janardan Debanath and another** reported in 2004 Vol.4 SCC 245. The Hon'ble Supreme Court in the case of **State of UP and Anr. Vs. V.N. Prasad** reported in 1995 SCC(L&S) 781, has clearly observed that there must be a strong and convincing evidence



of malafide and a person against whom malafide has been alleged must be impleaded as one of the respondents (1995 (2) SC 570 – Chaman Lal Goel's case . The learned counsel for the respondents has also argued that even if there is violation of guidelines issued by the department, the transfer cannot be interfered with. In this respect he has relied on a judgement of Hon'ble Supreme Court rendered in the case of **Union of India Vs. S.L. Abbas** reported in AIR 1993 page 2444. In view of this decision, even if there is violation of guidelines issued by the department it will not be a ground for challenging the validity of transfer order. The Hon'ble Supreme Court in the aforesaid decision has clearly held that the guidelines issued by the department are not having any mandatory force. We have carefully considered the submissions advanced on behalf of both the parties and we are of the considered view, that there is no ground warranting our interference in the matter of transfer.

7. In view of the above discussion, the OA is devoid of merits. Accordingly, the same is dismissed. No order as to costs.

A.K.Gaur
(A.K.Gaur)
Judicial Member

Dr.G.C.Srivastava
(Dr.G.C.Srivastava)
Vice Chairman

Issued
on 14.8.06

प्राप्तिकर्तन सं. ओ/व्या..... जबलपुर, दि.....
प्रतिलिपि आव्यो धितः—
(1) संस्था, उच्च उच्चाधिकारी वार दरारेसिएशन, जबलपुर
(2) गोपेन्द्र शी/धीरेन्द्री/कु..... के काउंसल
(3) प्रद्युम्नी शी/धीरेन्द्री/कु..... के काउंसल
(4) विद्यालय, लोप्रजा, जबलपुर व्यावस्थीड
सूचना एवं आवश्यक कार्यवाही हेतु *Akash Sharma*
Dr. D. D. Dhananjay *SD Dharmedhwarji*
J. V. Wagle *14-8-06* *Dr. D. D. Dhananjay*