

**Central Administrative Tribunal
Jabalpur Bench**

OA No.866/05

Jabalpur, this the 31st day of October 2006.

CORAM

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

Manohar J.Motiramant
S/o Shri Jodharam Motiramani
Working as Superintendent of
Central Excise at Amlai in the
Bhopal Commissionerate.

Applicant.

(By advocate Shri Gopi chourasia)

Versus.

1. Union of India
through Secretary
Ministry of Finance
Department of Revenue
North Block
New Delhi
2. The Chairman
Central Board of Excise and Customs
North Block
New Delhi.
3. The Chief Commissioner
Customs and Central Excise
48, Administrative Area
Opp.Maida Mill, Arera Colony
Bhopal.
4. The Commissioner
Central Excise & Customs
Mainbagh Palace
Indore.
5. Commissioner
Central Excise & Customs
Bhopal.

Respondents

(By advocate Shri P.Shankaran)

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ORDER

By A.K.Gaur, Judicial Member

The controversy involved in the present case is as to whether the seniority of the applicant should be counted from the date of his transfer i.e. w.e.f. 6.5.78 - the date of issue of transfer order - or from the date of taking over charge at new place Indore on 19.7.78.

2. The applicant was initially appointed as Inspector of Central Excise in the Central Excise Department on 3.7.73. Thereafter he applied for transfer to Indore. His request was accepted vide order dated 6.5.78. The applicant was relieved from Mumbai on 17.7.78 and he joined at Indore on 19.7.78. It has been contended by the applicant that at the relevant point of time, he was to be governed by the instructions dated 12.2.58. Paras 1 & 2 of the instructions dated 12.2.58 read as follows:

- (i) In case of persons seeking transfer within first 3 years in the department the said transfer on request would be allowed without any loss of seniority.
- (ii) If the said request for transfer is made after a period of 3 years, after the first appointment in the department, the service to the extent of 3 years only will be allowed for determining the seniority in the new charge.

3. The benefit of the above instructions was denied to the applicant. Later, on making several representations, the respondents partly granted the benefit to the applicant, in terms of the judgement of the Hon'ble Supreme Court and the circular issued by the Ministry dated 20.10.98. It has been averred in the OA, that in another similar case, the Patna Bench of the Tribunal allowed OA No.601/93 filed by one Damodar Singh claiming the benefit of the instructions and on having received the nod of the Apex Court, the Ministry vide circular dated 20.10.98 extended the benefit of the judgement to all the employees. The applicant made a representation (A-5) to the respondents claiming the benefit of the judgement of the Supreme Court and the circular dated 20.10.98. It has been alleged that though the applicant was granted the benefit, due to mis-interpretation of the instructions, he was placed at Sl.No.42 in the seniority list instead of

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being placed between Sl.No.19 and 20. The respondents computed the seniority of the applicant from 19.7.78 instead of 6.5.78, which is against the instructions dated 20.10.98. Hence this OA.

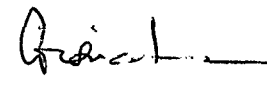
4. Denying the allegations contained in the OA, the respondents have contended that on acceptance of request transfer, the applicant was relieved from Mumbai on 17.7.1978 and he joined at Indore on 19.7.78. On joining there, the applicant was assigned seniority below to the last temporary Inspector, in the combined cadre of erstwhile Indore and Nagpur Collectorate as per rules on the subject. Thereafter, as per direction issued by respondent No.2 dated 20.10.98 to grant benefit of clause (i) and (ii) of Ministry's OM dated 12.2.1958 to the non-gazetted staff in CBEC, who took inter commissionerate transfer before 20.5.1980 in pursuance of orders passed in OA No.601/93 (Damodar Singh Vs.UOI) by the Patna Bench, the applicant was assigned seniority from the date of joining the new station in consultation with respondent No.1 by counting 3 years previous service rendered at Mumbai Collectorate of Central Excise. The transfer of the applicant from Mumbai to Indore took place before 20.5.80 but after completing 5 years service at Mumbai. Therefore, he was not entitled to get the benefit of clause (i) of the circular dated 12.2.58 but only under clause (ii). The applicant joined at Indore only on 19.7.78; therefore, he is entitled to count three years service for seniority only from 19.7.1975. Accordingly he was assigned seniority at Indore Commisssonerate from 19.7.75. Based on the seniority, the applicant was also given consequential benefits of promotion to next higher grade and notional fixation of pay without arrears from the date on which his immediate junior was promoted as per order dated 16.3.2005 (A-1).

5. Having heard the learned counsel for the parties and after going through the Government of India's letter dated 18.11.99 (Annexure R-1), it is abundantly clear that the benefit of past 3 years service for determining the seniority in the new charge should be counted from the date of joining by the individual in the new charge. The applicant has raised the dispute by mis-interpreting the provisions of circular

dated 20.10.98 that he is entitled to count his seniority taking his transfer made on 6.5.78 i.e. the issue of the transfer order and not the date of taking over new charge at Indore i.e. 19.7.78. If the contention of the applicant is accepted, same would lead to anomalous situation. In our considered opinion, the transfer of the applicant from Mumbai to Indore took place after 3 years of his initial appointment and therefore he is entitled to count only 3 years service to determine his seniority from the date he joined the new charge at Indore i.e. 19.7.78. We have also seen from the records that the respondents have assigned correct seniority to the applicant as per the above instructions and also in accordance with the clarifications issued vide letter dated 18.1.99. Learned counsel for the applicant has miserably failed to demonstrate that the clarifications dated 18.11.99 required proper approval of the Board of CBEC. The date of transfer is not the criteria for determining seniority but only the date of joining the new station. There is no illegality or arbitrariness in the action of the respondents in fixing the seniority of the applicant. We have also seen the decisions of the Tribunal rendered in 2006 (2) ATJ 527 and 1994 Vol.24 ATC 620 and are fully applicable to the facts of the present case.

6. In view of the above discussion, we find that the OA has no merits and same is liable to be dismissed. Accordingly OA is dismissed.


(A.K. Gaur)
Judicial Member


(Dr. G.C. Srivastava)
Vice Chairman

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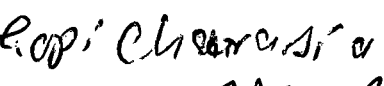
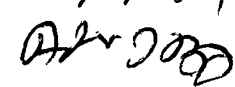
(1) सचिव, उच्च न्यायालय

(2) अध्यक्ष, उच्च न्यायालय

(3) प्रमुख, सी.पी.ए.

(4) न्यायाधीश, उच्च न्यायालय

सचिव एवं अध्यक्ष, उच्च न्यायालय


P. Shan Karay
Advocate



2/11/06

5/11/06