

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT BENCH AT BILASPUR

Original Application No. 592 of 2000

Bilaspur, this the 8th day of December, 2003

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri G. Shanthappa, Judicial Member

Ashok Kumar Agrawal, S/o.
Pooran Chand Agrawal, aged
about 44 years, Inspector Central
Excise, Range-II Jamul, Bachat
Bhawan, Sector-1, Bhilai, Distt.
Durg (M.P.).

... Applicant

(By Advocate - None)

Versus

1. Union of India,
Through : Chairman, Central
Board of Excise and Customs
Government of India, Ministry
of Finance, Deptt. of Revenue,
North Block, New Delhi.

2. The Commissioner, Central
Excise, Manik Bagh Palace,
Indore (M.P.).

3. The Commissioner, Customs and
Central Excise, Civil Lines,
Raipur (M.P.).

4. Dy. Commissioner, Customs and
Central Excise, 32 Bungalow, Raipur
Naka, Bhilai, Distt. Durg
(M.P.).

... Respondents

(By Advocate - Shri M.N. Banerjee, proxy counsel for Shri
S.A. Dharmadhikari for the respondents)

ORDER (Oral)

By G. Shanthappa, Judicial Member -

As none is present on behalf of the applicant, we
are disposing of this Original Application in the absence of
counsel for the applicant, by invoking provisions of Rule
15 of CAT (Procedure) Rules, 1987.

2. The applicant has filed this Original Application
seeking the relief to direct the respondents to count the

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period of three years of service rendered by the applicant in previous Collectorate before his transfer from Bombay to Indore Collectorate. He has also further requested to amend the seniority list Annexure A-3 and accord seniority to the applicant taking into consideration his past service from 03.06.1982 to 01.05.1985 as per Gazetted transfer policy (Annexure A-2). The applicant has also prayed for quashing the order at Annexure A-6.

3. The brief facts of the case of the applicant ~~is~~ ^{are} that the applicant was appointed as Inspector, Custom and Central Excise and joined on 03.06.1982 in the office of the Collector, Central Excise, Bombay II. The applicant was transferred on his request from the office of Collector, Central Excise Thane (Maharashtra) to the office of Commissioner, Central Excise and Customs, Indore. The applicant has rendered three years of service at Bombay. He has requested for counting the service for the purpose of seniority in Indore Division. The applicant has relied on the circular issued on 12.02.1958. The similar case has been decided by this Bench of the Tribunal in OA No. 337/99 as per Annexure A-4. Accordingly the applicant submitted his representation as per the order of this Tribunal in OA No. 337/1999. After receipt of the letter the respondents have issued the order at Annexure A-6 observing that the applicant is not entitled for the relief to count the service for the purpose of his seniority in Indore Division.

4. Per contra the respondents have filed the reply contending that the service of the applicant is not applicable under the circulars issued in the year 1958 and 1972. The latest circular issued by the Collectorate vide

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Annexure R-1 is applicable to the facts of this case. Under the said circular dated 20th May, 1980 (Annexure R-1) the respondents have dealt with the transfer - delegation of powers to the Heads of Departments for permitting inter-Collectorate transfers of Group-C officers. The relevant portion of the circular dated 20th May, 1980 is extracted below :

"(ii) the transferee will not be entitled to count the service rendered by him in the former Collectorate for the purpose of seniority in the new charge. In other words, he will be treated as a new entrant in the Collectorate to which he is transferred and will be placed at the bottom of the list of the temporary employees of the concerned cadre in the new charge."

The respondents have applied the said circular and they have decided the case of the applicant, since the applicant has been transferred at his own request and he has submitted his written undertaking that he shall abide by the requisite terms and conditions before the transfers are actually effected. When such an undertaking is there, then whether any circular for counting the service for the purpose of seniority is required? The applicant had approached this Tribunal for grant of reliefs by submitting the judgment of the CAT, Patna Bench and also the judgment of the Hon'ble Supreme Court (Annexure A-8). The said judgments are not applicable to the facts of this case, since those judgments are applicable to the circulars issued prior to 1980.

5. The applicant had requested the Department to effect the transfer on the following terms :

"(i) The concerned two collectorate should agree to the transfer.

(ii) The transferee will not be entitled to count the service rendered by him in the former Collectorate for the purpose of seniority in the new charge. In other words, he will be treated as a new entrant in the Collectorate to which he is transferred and will be placed at the bottom of the list of the temporary employees of the concerned cadre in the new charge;

(iii) On transfer he will not be considered for promotion/confirmation in the old office.

(iv) If he is a permanent employee, he will retain his lien in the old charge till he is confirmed in the new charge.

(v) He will not be entitled to any joining time and transfer allowance.

(vi) Such transfers can be effected only in the posts filled by direct recruitment;

(vii) Ordinarily, no request for inter Collectorate transfer should be entertained till the officer appointed to a particular collectorate/Post completes the probation period of two years.

The applicant has been transfer on his request from Central Excise, Bombay-II Collectorate to Indore Collectorate in accordance with the instructions contained in the board's letter dated 20.05.80 after obtaining specific written undertaking from the applicant that he shall abide by the requisite terms and conditions before the transfers are actually effected."

6. In the rejoinder the applicant has not denied the averments made in the reply. Hence we have proceeded to pass the orders considering the reply and also the documents submitted by the respondents.

7. After perusal of the records and also the pleadings, we have decided the case on merit and the question involved in this case is whether the applicant is entitle for the reliefs as claimed under the circulars issued in the year 1958, and also 1972?
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8. The respondents have issued the circular as per Annexure R-1 dated the 20th May, 1980. The applicant had given an undertaking according to the said circular. Accordingly the respondents have passed the orders at Annexure A-6 rejecting the relief of the applicant for counting the services for the purpose of seniority in the Indore Division. The judgments submitted by the applicant alongwith the Original Application is not applicable to the



facts of this case. Hence the issue/question arised above past is decided in negative. The services of the applicant is not applicable for counting the services for the purpose of seniority as per Circular dated 20.05.1980. Hence the applicant has not made out his case under the said circular.

9. Since the applicant has not made out any case for grant of any relief as claimed in the Original Application, the Original Application is dismissed. No costs.

G. Shanthappa
(G. Shanthappa)
Judicial Member

M.P. Singh
(M.P. Singh)
Vice Chairman

"SA"

Entered
6/12/03

VE Tamarkar, Adl
SA Dharmachikam, New
Wastaw
16/12/03