

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

ORIGINAL APPLICATION NO.170/00369/2017

DATED THIS THE 20TH DAY OF NOVEMBER, 2017

HON'BLE DR. K.B. SURESH, MEMBER(J)

HON'BLE SHRI P.K. PRADHAN, MEMBER(A)

Sri M.N. Narasimha Murthy,
S/o N. Narasiyappa,
Aged about 44 years,
Workin as Intelligence Officer,
Office of the Additional Director General,
Directorate of Revenue Intelligence,
Zonal Unit, No.8 (2)P, Opposite to BDA Complex,
1st Block, 3rd Stage, H.B.R. Layout,
Kalyananagar Post, Bangalore-560 043.
Residing at No.09, 'H'Block,
Central Excise & Customs Staff Quarters,
B.T.M. Layout, Bengaluru-560 068.

...Applicant.

(Party in person)

V/s.

1. Union of India,
Represented by the Secretary,
Ministry of Finance, Department of Revenue,
Central Board of Excise and Customs,
North Block, New Delhi – 110 001.

2. The Chairman,
Central Board of Excise and Customs,
North Block,
New Delhi – 110 001.

3.The Director General,
Directorate of Revenue Intelligence Hqrs.,
7th Floor, 'D' Block, I.P. Bhavan,
I.P. Estate, New Delhi-110 002.

4.The Chief Commissioner of Central Excise,
Bangalore Zone,
Central Revenue Buildings,
Queen's Road,
Bengaluru-560 001.

5.The Additional Director General,
 Directorate of Revenue Intelligence,
 Zonal Unit, No.8 (2)P, Opposite to BDA Complex,
 1st Block, 3rd Stage, H.B.R. Layout,
 Kalyananagar Post, Bangalore-560 043.

...Respondents.

(By Shri M.V. Rao, Sr. Panel Counsel)

O R D E R (ORAL)

HON'BLE DR K.B. SURESH, MEMBER(J)

Heard. The applicant apparently seeks under Article 14 of the Constitution of India an equality in situation between three persons among (1) Shri Sunil Kumar, Intelligence Officer, (2) Shri R. Lokesh, Stenographer Grade III, (3) Shri R. Rajashekar, Stenographer Grade III. Therefore, having established that it is possible for inter Commissionerate transfer, we will go to the order passed by us earlier in OA.No. 381/2014 dated 09.06.2014.

2. Apparently to our order for consideration again for applicant's transfer on inter Commissionerate basis from DRI Central Excise, an order seems to be passed No.DRI.F.No.A-59011/06/2008-Estt. Dated 11.09.2014 in which it is claimed in para 3 of the said order, which is quoted below:

“3.On careful examination of facts of the case my views are as under-
 I have observed:

i.That intelligence Officer (IO) is a distinct post for DRI/ DGCEI Cadre and the appointment of Intelligence Officer as per existing Recruitment Rules is done by 85% through “deputation” and 15% through “transfer” from lower grade.

ii.That the officers from DRI Cadre are designated as “Intelligence Officers” after completion of certain years of service in lower grade and after qualifying the selection process.

iii.That it is evident from Recruitment Rules that through the post of Intelligence Officer appears to be analogous to Inspector if Central Excise/ Examiner/

Preventive Officer, it is a different Cadre altogether, so much so:

a) That appointment as IO is governed by a different set of recruitment rules.

b) Mode of appointment is different from other analogous posts of Inspector i.e. Inspector of Central Excise/ Preventive Officer/ Examiner. In case of Inspector of Central Excise/ Preventive Officer/ Examiner mode of recruitment is direct as well as promotion, whereas in case of I.O post it is “deputation” and “transfer” from lower grade. Recruitment Rules of IO nowhere prescribe any quota for promotion.

c) Mode of transfer from STA/TA/Steno to IO of DRI/DGCEI is also different from mode of promotion from STA/TA to Inspector/ Preventive Officer/ Examiner. In case of promotion from STA/TA to Inspector/ Preventive Officer/ Examiner there is provision of DPC and officers are promoted as Inspector on “seniority cum fitness” basis, whereas in case of appointment as IO there is no contempt of appointment on the basis of “seniority” only. All officers who complete the minimum eligibility criteria may appear in exam of IO and viva-voce and if they pass the exam, they can be designated as IO. In such case it is possible that even a junior STA may become IO earlier than a senior STA in case senior STA fails to pass the exam. It is a very important factor since as per RR, it is not considered as “promotion”; a senior STA who could not pass the departmental exam cannot claim to be designated as IO on terms of provisions of DOPT OM No. AB 14017/12/88 Estt (RR) dated 25.03.1996.

d) As per Recruitment Rules it is not open for STA/TA/Stenos of Central Excise/Customs/Customs Preventive Wing to appear in examination for the post of Intelligence Officer and only TA/STA/ Stenos of DRI Cadre can be appointed as IO of DRI.”

3. One of the grounds raised in para 6 is that inter Commissionerate transfer has to be done against direct recruitment quota vacancies and implementation of the order F.No.A22015/11/98-Ad.IIIA dated 13.05.1998 is that it may not be applicable to the applicant as he has not joined the department as direct recruited Inspector, but was promoted as Inspector. But we have found that earlier also under various levels of promotees in the department it has been granted. Therefore, there must be a reasonable nexus for non-granting to the applicant.

4. Shri M.V. Rao, learned counsel appearing for the respondents submits that in para 8 and 16 of the reply, they have dealt with it. They would

say that if at all any such transfer has been given earlier, it might be a wrong order and that cannot be made as a legal basis for seeking relief. Therefore, we queried Shri Rao, as to what illegality have been found in the said 3 transfers illustrated by the applicant. This Shri Rao is unable to answer. Therefore, it is to be held that when illegality is focused, granting it or rejecting the benefit to a Government employee, the illegality must be found out after application of mind by the respondents. Neither in the order passed, it is made, nor in the ground raised in the reply nor during hearing, the illegality which would attach to the earlier 3 transfers is being brought out. Since we are to assume that Government have done fairly and equitably, in the absence of any such grounds or pleadings, we have to hold that all such act which was earlier given is also done correctly and rightly. Therefore what is the next ground to deny the benefit to the applicant.

5. The respondents in the impugned order would say that the applicant is not a direct recruited Inspector. So the relevance to direct recruitment for obtaining a transfer, it is not forthcoming from the respondents. There cannot be any such distinction.

6. The 2nd question is that the applicant while applying earlier was only a TA, then STA then only became Intelligence Officer. But then it has been found that Stenographer Grade III were also given this inter Commissionerate transfer. Therefore, there cannot be different basis on placement.

7. In the impugned order a distinction is sought to be brought in between the Intelligence Officer and Inspector in Central Excise. After examining the concerned statute, there cannot be any functional difference between the Intelligence Officer in DRI and Inspector in Central Excise, as the case may be. Therefore the impugned order is without any legal or justifiable basis. It is hereby

quashed. We therefore direct the respondents to immediately grant inter Commissionerate transfer to the applicant, as we assume that before rejecting, there would have been discussion between the two departments. Thus the matter is pending consideration for so many years. Therefore there is no need to delay it any further. We issue a mandate to the respondents to grant transfer to the applicant within 2 months.

8. The OA is allowed. No costs.

(P.K. PRADHAN)
MEMBER(A)

(DR. K.B. SURESH)
MEMBER(J)

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Annexures referred to by the applicant in A.No.369/2017

Annexure A1: Copy of application dated 10.09.2012 requesting for transfer from DRI to Central Excise.

Annexure A2: Copy of the order dated 05.08.2013 rejecting transfer issued by the Respondent No.3 and copy of order dated 19.02.2014 passed by the Hon'ble High Court of Karnataka in IA No.1/2014 in WP. No.47138/2011.

Annexure A3: Copy of order dated 27.10.2011 issued by the Ministry of Finance, New Delhi.

Annexure A4: Copy of the order dated 19.06.2014 passed by Hon'ble Tribunal in OA.No.381/2014.

Annexure A5: Copy of order dated 11.09.2014 rejecting my transfer passed by Respondent No.3.

Annexure A6: Copy of list of Officers transferred from DRI to Central Excise and Customs and the information obtained under RTI Act, 2005 regarding transfer.

Annexure A7: Copy of OA.No. 170/108/2015 filed before Hon'ble CAT, Bangalore Bench.

Annexure A8: Copy of the order dated 14.08.2015 passed by Hon'ble Tribunal, Bangalore Bench in OA.No.170/108/2015.

Annexure A9: Copy of the order dated 25.01.2016 passed by Hon'ble Tribunal in RA.No.02/2016.

Annexure A10: Copy of the order F.No.A-32022/81/2015-Ad.III, dated Dec, 2015 issued by Respondent No.3.

Annexure A11: Copies of OM dated 19.03.1964 and 02.09.1970 issued by Government of India.

Annexure A12: Copy of Writ Petition No.15102/2017 filed before the Hon'ble High Court of Karnataka, Bangalore Bench and certified copy of order dated 30.05.2017.

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