

CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH

O.A.NO.060/00632/2017

Orders pronounced on: 13.07.2018
(Orders reserved on: 10.7.2018)

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)**

Rohit Arora S/o Sh., Suresh Kumar Arora,
aged 36 years, Inspector, Central Excise & Service Tax
Commissionerate, Chandigarh-I, Central Revenue Building,
Sector 17, Chandigarh (Group 'B')

Applicant

By: Mr. V.K. Sharma, Advocate.

Versus

1. Union of India through the Revenue Secretary,
Government of India, Ministry of Finance,
Department of Revenue,
Central Board of Excise and Customs, 4th Floor, HUDCO Building,
Bhikaji Cama Place,
R.K. Puram, New Delhi.
2. Chief Commissioner of Central Excise, C.R. Building, Plot No. 19,
Sector 17C, Chandigarh-160017.
3. Chief Commissioner of Central Excise, Mumbai Zone, New Central
Excise Building, 115, Maharishi Karve Road, Opposite Churchgate
Station, Mumbai-400020.
4. Principal Commissioner of Central Excise, C.R. Building, Plot No.
19, Sector 17C, Chandigarh-160017.

...

Respondents

By : Mr. K.K. Thakur, Advocate.

O R D E R
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, seeking quashing of impugned order dated 12.5.2017 (Annexure A-11), vide which his claim for repatriation from Chandigarh Zone to Central Zone, Mumbai, has been rejected and for issuance of a direction to the respondents to consider and accept his request for repatriation to his parent Zone, Mumbai, without loss of seniority as he has lien there etc.
2. The facts of the case, as culled out from the pleadings of the parties, are that the applicant, was appointed as Inspector, on direct recruitment basis, on 8.9.2009 in Mumbai Zone of Central Excise & Customs and posted at Aurangabad. In terms of policy for transfer from one Zone to another, the applicant applied and was granted transfer from Mumbai Zone to Chandigarh Zone, in November, 2013. Finding that there are likely to have better promotional avenues in Mumbai Zone, the applicant submitted a representation dated 3.9.2015 (Annexure A-1), 19.10.2015 (Annexure A-2), 19.2.2016 (Annexure A-4) and 23.5.2016 (Annexure A-5), for repatriation to parent zone, for better future and on account of certain family circumstances. In response to a query under RTI Act, he was informed vide letter dated 8.2.2017 (Annexure A-6), that two inspectors namely Sh. Gara Sharma and Bhupendra Singh, who had joined Chandigarh Zone, on inter-Commissionerate transfers, have been repatriated to their parent zone. He has mentioned names of other persons also who have been repatriated to their parent cadre, Annexure A-7 and Annexure A-8. However, the claim of the applicant has been rejected vide impugned order, Annexure A-11, hence the O.A.

3. On notice, the respondents entered appearance and contested the claim of the applicant by filing a reply. They plead that the claim of the applicant was considered and rejected as per instructions of the Department of Personnel & Training (DoPT) issued in 2011, as provision of lien was not available, in view of subsequent instructions dated 27.10.2011 (Annexure A-11). The provision of ICT was available upto 2004 and since then it is no longer available, as such claim of the applicant has rightly been rejected by the respondents. The applicant cannot compare his case with his named colleagues as facts are distinguishable. Thus, they have prayed for dismissal of the O.A.

4. We have heard the learned counsel for the parties at length and examined the pleadings on the file.

5. Learned counsel for the applicant vehemently argued that the applicant had submitted his application for transfer back to his parent cadre within two years, during which his lien was retained in parent zone. When likes of him have been transferred back to their respective parent zones, there is no earthly reason to discriminate with the applicant. In support of his claim, learned counsel for the applicant argued, that the Instructions dated 30.6.2004 (Annexure A-9) cover his case on all fours, as the same clearly provide that wherever the request by an inter Commissionerate transferee has been made for repatriation to parent Commissionerate within the lien period, there should be no objection to accept such a request. On the basis of information provided on 8.2.2017 (Annexure A-8), under RTI Act, 2005, learned counsel further argues that respondents have themselves admitted and given names of four individuals, who have been transferred on inter Commissionerate transfer basis in terms of

instructions dated 27.10.2011 and have been repatriated back to their parent Commissionerate, after 2011.

6. On the contrary, the learned counsel for the respondents argues on similar lines, as stated in the written statement, and submits that in view of the instructions on the issue, the claim of the applicant merits dismissal more so in view of law declared by Principal Bench of this Tribunal in O.A. No.1143/2013 titled **NITIN KUMAR SAHU VS. UNION OF INDIA ETC.** decided on 20.5.2014 (Annexure R-1), in which similar claim, as raised in this O.A., has been declined.

7. We have given a thoughtful consideration to the entire matter and arguments advanced by learned counsel for both sides.

8. By and large, the facts of the case are not in dispute. The instructions issued by the DoPT vide OM dated 6.3.1974 (page-74) of the paper book, provides that if a permanent employee is selected on the basis of his application for posts in other Central Government Department / Offices / State Government, his lien may be retained in the parent department for a period of 2 years. If the employee concerned is not permanently absorbed within a period of 2 years from the date of his appointment in the new post, he should immediately on expiry of the period for 2 years either resign from the service or revert to his parent cadre. In exceptional cases, such lien can be extended or one more year and it has been impressed that timely action should be taken to avoid complications.

9. It is apparent from the pleadings that the first policy instructions on Inter Collectorate Transfer were issued on 20.5.1980 providing for such transfers on existence of certain conditions like agreement of both collectorates and loss of seniority in new charge etc. However, the Board vide letter dated 15.1.1998 issued fresh instructions, with

reference to DoPT instructions / OM dated 24.9.1992, that if transferee is a permanent employee, he will retain his lien in the old charge for a period of 2 years from the date of his transfer and after that, it would stand terminated automatically and he will have no right to get repatriation to his old charge. However, again the Board vide OM dated 19.2.2004, provided in reference to earlier OM dated 20.5.1980, that such transfers have caused administrative difficulties and it was decided that hence forth no inter commissionrate transfer shall be allowed for any Group B, C or D employee. However, in extreme circumstances, such transfers shall be allowed on deputation basis, for a period of 3 years etc. Again the Board issued instructions dated 30.6.2004, with reference to earlier O.M dated 19.2.2004, that "if wherever the request by an inter Commissionrate transferee has been made for repatriation to parent Commissionrate, within the lien period, there should be no objection to accept the request". Again, vide order dated 27.10.2011, the Board with reference to earlier OM dated 19.2.2004, intimated lifting of the ban on ICT with immediate effect. The star plea, taken by the respondents, is that in the fresh guidelines, there was no provision of lien available for transfer on ICT basis. Therefore, as on date, there is no enabling provision for return of an officer to parent Commissionrate under a lien arrangement, protecting his seniority. Thus, the request of the applicant has rightly been declined. It has also been pleaded that a clarification was also sought from the Ministry but to no avail and as such it is not advisable to accept to the request of the applicant.

10. The alternative plea taken by the respondents, as is apparent from the impugned order, is that if claim of the applicant is accepted, it would be against relevant instructions, set a wrong precedent and open

the door for similar requests, on equity consideration. The sequence of events and the instructions issued by the DoPT and then by Board from time to time would leave no manner of doubt, that one can retain his lien in parent office / zone for two years. Such a lien cannot be taken away at least upto two years, and on expiry of it, it was to expire automatically. The applicant had joined from Mumbai Zone to Chandigarh Zone on 25.11.2013 after relieving on 22.11.2013, so ideally, he could retain his lien in parent zone upto 24.11.2015. It is also not in dispute that the applicant submitted a representation on 3.9.2015 (Annexure A-1) followed by subsequent representation/reminders for transfer back to his parent zone Mumbai, i.e. well within two years. However, the case of the applicant was kept pending by the respondents without any decision and they passed an order only after directions of this Tribunal in earlier round of litigation.

11. The moot point involved in this case would be as to whether the respondent Board could nullify the instructions of the DoPT for retention of lien of two years and as to whether in view of instructions of 2011, one would be entitled to transfer back to parent cadre, with seniority or with loss of seniority. The instructions of 2011 would indicate that there is no ban on such transfers, provided one would lose seniority. This cannot be the aim and intention of the instructions as sought to be projected by the respondents.

12. We are of the firm view that harmonious construction of the instructions would have to be carried out which would mean that if one claims and is transferred back within two years of his request, he or she would be entitled to seniority also but if he or she makes a request after two years, when his or her lien has come to an end automatically, then he or she would not be entitled to any seniority. In

the case of **ANWAR HASAN KHAN VS. MOHD. SHAFI** (2001) 8 SCC 540, it has been held that for interpreting a particular provision of an Act, the import and effect of the meaning of the words and phrases used in the statute have to be gathered from the text, the nature of the subject matter and the purpose and intention of the statute. It is a cardinal principle of construction of a statute that effort should be made in construing its provisions by avoiding a conflict and adopting a harmonious construction. The statute or rules made there under should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object sought to be achieved. The well known principle of harmonious construction is that effect should be given to all the provisions and a construction that reduces one of the provisions to a 'dead letter' is not harmonious construction. The decision in the case of Nitin Kumar Sahu (supra) rendered by the Tribunal was modified by Hon'ble Delhi High Court in W.P. © No. 6563 of 2016 decided on 29th July, 2016 observing that "it was the clear understand of both the petitioner and the respondents that the transfer sought was based on the letter dated 27.3.2009" and as such respondents were directed to pass a fresh order. That is not the case in hand and as such the said decision would not help the respondents, at all.

13. In these circumstances, it is held that the genuine claim of the applicant for repatriation to his parent Zone has wrongly been rejected by the respondents as it was covered within the four corners of the relevant instructions and merited acceptance, as discussed above.

14. In the background of aforesaid discussion, this O.A. is allowed. The impugned order, Annexure A-11, is quashed and set aside. The respondents are directed to re-consider the case of the applicant

accordingly and pass necessary orders within a period of two months from the date of receipt of a certified copy of this order. The parties are, however, left to bear their own costs.

**(SANJEEV KAUSHIK)
MEMBER (J)**

**(AJANTA DAYALAN)
MEMBER (A)**

Place : Chandigarh.
Dated:13.07.2018

HC*

