

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD**

Original Application No.021/00511/2017

Date of C.A.V. : 30.08.2017

Date of Order : 19.09.2017

Between :

Sri P.Narasimha Rao, S/o Late P.Satya Murthy,
Aged about 50 years, Occ : Joint Commissioner,
Secunderabad GST Commissionerate,
Basheerbagh, Hyderabad.

... Applicant

And

1. The Government of India,
Ministry of Finance,
Department of Revenue
(Central Board of Excise & Customs),
North Block, New Delhi.
Represented by Under Secretary.

2. The Central Board of Excise & Customs,
Ministry of Finance,
North Block,
New Delhi,
Represented by its Chairman.

3. Chief Commissioner,
Hyderabad Zone,
Basheerbagh,
Hyderabad.

... Respondents

Counsel for the Applicant	...	Mr.N.Vijay, Advocate
Counsel for the Respondents	...	Mrs.K.Rajitha, Sr.CGSC

CORAM:

<i>Hon'ble Mr.Justice R.Kantha Rao</i>	...	<i>Member (Judl.)</i>
<i>Hon'ble Mrs.Minnie Mathew</i>	...	<i>Member (Admn.)</i>

ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }

This Original Application is filed by the applicant to declare the action of the respondents in not retaining him as Joint Commissioner in Hyderabad on par with his juniors pursuant to the office order dated 27.06.2017 as illegal, arbitrary and contrary to the transfer policy issued by Respondent No.1 dated 05.04.2011 and consequently direct the respondents to retain the applicant at Hyderabad Zone.

2. The brief facts stated by the applicant in his application which are relevant for considering the issue involved in the application may be stated as follows :

The applicant joined in service on 24.03.1993 as Appraiser of Customs at Mumbai in Group 'B' cadre. He acquired some promotions in due course and was appointed as Deputy Commissioner in Hyderabad Zone for the first time on 31.12.2013. As per Clause 5.3 of transfer policy the applicant can serve for a maximum period of 8 years in Class 'A' station. Hyderabad is considered to be Class 'A' station and it falls in the East Zone. On promotion as Joint Commissioner the applicant was transferred to Visakhapatnam vide proceedings dated 10.05.2016. Against the said proceedings he filed OA.621/2016 before this Tribunal assailing the order of transfer. Initially he was granted interim stay of transfer on 01.07.2016 and the same was extended from time to time. O.A.No.621/2016 was disposed of on 02.05.2017 directing the respondents to retain the applicant in Hyderabad up to the end of June 2017. In the said OA the applicant questioned

the transfer on the ground that as per the transfer guidelines he has to be retained in Hyderabad since his daughter was studying Class XII. In any event the OA was disposed of obviously on the submissions made by the applicant that it was sufficient for him if he was retained in Hyderabad upto the end of June 2017. Making the said submission the applicant did not contest the OA on merits.

3. Subsequently the Respondent No.1 issued office order dated 27.06.2017 promoting 124 Deputy Commissioners as Joint Commissioners and majority of the officers have been retained in Hyderabad and they are working in Hyderabad in view of GST roll out on 01.07.2017. Retaining the promoted officers according to the applicant is deviation of Clause 4.3 of the transfer guidelines. He submits that he being a Senior Joint Commissioner intensely involved in the GST roll out, ought to have been retained in Hyderabad Zone on par with his juniors. He terms the action of the respondents in transferring him to Visakhapatnam is discriminatory among the same class of officers without any reason. He submitted a representation dated 29.06.2017 for retention in Hyderabad Zone, the respondents did not consider his representation, on that he filed the present OA.

4. In the reply statement the respondents inter alia contended as follows :

The request of the applicant not to transfer him from Hyderabad Zone was considered by the Board twice. The applicant requested the Board for retention at Hyderabad till 2016-17 vide his representation dated 11.02.2016 quoting the

grounds of his mother's ill health and daughter's education. He submitted another representation dated 16.05.2016 to the Board stating that his daughter was pursuing Class 12 (Senior Intermediate) during the academic year 2016-17 and sought retention. It is submitted by the respondents that Para 4.3 of Transfer / Placement Policy for Group 'A' officers of CBEC provides that the normal practice is transfer on promotion. However, according to the respondents the applicant made a representation on his daughter's education and therefore he was specifically retained in Hyderabad CX Zone till AGT-2016 as per Board's office order dated 17.08.2015. Therefore, it is said that the Board considered the request of the applicant on two occasions viz., initially when he was transferred to Hyderabad as Deputy Commissioner on the grounds of his mother's ill health and second time as Joint Commissioner even though, his daughter was studying in 11th class (Junior Intermediate). It is further submitted by the respondents that while considering the requests of the officers in the matter of transfer it has to be ensured that the postings are done in the interest of administrative requirements of all the subordinate field officers of the Central Board of Excise and Customs. Further in the interest of the administrative efficiency, it is essential that all formations across the Country shall have proportional and adequate staff. The transfer policy has been framed after due deliberations by the Central Board of Customs and there is no deviation by the respondents from the transfer guidelines. It is also contended by the respondents that the Tribunal disposed of OA.No.621/2016 on the mere submission made by the applicant without affording any opportunity to the respondents to oppose the same. In view of the GST roll out it is important that all GST formations are adequately staffed with senior officers. The respondents produced the proceedings dated 18.08.2017 at the time of hearing of the OA,

which show that the vacancy position at Hyderabad is 30%, whereas it is 42% at Visakhapatnam. Contending as above, the respondents sought to dismiss the OA.

5. We have heard Mr.N.Vijay, learned counsel for the applicant and Mrs.K.Rajitha, learned Senior Central Government Standing Counsel for the respondents.

6. In the first place it requires to be noticed that the transfer is an incidence of Government service and a Government employee or an officer has no right to insist that he wishes to work at a particular place. In the instant case there is no dispute about the fact that every officer shall be transferred on promotion as per the transfer policy of the Board. Therefore, there is no deviation made by the respondents in transferring the applicant on promotion. There is no force in the contention of the applicant that on promotion all his juniors were retained, whereas he being a senior officer was transferred to Visakhapatnam. On two earlier occasions on promotion he was transferred, but was retained either on his request or by virtue of the orders of this Tribunal. Moreover all the 124 Deputy Commissioners who were promoted as Joint Commissioners were not retained at Hyderabad. Some of them were retained and some of them were transferred. It is because of the administrative exigency of the department.

7. Before concluding the order, it is necessary to refer to the judgement of the *Hon'ble Supreme Court in Shilpi Bose Vs. State of Bihar reported in AIR*

1991 SC 532 wherein Hon'ble Supreme Court has held as follows :

“Courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other.”

Further in **AIR 1993 SC 2444** the Hon'ble Supreme Court has held as follows :

“Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it.”

8. Coming to the facts of the present case, the applicant was transferred as per the guidelines of the transfer policy of the Board. There is no deviation from the guidelines. Merely because some of the officers are retained on administrative exigency, the applicant cannot describe it as a deviation from the policy. More over on earlier two occasions, the applicant was transferred and was retained on his request and also by virtue of the order passed by this Tribunal. Since he was retained at Hyderabad in spite of the transfer orders, it is not open for him to contend that his juniors were retained and he was discriminated in the same class. The impugned transfer is not prompted by any mala fides or made in violation of any statutory rules. It is well settled that the order of transfer cannot be interfered even if it is violation of guidelines or of executive instructions.

9. We, therefore, see absolutely no merit in the present OA and accordingly dismiss the OA without any order as to costs.

(MINNIE MATHEW)
MEMBER (ADMN.)

(JUSTICE R.KANTHA RAO)
MEMBER (JUDL.)

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