
(2011) 03 DEL CK 0049
In the Delhi High Court
Case No : Writ Petition (C) 2329 of 2000

D.D. Kaushik

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2011) 03 DEL CK 0049

Hon'ble Judges : Dipak Misra, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : G.D. Gupta and S.K. Gupta, for the Appellant; Ashwani Bhardwaj and Jitender, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, C.J.—Invoking the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, the Petitioner has called in question the order dated 29th October, 1999 passed by the Central Administrative Tribunal, Principal Bench (for short "the tribunal") in O.A. No. 529/1995.

2. Bereft of unnecessary details, the facts which are essential to be stated are that the Petitioner on successful completion of the Subordinate Service Commission Examination conducted for the post of Inspector Central Excise during 1977 was offered the appointment on 23.11.1978 and joined in the service on 12.12.1978 at the Central Excise Collectorate, Bombay. On 30.4.1979, he submitted a representation to the Collector, Central Excise, Bombay requesting for transfer to Delhi on compassionate grounds. After receipt of the representation, the Assistant Collector, Central Excise, Bombay by his letter dated 28.5.1979 required the applicant to submit a declaration to the effect that on transfer to Delhi Collectorate, he would be treated as a new entrant and would be adjusted against direct recruitment vacancy of inspector and his seniority would be accordingly fixed. When the matter stood thus, he was further informed that he was required to complete two years probation period for

becoming eligible for inter collectorate transfer. After completion of probation, by order dated 2.8.1982 he was transferred to Delhi Collectorate and was assigned the seniority at the bottom of seniority list of temporary inspector working in Delhi Collectorate at that time. The said seniority was reflected in the seniority list on 31.12.1990.

3. Being aggrieved by the aforesaid publication of the seniority list, the Petitioner submitted a representation in 1991 and he was communicated vide letter dated 30.9.1992 that his case along with others was recommended to re-fix the seniority appropriately but the said order was recalled by a communication dated 20.1.1994 as contained in Annexure-P25. A further representation met with unsuccess by communication dated 2.3.1994.

4. Being dissatisfied, the Petitioner approached the tribunal contending, inter alia, that the transfer policy dated 12.2.1958 had not been superseded and, therefore, he should get the benefit of the said policy. The relief sought for by the Petitioner was resisted on the ground that the application was barred by limitation u/s 21 of the Act

5. The tribunal after appreciating the rivalised submissions and referring to the various decisions in the field came to hold as follows:

Hence the applicant have been transferred on compassionate grounds and on the basis of the undertaking given by him to forego his seniority at Bombay and having accepted the bottom seniority at Delhi Collectorate and having worked for more than 10 years at Delhi, questioning the seniority cannot now to seek the benefit of circular of 1958 which in fact has been superseded by the department and issued separate orders in 1990. We are also fortified in our view by the judgment of the Principal Bench of the Tribunal in OA 1718/89 decided on 3.4.91 Shri O.P. Bhatia v. Union of India and Ors. OA 1718/89. The facts in Bhatia's case are identical with the facts of the present case.

6. Be it noted, the tribunal referred to various decisions in O.A. No. 430/1995 and 487/1995 wherein by order dated 26.10.1999, similar view was taken by the tribunal. In the ultimate eventuate, the tribunal dismissed the original application.

7. We have heard Mr. G.D. Gupta, learned senior counsel along with Mr. S.K. Gupta, learned Counsel for the Petitioner.

8. It is submitted by Mr. G.D. Gupta, learned senior counsel that the order passed by the tribunal is vulnerable inasmuch as the tribunal has erroneously come to hold that the 1958 circular is not applicable whereas the Patna Bench of the Central Administrative Tribunal in OA No. 601/1993 (Damodar Singh v. Union of India and Ors. OA No. 601/1993) had expressed the view that the 1958 circular is not superseded by the 1972 circular and hence, the same would be applicable. The learned senior counsel also submitted that even if the Petitioner had made a request, he cannot be put in the bottom of the seniority list as that is contrary to instructions. To bolster the said submission, he has referred to the

order passed on 16.1.1990 in Civil Appeal No. 1697/1988 (Union of India v. A.D. Deshpande Civil Appeal No. 1697/1988). It is urged by him that once the Petitioner is considered under the 1958 circular, his seniority would not be affected.

9. Dr. Ashwani Bhardwaj, learned Counsel for the Respondents submitted that the tribunal has rightly held that the application was quite belated and further the 1958 circular has been superseded by the circular dated 20.5.1980 and, therefore, the Petitioner cannot avail the benefit having been transferred in the year 1982. To bolster the said submission, he has commended us to the decision in Civil Appeal No. 8017/2003 (Union of India and Ors. v. Deo Narain and Ors. Civil Appeal No. 8017/2003).

10. At this juncture, we think it appropriate to refer to the order passed in Civil Appeal No. 1697/1988:

We have heard learned Counsel for the parties. The Respondent was confirmed as Inspector by the Collector of Central Excise, Poona vide his order dated 31.8.70 w.e.f. 8.10.1969. As such the transfer from Poona to Bombay, he is governed by the Board of Central Excise Instruction No. (V). The Undertaking given by the Respondent was contrary to these instructions. In the view of the matter, no infirmity can be found in the judgment of the Central Administrative Tribunal. We affirm the same and dismiss the appeal. There shall be no order as to costs.

11. It is not in dispute that under the 1958 Circular, if a person is transferred on his own request, he cannot be given the bottom seniority as per Clause 1 and 5 of the said circular. The said two clauses read as under:

(i) Transfers of staff within a period of three years of first appointment in the Department may be allowed without any loss of seniority.

(ii) to (iv) xxx xxx xxx

(v) Ordinarily, only non-permanent (temporary and quassi permanent) persons should be permitted to be transferred from one charge to another. In exceptional cases, permanent persons may be transferred, but they are liable to be placed at the bottom of the seniority list of permanent persons in that grade. It is possible that in the new charge there are several persons who are senior to the transferee, on the basis of length of services but have not been confirmed. On the other hand, it is also possible that the junior most confirmed persons in the new charge is far junior to the transferee. It will therefore, be necessary to fix the seniority of the permanent transferee, on the adhoc basis, considering the length of his service, date of confirmation, etc. vis-?-vis the length of service etc. of the persons already working in the grade concerned, in the new charge. This should be done under the orders of the Board, before the transfer is effected.

12. It is also not in dispute that the Patna Bench had held that 1972 circular had not superseded the 1958 circular. The order passed by the Patna Bench was

challenged in Civil Appeal No. 6374/1996. The said order is reproduced below:

The Respondents seniority was determined taking into fact that at Patna he should be treated to be the Junior most of the date of his prayer from transfer was allowed and he joined at Patna. Challenging the Seniority the Respondent had initially filed a representation to the Central Board but the representation having been rejected. He had approached the impugned judgment has come to the conclusion that I view of the policy of the Central Government in the year 1958 the Respondent's service period and not on the basis of the transfer which was made at his request. The Appellant has not been able to produce any material to indicate that the said policy was not in vogue when the Respondent was transferred pursuant to his request. In that view of the matter we see no infirmity with the impugned order of the tribunal. This appeal is accordingly dismissed. No order as to costs.

13. The 1980 circular that was issued by the department reads as follows:

I am directed to say that as you are aware transfers of Group C Officers from one Collectorate to another having separate orders at present allowed on compassionate grounds with the approval of the Board, subject to certain conditions. You are also well acquainted with the basis and conditions on which such transfers are effected and the procedure to be followed in this regard.

2. It has now been decided to delegate the powers to the Heads of Department in this regard. The requests received from inter-Collectorate transfers from Group "C" Officers on really compassionate grounds may be considered on merits. The transfer where-ever considered necessary, may be effected by you on the following conditions: -

(i) the concerned two Collectorates should agree to the transfer.

(ii) the transferees 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 this words, he will be treated as a new entrants in the Collectorate to which he is transferred and will be placed at the bottom 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 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 travelling allowance

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

(vii) Ordinarily, no requests for inter-collectorate transfer should be entertained till Collectorate/post/completes the probation period of two years.

3. A Written undertaking to abide by the requisite terms and conditions may be

obtained from the employee seeking transfers before the transfers are actually affected.

4. The receipt of the letter may kindly be acknowledged.

5. Hindi version of the letter will follow.

14. In the case of Deo Narain (supra), the Apex Court while dealing with the 1980 circular has expressed the view as follows:

20. It is thus clear that as early as in 1980, a policy decision was taken by the Appellants that in certain circumstances, D Cs could be transferred from one Collectorate to another Collectorate purely on compassionate grounds. But, it was also provided that such transferee would not be entitled to count the service rendered by him/her in the former Collectorate for the purpose of seniority in the new Collectorate. In other words, such transferee would be treated as new entrant in the Collectorate in which he/she is transferred and will be placed at the bottom of the list of temporary employees of the cadre in the new charge.

15. In view of the aforesaid, it is crystal clear that their Lordships have treated the 1980 circular as a policy decision and the 1980 circular stipulates about the bottom seniority.

16. As is demonstrable, the Petitioner was transferred on completion of the probation period in the year 1982. Thus, his seniority is to be determined under the 1980 Circular and hence, the plea that he has to be governed by the 1958 circular is sans substance.

17. In view of the aforesaid, we do not perceive any merit in this petition and accordingly, the same stands dismissed without any order as to costs.