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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 29th July, 2016

+ W.P.(C) 6563/2016

NITIN KUMAR SAHU

..... Petitioner

Through Mr. M. K. Bhardwaj and

Mr. Shriambhra Kashyap, Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Through Mr. Arun Bhardwaj, CGSC with

Mr. Mimansak Bhardwaj, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S.MEHTA

G.S.SISTANI, J (ORAL)

1. Challenge in this writ petition is to the order dated 30.05.2014 passed by the Central Administrative Tribunal (hereinafter the '*Tribunal*') in O.A. No. 1143/2013, whereby the Tribunal had denied to revert the petitioner/applicant therein to his parent Commissionerate, i.e. Delhi Zone.

2. Notice to show cause as to why the petition be not admitted.

3. Mr. Arun Bhardwaj, Advocate accepts notice on behalf of the respondents.

4. With the consent of the parties this writ petition is taken up for final hearing.

5. Brief facts which are required to be noticed for the disposal of this

writ petition are that the petitioner joined the Central Excise and Customs, Delhi Zone in December, 2009 as an inspector. On 09.04.2010, the petitioner made an application before the respondent No. 3 seeking Inter Commissionerate Transfer (ICT) from Delhi to Kanpur (Lucknow Zone) for the reason that he was unable to tend to his family and wife, who was employed as an Assistant Teacher in a Junior Government High School located in district Fatehpur, U.P. The Department in response, by a Letter dated 30.04.2010, requested the petitioner to specify as to whether he was requesting the ICT on 'Spouse Ground' in terms of the Ministry's Letter [F.No.A-22015/19/2006-Ad.III.A] dated 27.03.2009 or on deputation basis. The petitioner replied by a letter dated 25.05.2010 specifying that he wanted an ICT on 'Spouse Ground'. Consequently, the application was processed and the petitioner was transferred by an order dated 13.04.2011 from Central Excise (Delhi Zone) to Central Excise (Lucknow Zone). The petitioner was relieved from the Delhi Zone on 10.06.2011 and joined the Lucknow Zone on 13.06.2011.

6. Meanwhile, on 16.05.2011, the Ernakulam Bench of the Tribunal passed an order in the case of **Joju M. Mampilly and Anr. v. Union of India and Ors., O.A. 643/2009** by which the Letter dated 27.03.2009 was quashed. It is also the case of petitioner that when he joined Central Excise (Lucknow Zone) on 13.06.2011, he was informed that the Letter of 27.03.2009 is under challenge and his seniority is subject to the outcome of the same. Subsequently, on 27.10.2011, the respondent No. 2/ Central Board of Excise and Customs issued a Notification stating that the employee transferred on 'Spouse Ground' shall lose his seniority. The Notification reads as:

“(ii) The transferee will be placed below all officers appointed regularly to that post/grade on the date of his/her appointment on transfer basis in terms of Para 3.5 of DOP&T's O.M. dated 03.07.1986. In other words, such a transferee will be junior to

those regularly appointed officers prior to his/her transfer. However, such transferred officer will retain his/her eligibility of the parent Commissionerate for his/her promotion to the next higher grade, etc.

...

(vi) The seniority of the officers who were allowed ICT earlier by the various Cadre Controlling Authorities on the basis of Board's letters F.No.A.22015/19/2006-Ad.III.A dated 27.03.2009 ... shall be fixed as per the present instructions."

(Emphasis Supplied)

7. The Notification was made applicable retrospectively to all officers who had been granted ICTs in pursuance of the Letter dated 27.03.2009. Inevitably, the petitioner was deprived of his seniority without giving him any option. Accordingly, on 08.11.2011 the petitioner made a representation seeking reversal of his transfer as he did not want to lose his seniority. The request of the petitioner was not acceded to by an order dated 28.12.2011. Another representation was also made and the same was rejected on 23.08.2012. Thereafter, the petitioner filed an O.A. which was dismissed on the ground that the petitioner did not retain his lien upon his previous post in Delhi and that consequently, there was no slot for the petitioner to come back to. Being aggrieved the petitioner has preferred the present petition.

8. Learned Counsel for the petitioner submits that when the petitioner had sought a transfer on 'Spouse Ground', the Letter dated 27.03.2009 was in force and applicable and it was only because the same enabled transfer without the loss of seniority that he had exercised the option of transfer. Further, when the petitioner learnt that the Letter dated 27.03.2009 had been quashed by the Tribunal and the department was applying the order of the

Tribunal retrospectively, he requested to be reverted back as he did not wish to lose his seniority.

9. Learned Counsel for the petitioner further submits that the petitioner exercised his first option based on the Letter dated 27.03.2009 and there was no option to keep the lien as it was a transfer and not a deputation. He further submits that order of the Ernakulam Bench of the Tribunal cannot be applied retrospectively and moreover, in all fairness, the petitioner has only sought reversion because he does not want to compromise his seniority. He also submits that he would no objection in case the department wishes to continue him at Lucknow provided his seniority should not be compromised or to return to Delhi Zone provided his seniority will not be affected.

10. The learned Counsel for the petitioner further submits that the order of the Tribunal has been challenged before the Supreme Court by means of a Special Leave Petition and the same is pending.

11. We have heard learned counsel for the parties. It is not in dispute that petitioner sought the transfer on 'Spouse Ground' based on the Letter dated 27.03.2009. Para 3 of the Letter reads as under:-

“3. The Board deliberated upon the issue its meeting held on 04.03.2009 and have decided to partially relax the earlier instructions of the Board as referred to above, in order to facilitate posting of husband and wife at the same station in the with the instructions of the DOPT. Accordingly, it has now been decided to permit inter-Commissionerate transfers of Groups-B, C and D Officers beyond the Commissionerate having commons cadres, i.e., from the Cadre Controlling Authority to another, without any loss of seniority, subject to the following conditions:

a) ...

b) The option for change of cadre must be exercised within six months of the initial appointment of the officers, if the officer is

married at the time of such initial appointment. In case of marriage taking place subsequent to the initial appointment, the option must be exercised within six months of the marriage. Further, as far as the past-cases are concerned, the option must be exercised within six months of the issue of these instructions.”

(Emphasis Supplied)

12. We also deem it appropriate to refer to the Letter dated 30.04.2010 of the Department. It reads as under:

“In this regard, you are requested to direct Shri Nitin Kumar Sahu, Inspector mention clearly whether the request for Inter Commissionerate Transfer from Delhi to Kanpur on ‘Spouse Ground’ in terms of Ministry’s letter F.No.A-22015/19/2006-Ad.III.A dated 27.03.09 or on deputation basis forward the same to this office further process.”

(Emphasis Supplied)

13. On 25.02.2010, the petitioner replied to the said Letter by stating that he is requesting an ICT on ‘Spouse Ground’ in terms of the Letter dated 27.03.2009. The said reply reads as under:

“Respectfully, with reference to your letter No.C.No.II-13(20)CC/ICT/INSPR/2010/2762 dated 30.04.10, that was in response of my application dated 09.04.2010 regarding Inter Commissionerate Transfer from Delhi to Kanpur, I want to clarify that I want Inter Commissionerate Transfer from Delhi to Kanpur on ‘Spouse Ground’ in terms of ministry’s letter F.No.A-22015/19/2006-Ad.III.A dated 27.03.2009 and I do not want transfer on deputation basis. I have submitted the documents of the service of my wife in my earlier application dated 09.04.10. It is therefore, again requested that I may

please be considered for Inter Commissionerate Transfer from Delhi to Kanpur as per the ministry's aforesaid letter."

(Emphasis Supplied)

14. Bare perusal of the above letters show that it was the clear understanding of both the petitioner and the respondents that the transfer sought was based on the Letter dated 27.03.2009. Even the order dated 13.04.2011, whereby the transfer request was acceded to, clearly opens as *"In terms of the Ministry's letter F.No. A.22015/19/2006.Ad.IIIa..."* Therefore, there can be no doubt that the Letter dated 27.03.2009 was the basis of the transfer of the petitioner.

15. In our view, since the petitioner had been transferred based on the Letter dated 27.03.2009, the concession granted to him cannot be withdrawn with retrospective effect, even if, the Letter stands quashed. Perusal of the order of the Ernakulam Bench of the Tribunal in **Joju M. Mampilly** (*Supra*) confirms that the order is not retrospective. There is yet another aspect in the matter. Fearing that the petitioner may lose his seniority, he made a representation that he be reverted back to Delhi Zone in case the Respondents wished to withdraw the concession granted to him in terms of the Letter dated 27.03.2009, which was denied.

16. In view of this request, an option was available with the respondent either to allow him to remain in Lucknow Zone as per Letter dated 27.03.2009 or to transfer him back to the Delhi Zone without affecting his seniority.

17. At this stage, Mr. Bhardwaj, learned counsel for the respondents submits that the respondent would pass a fresh order on the request of the petitioner seeking transfer to Delhi Zone.

18. Learned counsel for the petitioner submits that the petitioner has no

objection if the respondent continue the petitioner at Lucknow Zone or revert/ transfer him to Delhi Zone provided his seniority should not be compromised as he was governed by the Letter dated 27.03.2009.

19. We find the stand of the petitioner to be fair and just.

20. The respondent is directed to pass a fresh order within four weeks of the receipt of this order.

21. With the aforesaid observations, the writ petition is disposed of.

G.S.SISTANI
(JUDGE)

I.S. MEHTA
(JUDGE)

JULY 29, 2016/b

