

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P. No. 15352 of 2017
and
W.M.P. No. 16649 of 2017

1. Union of India
Rep. By Additional Commissioner (CCA),
O/o Chief Commissioner of Central Excise,
Ministry of Finance, Department of Revenue
No. 26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.
 2. The Commissioner of Central Excise,
Cadre Control Authority,
Mumbai - I, Commissionerate,
Central Excise Building,
No. 115, M.K. Road, Churchgate,
Mumbai - 400 020
...Petitioners
- Vs.
1. Central Administrative Tribunal,
Rep. By its Registrar,
Chennai Bench,
City Civil Court Buildings,
2nd Floor, Chennai - 600 104
 2. V. Gunasekaran
...Respondents

Prayer: Writ Petition filed under Article of 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the first respondent in OA. No. 1580 of 2014 dated 17.02.2017 and to quash the same as illegal and contrary to the law.

For Petitioner : Mr. V. Sundareswaran

For Respondents : R1 - Tribunal
Mr. R. Saseetharan for R2

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

This writ petition involves placement in Inter-Commissionerate transfer vis-a-vis a transferee.

2. Both the respondent No. 2 and one Mr. P. Prithiviraj were working at Pune Commissionerate. P. Prithiviraj, who was admittedly junior to the respondent No. 2 in the cadre of Inspector of Central Excise, made a request for transfer from Pune to Pondicherry in the month of March 2003. The respondent No. 2 filed his requisition for transfer from Pune to Trichy on 30.04.2003, which was received on 06.05.2003 by the petitioners. On 10.07.2003, Mr. P. Prithiviraj was transferred from Pune to Pondicherry Commissionerate vide Order No. 96/03 on Direct Recruitment Vacancy. Thereafter, the respondent No. 2 made another request for transfer on 17.07.2003 from Pune to Chennai Commissionerate. On 19.02.2004, a decision was made discontinuing Inter-Commissionerate transfers. The respondent No. 2 was permitted to join Chennai Commissionerate on deputation basis on 20.01.2005.

3. The respondent No. 2 approached the Tribunal, inter alia, contending that he should be placed at Chennai Commissionerate above P. Prithiviraj, who is, admittedly, not a party before the present proceedings. The Tribunal was pleased to grant the aforesaid request and, hence the present writ petition.

4. From the facts narrated above, it is not in dispute that the respondent No. 2 made a request and was transferred after the request of said P. Prithiviraj was acceded to. Therefore, he cannot claim any seniority over P. Prithiviraj. Secondly, the said P. Prithiviraj is not also a party before us and therefore, any order passed without hearing him would certainly not bind him.

5. Learned counsel appearing for the respondent No. 2, at this juncture would submit that the petitioners are not even reckoning the relevant crucial date which is the date of joining at Chennai i.e., 20.01.2005, for considering him for promotion.

6. The learned counsel appearing for the petitioners would submit that if the aforesaid exercise is done, there would be no difficulty.

7. Therefore, this Court has to dispose of this writ petition by holding that the petitioners will have to consider the case of the respondent No. 2 by taking into consideration

the date of joining on ***28.01.2005**, though, he is not entitled to seek seniority above P. Prithiviraj who admittedly joined in Chennai Commissionerate much earlier to him and therefore, became a senior to him.

8. The aforesaid exercise has to be done within a period of eight weeks from the date of receipt of a copy of this order. It is for the petitioners to consider the consequential benefits, but after passing appropriate orders, as directed above.

9. The writ petition stands disposed of in the above terms. Consequently, the miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VIII)
DATED: 11/12/2018

***Corrected as per order of
this Court dated 23/04/2019**

Sd/- Assistant Registrar(CS VIII)
Dated 27/04/2019

//True Copy//

Sub Assistant Registrar

ssm

To

The Registrar,
Central Administrative Tribunal,
Chennai Bench,
City Civil Court Buildings,
2nd Floor, Chennai - 600 104

**To be Substituted to
this Order already
despatched on 19/02/2019**

+1cc to Mr.V.Sundareswaran, Advocate Sr.39407
+1cc to Mr.R.Sasetharan, Advocate Sr.39400

W.P. No. 15352 of 2017

rsk[co]
srg 12/12/2018
GN(27/04/2019)