

CASE NO.:
Special Leave Petition (civil) 20706 of 2006

PETITIONER:
Prabir Banerjee

RESPONDENT:
Union of India and others

DATE OF JUDGMENT: 05/10/2007

BENCH:
Altamas Kabir & D.K.Jain

JUDGMENT:
J U D G M E N T

Altamas Kabir, J.

The petitioner in the instant special leave petition was one of two petitioners who had filed writ petition No.3622 of 2005 in the High Court of Madhya Pradesh, Indore Bench, calling in question the legal propriety of an order dated 13.9.2005 passed by the Central Administrative Tribunal, Jabalpur Bench, in O.A.No.6002/2005. The writ petitioners had approached the Tribunal for quashing of the order of transfer by which they were transferred from Indore to Nagpur. The challenge to the order of transfer was made on the ground that inter-zonal transfer was prohibited in the Department of Central Excise and Customs and hence the impugned transfer order was void and was liable to be quashed.

In order to appreciate the case made out by the writ petitioners before the High Court it will be necessary to set out a few facts relating to the case.

Appearing for the petitioner Prabir Banerjee, Mr. Mukul Rohtagi, learned Senior Advocate submitted that the petitioner had been appointed as Inspector, Central Excise, in 1982. Subsequently, in 2003 he was promoted to the post of Superintendent under the Bhopal zone which comprised of the Commissionerates of Bhopal, Indore and Raipur. On 19.2.1994 the Department of Revenue in the Ministry of Finance, Government of India, issued a circular addressed to amongst others all the Chief Commissioner of Central Excise containing certain instructions regarding the discontinuance of inter-Commissionerate transfers. Since much of the submissions made in this matter revolve around the said circular, the same is reproduced hereinbelow:

\023F.No. A 22015/03/2004 AD IIIA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

New Delhi, the 19th February 2004

To
All Chief Commissioner of Customs,

All Chief Commissioner of Central Excise,
All Commissioner of Customs,
All Commissioner of Central Excise,
All Directors General/ Directors
Commissioner, Central Bureau of Narcotics,
Gwalior
(all by name)

Subject : Inter Commissionerate Transfers \026
Issuance of Instructions \026
regarding their discontinuance
etc.

Sir/ Madam,

It would be recalled that hitherto inter-Commissionerate transfer (i.e. transfer from one cadre controlling authority to another) of Group \021B\022, \021C\022 and \021D\022 employees were taking place on compassionate grounds. These powers had been delegated to the Head of Departments subject to the conditions laid down in F.No. A22015/34/8-0-Ad III B dated 20.5.1980. Since inter-Commissionerate transfers have caused certain administrative difficulties resulting in protracted litigation, the matter has been reviewed by the Board in detail.

Accordingly, in supersession of all the previous instructions issued on the subject in the past, it has been decided that henceforth no inter-Commissionerate transfer shall be allowed for any Group B, C and D employee. Instead, in exceptional circumstances depending upon the merits of each case where it is considered necessary to accept such requests on extreme compassionate grounds, such transfers shall be allowed on deputation basis for a period three years subject to the approval of the transfer and transferee cadre controlling authorities. Further extension of deputation period can be made up to one year by the Commissioner and for a further period of one year by Chief Commissioners concerned on mutually agreed basis. Such transfers shall be with the specific condition that no deputation allowance shall be admissible for deputation period including extended period, if any. Where ever required, necessary amendments in recruitment rules are under approval and shall be issued subsequently.

This issues with the approval of the Board

Receipt of these instructions may please be acknowledged.

Yours faithfully,

Sd/-
(S.K. Thakur)
Under Secretary to the Govt. of India\024

From the said circular it will be seen that the Board after reviewing the existing policy relating to inter-Commissionerate transfers took a decision whereby in supersession of all the provisions /instructions issued on the subject in the past, no inter-Commissionerate transfer would thenceforth be allowed for any Grade B, C and D employee. Even with regard to the cases where requisitions were made on extreme compassionate grounds such transfers could be allowed on deputation basis for a period of 3 years subject to the approval of the Transfer and Transferee Cadre Controlling authorities. As indicated hereinbefore the petitioner was promoted to the post of Superintendent in 2003, which is a \021B\022 category post.

The said circular was subsequently amended by another Circular issued by the Department of Revenue on 9th March, 2004 which is reproduced hereinbelow:

\023F.No. A 22015/03/2004 AD IIIA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

New Delhi, the 9th March, 2004

To
All Chief Commissioner of Customs,
All Chief Commissioner of Central Excise,
All Commissioner of Customs,
All Commissioner of Central Excise,
All Directors General/ Directors
Commissioner, Central Bureau of Narcotics,
Gwalior
(all by name)

Subject : Inter Commissionerate Transfers \026
Issuance of Instructions \026
clarification regarding.

Sir/ Madam,

I am directed to refer to this office circular of even number dated 19.2.2004 on the subject cited above and to say that some references have been received seeking clarification regarding inter-Commissionerate transfers within the same zone. It is therefore, clarified that inter-Commissionerate transfers amongst the Commissionerates having common cadre where there is no loss of seniority involved, may be allowed to continue as hitherto.

This issues with the approval of the
Board

Yours faithfully,

Sd/-
(S.K. Thakur)
Under Secretary to the Govt. of India\024

By virtue of said amendment it was clarified that inter-Commissionerate transfers amongst the Commissionerates having common cadre, where there was no loss of seniority, could be allowed to continue as before.

Pursuant to the promulgation of the aforesaid circulars an order, being Office Order No.1/2005 dated 31.3.1995 was issued by the Chief Commissioner of Customs and Central Excise, M.P. and Chhattisgarh States, whereby along with 55 other officers the petitioner was transferred from the Indore Commissionerate to the Nagpur Commissionerate. It is this order which was challenged by the petitioner and others before the Central Administrative Tribunal on the ground that although inter-Commissionerate transfers were permitted the same did not permit the authorities to also effect inter-zonal transfers which had been prohibited.

After considering the submissions made on behalf of the respective parties and the various circulars issued by the Central Board of Excise and Customs, and in particular the Circular/instructions dated 10th September, 1990, which provides for common cadre of Superintendents of the Bhopal and Nagpur Commissionerate under the Chief Commissioner, Bhopal, as the Cadre Controlling Authority, the Tribunal dismissed the application filed by the petitioner herein.

As mentioned hereinabove the said order of the Central Administrative Tribunal was impugned by the petitioner herein along with one Mahender Singh by filing Writ Petition No.3622/05 before the High Court of Madhya Pradesh, Indore Bench.

During the hearing of the writ petition the main submission made on behalf of the writ petitioner was that transfer from one zone to another zone was prohibited by the Department itself and the impugned transfer order being in violation of the declared policy of the Department was liable to be quashed. On the other hand, the order of the Tribunal was strongly supported by the respondents on the ground that inter-zonal transfer was permitted, inasmuch as, constitution of a zone was for the purpose of revenue and had nothing to do with transfer which is an incident of service. It was also urged on behalf of the respondents that even if the petitioners were transferred to the Nagpur zone their seniority would not be affected in any way.

Having regard to the submissions made the High Court observed that the grievance of the petitioners was based on the apprehension that their seniority would be affected. However, relying on the decision of this Court in the case of Shilpi Bose vs. State of Bihar (AIR 1991 SC 532), the High Court ultimately came to the conclusion that transfers made in administrative exigencies or in public interest or for smooth functioning of the system did not warrant any interference under Articles 226 and 227 of the Constitution of India. Several other decisions on the same

issue were also referred to and the writ petition was disposed of with leave to the petitioners to submit a representation to the competent authority within a period of four weeks from the date of the order, with a further direction that the said representation was to be disposed of within a period of four weeks from the date of receipt of the same.

Since the main contention of the writ petitioners was that inter-zonal transfers were not permitted by virtue of the policy of the Central Board of Excise and Customs, the High Court, instead of advertng to the said issue went into a separate issue regarding transfer in Central Government services wherein transfer is an incident of service and wrongly permitted the petitioners to file representation before the Department against the order of transfer under challenge.

Aggrieved by the order of the High Court one of the petitioners, namely, Prabir Banerjee, has filed this special leave petition on the same grounds as urged before the Tribunal and reiterated before the High Court.

Appearing in support of the special leave petition, Mr. Mukul Rohtagi, Senior Advocate, appearing with Dr. Abhishek M. Singhvi, Senior Advocate, urged that both the Tribunal as well as the High Court failed to appreciate the main plank of challenge made on behalf of the petitioners, namely, that inter-zonal transfers have been prohibited and since the Nagpur zone was a separate zone from the Bhopal zone the transfer order had been made in violation of the policy of transfer.

It was urged that instead of deciding the aforesaid question raised on behalf of the writ petitioners, the High Court went into a broader issue regarding transfer being an incident of service under the Central Service Rules. Mr. Rohtagi also urged that in the absence of any Rules framed by the Central Board of Excise and Customs the instructions issued by the Board from time to time would have to be applied in respect of the employees of the Department. Conceding that transfer was an incident of service in the Central services, Mr. Rohtagi urged that the said principle would not apply in this case in view of the existence of definite instructions issued by the Board in this regard.

It was urged that the High Court appears to have missed this aspect of the matter and had relied solely on the decision of this Court in the case of *Shilpi* (supra) and certain other decisions namely (i) *S.B.I. vs. Anjan* 2001 (5) SCC 508; (ii) *National Hydro Electric Power Corporation Ltd. vs. Shri Bhagwan* (2001 (8) SCC 574); (iii) *Union of India vs. Janardan Debnath* (2004 (4) SCC 245); (iv) *State of U.P. vs. Siya Ram* (2004 (7) SCC 405), in arriving at the conclusion that the writ petitioner would only be entitled to make a representation to the competent authority regarding the order of transfer.

Appearing for the respondents, Mr. B. Dutta, learned Additional Solicitor General, took us to the various circulars issued by the Department of Revenue in the Ministry of Finance, Government of India, which had also been referred to by Mr. Rohtagi, relating to inter-Commissionerate transfers of Grade B, C and D employees. In support of his contention that inter-zonal transfers in the

Department of Customs and Central Excise were permissible, the learned Additional Solicitor General urged that services under the said Department was an all India service wherein transfer was an incident of service to which the petitioner could not legitimately object. The learned Additional Solicitor General also referred to the communication from the Central Board of Excise and Customs to the Chief Commissioner of Central Excise and the Chief Commissioner of Customs, as also Central Excise and Customs, dated 16.1.2003, whereby it was declared by the Board that all the powers being exercised by the respective Commissioners as the Cadre Controlling Authority would thenceforth be exercised by the respective Chief Commissioners. In addition to the above, the learned Additional Solicitor General referred to the directions of the Board in its communication dated 24.8.04 whereby it was indicated that pending decision on the demand for bifurcation of group \021B\022 and \021C\022 cadres relating to Nagpur and Indore Collectorates it had been decided that cadre control of the said two Collectorates would be distributed between the two Collectors of Nagpur zone and Indore zone. The Collector of Central Excise of the Nagpur zone was made the Cadre Controlling Authority of Group \021B\022 and \021C\022 employees belonging to the Ministerial cadre whereas the Collector of Central Excise, Indore, was made the Cadre Controlling Authority in respect of Group \021B\022 and \021C\022 officers in the executive cadres. The learned Additional Solicitor General added that of the officers posts in the different Commissionerates the post of Superintendent was a Group \021B\022 post in the executive cadre and in respect of the two aforesaid Collectorates the Collector of Central Excise, Indore, became the Cadre Controlling Authority of such employees in the aforesaid Collectorates.

Referring to the counter affidavit filed on behalf of the respondents, and in particular para 3 (V), he submitted that by virtue of notification No.14/2002 Central Excise dated 8.3.2002, as amended, issued under Rule 3(2) of the Central Excise Rules, 2002, the statutory jurisdiction of the Chief Commissioner under the provisions of the Central Excise Act, 1944 and the Rules framed thereunder have been defined. He urged that the statutory jurisdiction was distinct from the jurisdiction of the Chief Commissioner as Cadre Controlling Authority which had been defined separately by way of administrative instructions. While the statutory jurisdiction of the Chief Commissioner, Bhopal under the Central Excise Act extended to the three Commissionerates of Bhopal, Indore and Raipur, the Chief Commissioner, Bhopal, was designated as the Cadre Controlling Authority for the combined cadre of Grade \021B\022 and \021C\022 of four Commissionerates, namely, Bhopal, Indore, Raipur and Nagpur. It was also submitted that since the jurisdiction of a Chief Commissioner as a Cadre Controlling Authority has not been defined or circumscribed by any notification issued under Rule 3(2), administrative instructions issued from time to time would have to be followed in the absence of such statutory rules, as had been done in the instant case.

It was submitted that the High Court had not committed any error in relying on the principle that in Central Government Service transfer was an incident of service and an employee was not entitled to question the impugned order of transfer on such ground. Further, since the transfer order had been issued by the Cadre Controlling Authority,

namely, the Chief Commissioner of Central Excise, Bhopal, who had been vested by the Board with authority to act as the Cadre Controlling Authority in respect of the three Commissionerates within the Bhopal zone and the Nagpur Commissionerate under the Nagpur zone, such order was made validly and could not be interfered with on the ground of lack of jurisdiction.

Having considered the submissions made on behalf of the respect parties we are inclined to agree with the stand taken by the respondents that while transfer is an incident of service under the Central Service Rules, the petitioner has no cause to complain in respect of the transfer order by which he was transferred from the Bhopal zone to the Nagpur zone, as the same had been passed by the Chief Commissioner of Central Excise, Bhopal zone, under powers vested in him by the Board by its Circular dated 16.1.2003.

Although, both the parties have relied upon the circular dated 19.2.2004 and 9.3.2004 issued by the Department of Revenue, in the Ministry of Finance, Government of India, the said two circulars have little or no relevance to the facts at issue in the instant case. The circular dated 19.2.2004 merely indicates that inter-Commissionerate transfers of Group \021B\022, \021C\022 and \021D\022 employees were taking place on compassionate grounds which had caused certain administrative difficulties resulting in protracted litigation which caused the Board to review the situation in detail. It is in that context that it was further indicated that in supersession of all previous instructions issued on the subject in the past from thenceforth no inter-Commissionerate transfer would be allowed for any Group \021B\022, \021C\022 and \021D\022 employee. Instead, in exceptional circumstances depending on merits of each case, such transfers would be allowed on deputation basis for a period of 3 years, subject to the approval of the transferring and transferee Cadre Controlling Authorities. The other circular dated 9.3.2004 merely clarified the question of inter-Commissionerate transfers within the same zone. In this context it was clarified that inter-Commissionerate transfers amongst the Commissionerates having common cadre, where there was no loss of seniority involved, such a practice would be allowed to continue.

In our view, neither of the two circulars have any bearing and/or relevance to the issues raised in the instant case where the central question is whether the Chief Commissioner of the Bhopal Commissionerate was competent to transfer the petitioner to a Commissionerate of a different zone, namely, Nagpur, except to the extent of indicating that inter-Commissionerate transfers between Commissionerates having a common cadre would be allowed to continue.

No doubt transfer is an incident of service in an All India service and under the Central Service Rules the Controlling Authority was competent to transfer the petitioner to any place in India, where it considered expedient to do so. But apart from the above, we also have to take into consideration the decision of the Central Board of Excise and Customs in its communication dated 24.8.1984 by which pending decision on the demand for bifurcation of Group \021B\022, and \021C\022 cadres relating to Nagpur and Indore cadres the Board took a decision that cadre control of the said two Collectorates would be distributed

between the two Collectors as indicated in the said communication. As mentioned hereinabove, while the Collector of Central Excise, Nagpur, was made the Cadre Controlling Authority of Group \021B\022 and \021C\022 Ministerial Cadres, the Collector of Central Excise, Indore was made the Cadre Controlling Authority of executive cadres of Group \021B\022 and \021C\022. We are alive to the fact that the decision taken by the Board was an administrative decision, but in the absence of any direct Rule relating to transfer between two Collectorates under the Central Board of Excise and Customs, the said administrative instruction would have to be implemented insofar as inter-Collectorate transfers between the Nagpur and Indore Cadre was concerned. In fact, by subsequent circular dated 16.1.2003 the Board further declared that the Chief Commissioner of Central Excise/Customs in a Commissionerate would be the Cadre Controlling Authority up to Group \021B\022 level staff, and its functions would include monitoring the implementation of the Board\022s instructions with regard to the transfers and equitable distribution of man-power and material resources between the Commissionerates/zones.

The learned Additional Solicitor General had strenuously urged that by virtue of the communication dated 24.8.2004 the Collector of Central Excise, Indore, had been made the Cadre Controlling Authority of executive cadres belonging to Group \021B\022 and \021C\022 of the Nagpur and Indore Collectorates, which empowers the Chief Commissioner of the Bhopal zone to exercise control over the cadre both in respect of the three Commissionerates comprising the Bhopal zone as also the Commissionerate of Nagpur falling within the Nagpur zone. It has neither been pleaded nor has it been shown to us that the decision of the Board as contained in the said circular of 24.8.1984 has since been rescinded or altered and that the Chief Commissioner of the Bhopal zone is no longer the Cadre Controlling Authority of the Nagpur Commissionerate.

In the aforesaid circumstances, although the High Court has proceeded mainly on the basis that in the Central Services transfer is an incident of service and has not really dealt with the various circulars on the subject, we are not inclined to interfere with the judgment and order of the High Court disposing of the writ petition.

There is also another aspect of the matter, namely, that pursuant to the leave granted by the High Court to make a representation to the competent authority, the petitioner herein made a representation for reconsideration of the transfer order to the Chairman of the Central Board of Excise and Customs on 17.4.05. In other words, the petitioner had submitted to the directions given in the impugned judgment, thereby, disentitling him to question the decision rendered by the High Court.

For the aforesaid reasons, we dismiss the Special Leave Petition, but, in the facts of the case, without any order as to costs.