

All India Federation of Central Vs. Shri A.C. Buck Chief Commissioner

All India Federation of Central Vs. Shri A.C. Buck Chief Commissioner

SooperKanoon Citation : sooperkanoon.com/55878

Court : Central Administrative Tribunal CAT Delhi

Decided On : Mar-03-2008

Judge : R A Neena

Appellant : All India Federation of Central

Respondent : Shri A.C. Buck Chief Commissioner

Judgement :

1. In this OA Shri D.K. Chopra, who is Superintendent in Customs Preventive is the President of the All India Federation of Central Excise Gazetted Executive Officers, Delhi and has filed this application on behalf of the said association. The relief sought by the applicants including Shri D.K. Chopra, in his personal capacity, revolve around reconsideration of the current transfer policy vis-à-vis the previous policy of 2004 which remained in force for three years and to direct the administration to take appropriate action against the officers who have misused their office to manipulate transfer orders.

Besides this OA, two MAs were also filed by him, i.e., 1903 and 1904 of 2007 on the question who was the correct person to represent the All India Federation of Central Excise Gazetted Officers.

2. At present, the limited issue which needs to be addressed in this order is the preliminary objection raised by the respondents that the present application has not been signed and verified by any competent authority but by Shri D.K. Chopra, President of the said association.

It is also submitted that the application under reply is not filed by any aggrieved person and, therefore, the same is contrary to the Central Administrative Tribunal (Procedure) Rules, 1987 and, therefore, not maintainable. It is also argued that no cause has accrued to the applicant and the application under reply is based on misconceived and misleading averments and grounds, because of which the same is not maintainable. It is also pleaded that the applicants have not been able to show any violation of any statutory rules or provisions whereby this OA can be considered maintainable.

3. Hence, this order will confine itself to the question whether this OA is maintainable under Section 19 of the Administrative Tribunals Act, 1985 wherein it is provided in Sub-section (3) as follows: (3) On receipt of an application under Sub-section (1), the Tribunal shall, if satisfied after such enquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application; but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons.

The Learned Counsel for the respondents pleaded that the applicant in the guise of representing the so-called federation is seeking relief on a personal transfer matter. He has no right to challenge the transfer policy, the domain of which lies with the executive. No enforceable right can accrue to him for redressal in the Tribunal.

At most, if violation of executive instructions has occurred, the same has to be challenged before the next higher executive authority, who would take necessary action to rectify the same. To substantiate the fact that the applicant has no legal right, the counsel for the respondents has referred to various case laws in *Ekta Shakti Foundation v. Government of NCT of Delhi*, *Manager (now Regional Director), RBI v. Gopinath Sharma and Anr.*, *Indian Drugs and Pharmaceuticals Ltd. v. Workman, Indian Drugs and Pharmaceuticals Ltd.*, *the Chief Commercial Manager, South Central Railway Secundrabad and Ors. v. G. Ratnam and Ors.*

, *Dr. Duryodhan Sahu and Ors. v. Jitendra Kumar* 9. At this juncture we may take note of a submission by Learned Counsel for the writ petitioners. It was submitted that the writ petitioners were registered before this Court's order and therefore, it

cannot be said that they had registered only to overreach this Court's order. It is pointed out by Learned Counsel for the respondent that the PUCL case was being heard for a long time, and various details were being called for. The intention of this Court to keep contractors out of the picture was clearly evident. Ekta Shakti Foundation (Writ Petition No. 232 of 2006) was registered on 21.11.2003, Surya Society (Writ Petition No. 233 of 2006) was registered on 5.12.2003 and Jay Gee Society (Writ Petition No. 234 of 2006) was registered on 25.3.2004.

10. While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. (See *Ashif Hamid v. State of J. & K.* , *Shri Sitaram Sugar Co. v. Union of India* . The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court it cannot interfere.

11. The correctness of the reasons which prompted the Government in decision making, taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation.

12. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.

4. It was argued that this preliminary objection has to be addressed before any other prayer can be taken up. If it is proved that the applicant has no legal right to

agitate the matter, the two MAs for amendment etc. need not be addressed at this stage. They would be required to be taken up only after the preliminary objection with regard to maintainability is decided. This would also take care of the question whether the Tribunal is the right forum for agitating such grievance.

5. The applicant, who appeared in person in reply to the above, argued that though there was a transfer policy of 2004, the order dated 29.6.2006 transferring some officers does not mention which transfer policy was being followed. The new transfer policy came into existence w.e.f. 1.1.2007. Specific names have also been indicated by the applicant in whose cases the transfer policy has not been followed. It is sought to be argued that the impugned order dated 29.6.2006 mentions sensitive and non-sensitive posts, while this categorization was only introduced in the transfer policy of 1.1.2007.

6. The applicant has also filed written arguments wherein he has tried to reiterate the issues which have been raised in the OA and has also referred to judgments in the case of Sheshrao Nagarao Umap v. State of Maharashtra and Ors. 1984 (2) SLR 328, Mathew Muthalali v. Revenue Divisional Officer (1972) ILJ 98 Page 102, 103, 104 (Ker).

7. After hearing both parties, it is apparent that it would be difficult to take up this OA under Section 19 of the Administrative Tribunal Act. There is force in the argument of the respondents' counsel that the Tribunal cannot, and should not, substitute its opinion on government policy unless violation of any statutory provisions or the Constitution is established, none of which has been done by the applicant. Transfer policy is very much in the domain of the executive. The applicant in the guise of the President of an Association which is not recognized by the Central Board of Excise and Customs in terms of the Central Civil Services (Recognition of Service Association) Rules, 1993 is agitating his own personal transfer issue in this OA. Citing of some other transfer cases is merely an attempt to allege discrimination in policy implementation; otherwise those officers would have been made parties. This situation would not change even if the Federation were a recognized service association. Arraying respondents by name is also an extraordinary step which only appears to show the applicant's anxiety to settle

some personal scores.

8. As such, this preliminary objection of the respondents is decided in their favour. The OA is not maintainable. The two MAs fail as a consequence. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com