

(17)

Central Administrative Tribunal
Principal Bench

O.A. 2238/98

New Delhi this the 12 th day of October, 1999

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Pawan Kumar,
S/o Shri Narain Singh,
Inspector Customs,
AIR Cargo Unit,
New Custom House New Delhi.

Applicant.

By Advocate Shri Yatendra Sharma.

Versus

1. Commissioner,
Office of the Commissioner of Central Excise,
Delhi- C.R. Building
I.P. Estate, New Delhi.

2. Deputy Commissioner (P&V),
Office of the Commissioner of Central Excise,
Delhi-I, C.R. Building,
I.P. Estate, New Delhi.

3. Dy. Director (Administration),
Directorate of Revenue Intelligence,
'D' Block, I.P. Bhawan, I.P. Estate,
New Delhi.

Respondents.

By Advocate Shri R.R. Bharti.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has impugned the validity of the order passed by the respondents dated 12.11.1998 which he has alleged is illegal. He has prayed that this order should, therefore, be quashed and set aside.

2. This is the second round of litigation by the applicant. Earlier he had filed O.A. 1578/98 which was disposed by the Tribunal by order dated 9.10.1998. In that O.A. the applicant had impugned respondents' order dated 11.8.1998 (Annexure A-11 to the O.A.) qua himself. The Tribunal had noted that it is not denied that the applicant

Y8

while working as Inspector, Customs and Central Excise, Vadodara, applied for deputation to Directorate Revenue Intelligence and upon being selected, was appointed as Intelligence Officer in DRI, New Delhi on deputation basis by order dated 24.9.1997 where he joined on 3.11.1997. He was posted in the General Intelligence Section by order dated 4.6.1998. It was also noted that the applicant was transferred on inter-commissionerate transfer from Vadodra Commissionerate to Delhi Commissionerate and pursuant to that order, the Delhi Commissionerate was required to relieve the applicant. He had joined the Delhi Commissionerate on 17.6.1998 on the basis of which he was posted in Customs Branch on 30.6.1998 and later on 6.8.1998 in Air Cargo Unit, but barely 5 days later he had been again recalled to DRI to complete the remaining term of his deputation in DRI. After hearing both the parties, the Tribunal had disposed of the O.A. with the following orders:

"In the result this O.A. is disposed of with a direction to Respondent No. 1 (Commissioner, Custom and Central Excise) to examine the matter in detail, if necessary in consultation with officials of the Dte. of Revenue Intelligence, keeping in view what has been stated in para 5 above, and pass a reasoned order in support of the decision that they take, in accordance with rules and instructions on the subject, within 2 months from the date of receipt of a copy of this order. Till then the operation of the impugned order dated 11.8.1998 shall remain stayed. No costs".

In pursuance of the aforesaid directions of the Tribunal in O.A. 1578/98, the respondents have passed the order dated 12.11.1998 which has been impugned in the present Original Application. In the impugned order, the respondents have, after giving the reasons, ordered that the applicant, presently posted at the ACU/Stat, may be relieved immediately to report for duty to Deputy Director (Admn.), DRI, New Delhi, ^{as} ~~immediately~~ to complete his tenure on deputation in DRI in public interest. There is no legal infirmity in this order and the claim of the applicant to quash this order is

18

accordingly rejected. The learned counsel for the applicant had contended that the reasons given by the respondents in the impugned order merely refer to the reasons which they had already given in the reply affidavit filed by them in O.A. 1578/98. However, in the facts and circumstances of the case, it cannot be stated that the respondents had not complied with the Tribunal's order dated 9.10.1998. They have passed reasoned and speaking order in pursuance of the directions of the Tribunal. In the circumstances, there is no ground to quash and set aside the impugned order dated 12.11.1998 and the O.A. is liable to be dismissed.

3. The learned counsel for the applicant had, however, contended very vehemently that in the meantime, while the aforesaid OA 1578/98 was pending, the respondents had issued his transfer order on inter-commissionerate basis from Vadodara Commissionerate to Delhi Commissionerate. This he claims was final by order passed on 17.6.1998. These facts have also been noted by the Tribunal in the order dated 9.10.1998. Shri R.R. Bharti, learned counsel, had submitted during the hearing that the department had passed the transfer order as well as the deputation order relating to the applicant from Vadodara Commissionerate to Delhi Commissionerate in applicant's interest. If that is so, it was for the applicant to have withdrawn his claim arising out of the terms and conditions of his deputation order if he had wanted to before the final order in O.A. 1578/092 was passed which he has not done. In the circumstances, the applicant cannot re-agitate the matter here, which grounds he could have taken in OA 1578/98 itself. However, taking note of the respondents' own action in issuing the transfer order transferring the applicant from Vadodara

Commissionerate to Delhi Commissionerate, it is left open to them to adhere to the request of the applicant for inter commissionerate transfer, subject to the usual terms and conditions of such transfer, if they so wish.

4. In the result, the O.A. fails but in the circumstances, it is disposed of with the above observations. No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J).

'SRD'