

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.438/98

Friday this the 27th day of March, 1998.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI S.K.GHOSAL, ADMINISTRATIVE MEMBER

N.P.Subramania Swami,
Superintendent of Central Excise,
Air Customs,
Trivandrum.

..Applicant

(By Advocate Mr. Shefik M.A.)

vs.

1. The Commissioner of Central Excise & Customs,
Central Revenue Buildings,
I.S.Press Road, Kochi-18.

2. Additional Commissioner(P&V),
Office of the Commissioner of
Central Excise and Customs,
Central Revenue Buildings,
I.S.Press Road, Kochi-18.

..Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

The Application having been heard on 25.3.1998, the Tribunal
on 27.3.98 delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

This application is directed against the order of the second respondent dated 13.3.98 by which the applicant was transferred from Air Customs, Trivandrum to Ernakulam II Division on alleged administrative grounds and the order dated 16.3.98 by which he was treated as relieved from the Airport with effect from 16.3.98 before his representation aggrieved by the transfer was considered and disposed of. The factual matrix is as follows.

2. The applicant a Superintendent of Central Excise was transferred and posted at the Air Customs, Trivandrum with effect from 14.12.96. In terms of this order the posting was for a period of two years but subject to any orders that might

be issued from time to time. On 11.2.98 the applicant was incharge of counter Nos. 23 to 26 in the Trivandrum Airport. One Sri M.Satheesh, Air Customs Officer was on duty in counter No.26. On 12.3.96 the applicant received a message from the headquarters office control room to report before the second respondent on 13.3.98 at 11 a.m. When he reported he was asked to go to the Superintendent, Vigilance who showed him a letter received from the Revenue Secretary, Govt. of India wherein it was stated that a passenger by name Mr.Nandakumar who had arrived by Flight No.062 from Middle East while getting cleared through Customs counter No.26 had to pay to the Air Customs Officer 80 Dhirhams on his demand and that this fact was reported to the Revenue Secretary by Shri K.P.S.Menon, the former Foreign Secretary and asked him to give his explanation. He immediately gave a written explanation that no such incident had come to his notice. The applicant went back and though he was to report at the Airport on 15.3.98, he availed of earned leave for some personal purpose. However, on 16.3.98 the applicant was served with the impugned order Annexure A-1 dated 13.3.98 transferring him to Ernakulam II Divisional office on administrative grounds. Immediately on receipt of it the applicant made a representation pointing out that the decision was arbitrary and requesting the first respondent to reconsider the decision in the light of the actual facts. While the applicant was awaiting a reply, he was served with the order Annexure A-2 dated 16.3.98 in which it was stated that the applicant was considered to have been relieved on 16th March 1998 consequent on his transfer to Ernakulam II

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Divisional office. The applicant assails these two orders on the ground that the decision to transfer him is vitiated by malafides as the power to transfer has been exercised for a purpose other than for which it is conferred, for non-application of mind and being based on irrelevant considerations and that the order has been passed in violation of the principles of natural justice. It has been alleged in the application that under identical circumstances as in this case, this Tribunal had set aside the transfer of two officials in O.A.1381/97. As the applicant has been moved out before completion of his tenure for no reason at all basing only on a complaint in which he was not even implicated, the order being punitive and passed without affording reasonable opportunity to the applicant to show cause against is violative of Article 311(2) of the Constitution, pleads the applicant. With these allegations, the applicant has prayed that the impugned orders Annexure A-1 and A-2 may be set aside and the respondents be directed to retain the applicant at Air Customs, Trivandrum till he would complete his normal tenure.

3. On behalf of the respondents 1 and 2 Shri C.R.Ravindran Nair, Assisant Commissioner(Legal) in the office of the Commissioner of Central Excise and Customs, Central Revenue Building, Cochin-18 has filed an affidavit. The impugned orders are sought to be justified on the ground that on receipt of a complaint after a preliminary enquiry, the Commissioner being satisfied that there is prima facie ground to hold an enquiry against the applicant for failure to satisfactorily perform supervisory functions, has

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initiated the proceedings and has considering that the continuance of the applicant in Air Customs, Trivandrum during the pendency of the enquiry may not be congenial to public interest transferred the applicant to Ernakulam. The allegation of malafides and consideration of irrelevant facts has been refuted. The decision having been taken in public interest is not exceptionable , plead the respondents. They have also indicated that if after the conclusion of the enquiry the applicant is found not guilty, he would be reposted back at the Air Customs and would be allowed to complete the remainder of his tenure there. As the impugned order of transfer as also of relief having been issued in public interest and is not punitive, the respondents contend that the application may be dismissed.

4. We have heard the learned counsel on either side at considerable length. Shri Shefik, learned counsel of the applicant argued that apart from the fact that a complaint was received against the Air Customs Officer who was incharge of counter No.26 on 11.2.98, there was nothing to implicate the applicant with any dishonesty or misconduct, and therefore, the decision taken to transfer the applicant abruptly before he completed his tenure at Air Customs being arbitrary, irrational amounting to colourable exercise of power, the Tribunal would be justified in interfering with the impugned orders. He also invited our attention to a decision of this Bench of the Tribunal in O.A.1381/97 wherein under similar circumstances an order of transfer of two officials out of the Air Customs before completion of the tenure was set aside.

5. Learned Additional Central Govt. Standing Counsel appearing for the respondents argued that when a complaint was received and after a preliminary enquiry into the matter, the competent authority was satisfied that there was sufficient ground to proceed against the applicant for failure to satisfactorily perform his supervisory function, the decision to transfer him out of the Air Customs during the pendency of the enquiry cannot at all be termed as arbitrary or irrational. The decision having been taken in public interest, the learned counsel argued that the Tribunal may not interfere in the matter. He further argued that as the transfer of the applicant to Ernakulam II Division, a place where his family is settled for the time being does not in any way cause any hardship to the applicant and therefore the contention that the order is punitive has no substance at all. He inviting our attention to the undertaking in the reply statement that in case the applicant is found not guilty on the conclusion of the enquiry, he would be reposted to the Air Customs, argued that the stand taken by the respondents is absolutely fair and therefore the situation does not call for any judicial intervention at all.

6. Given the facts and circumstances emerging from the pleadings as also on a perusal of the file which led to the impugned orders which was brought for our perusal by the Addl. Central Govt. Standing Counsel, we are of the considered view that the applicant does not have a real and legitimate grievance. It is true that the applicant has been shifted out of the Air Customs, Trivandrum before he could complete the full tenure of two years. The order by which he was transferred to Air Customs itself contains a clause that the posting was subject to any orders that might be issued from

time to time. Therefore even if the posting at Air Customs is generally for a tenure of two years, it is not as if an official posted there, cannot be shifted out before the completion of the tenure if public interest calls for such a transfer. The file leading to the impugned order reveals that on receipt of the complaint after getting the explanation of the applicant and on the basis of the preliminary enquiry held, the first respondent decided to initiate an enquiry against the applicant for alleged failure of supervisory duties and to transfer him out of Air Customs, as his retention there during the pendency of the enquiry was considered not desirable in public interest.

7. The argument of the learned counsel of the applicant that as there was no allegation against the applicant at all in the complaint of Shri K.P.S.Menon, there exists no justification for proceeding against him and much less for transferring him out of the Air Customs has no force at all. When a decision had been taken by the competent authority on the basis of the relevant material it is improper for the Tribunal to evaluate the sufficiency of the material which led to the decision. If the decision is taken based on considerations which are not relevant with an oblique motive, judicial intervention can be justified. We do not find such a situation in this case. The Commissioner of Central Excise and Customs, the competent authority has on the basis of the materials available before him decided to initiate disciplinary proceedings against the applicant and has under the circumstances transferred the applicant out of the Air Customs being satisfied that it would be better in public interest not to retain him there during the pendency of the enquiry. We do not find any justification for interference at all.

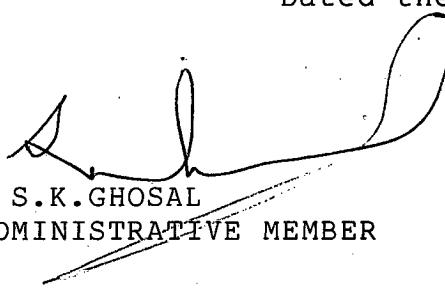
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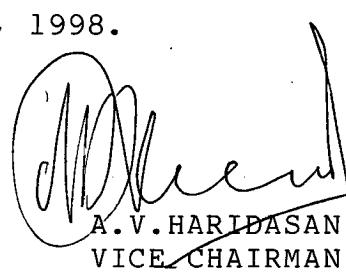
8. Learned counsel of the applicant argued that the impugned orders are cryptic and bereft of application of mind. We find no force in this argument also. In administrative orders of transfer etc. the competent authority cannot be expected to state the reason for taking the decision. After a decision is taken, the order alone is communicated to the officer or person concerned. If the order is challenged, the reason for the decision can be seen from the file which led to the order. Learned counsel of the applicant argued that the transfer of the applicant on complaint is punitive in nature and therefore the order passed without giving the applicant an opportunity of being heard is violative of the right guaranteed under Article 311(2) of the Constitution. We do not find any force in this argument. The applicant has not stated that he has been subjected to any adverse consequence or hardship on account of the transfer. His only grievance is that his transfer out of Air Customs before completion of tenure of two years carries a stigma. The order impugned in this case is an innocuous order carrying no stigma at all. A punitive action normally would bring to bear on the official subjected to it some adverse effect or hardship. In this case as the applicant has been posted to Ernakulam where his family is settled for the time being, it is difficult to understand what adverse effect it has on the applicant. Further the respondents have fairly undertaken in the reply statement that if on completion of the enquiry the applicant is found not guilty, he would be reposted to Air Customs, Trivandrum and would be allowed to complete the remainder of his tenure. We are of the considered view that the stand of the respondents is very fair. The argument of the learned counsel of the applicant

that it was under identical circumstances as in this case that the Tribunal set aside the orders of transfer of two other officials in the order in O.A. 1381/97 is not really correct. We have perused the order relied on by the learned counsel. In that case the Commissioner of Central Excise and Customs on the basis of the preliminary enquiry on a complaint against the applicants decided not to proceed against them as there was no evidence at all, but never the less on an assumption that they would have demanded illegal gratification without any basis transferred them. It was under these circumstances that the Bench held that the order in that case amounted to misuse of power of transfer. In this case, the Commissioner of Customs, on the basis of the materials available, decided to hold enquiry against the applicant and was thereafter that he ordered the applicant's transfer in public interest. The facts are entirely different.

9. In the conspectus of the facts and circumstances, we do not find any merit in this application. We, therefore, dismiss the application without any order as to costs.

Dated the 27th March, 1998.


S.K.GHOSAL
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

LIST OF ANNEXURES

1. Annexure A1: Order No.50/98 Ref.No.II/3/3/97-Estt.I dated 13.3.1998 issued by the second respondent.
2. Annexure A2: A-6 Relief Report dated 16.3.1998 issued by the Asst. Commissioner, Air Customs, Trivandrum.

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