

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A.No.457/2003

Friday this the 27th June 2003

C O R A M

Hon'ble Mr.A.V.Haridasan, Vice Chairman

K.Narayanaswamy
Havildar, Air Cargo Complex
Trivandrum.

...Applicant

(By Advocate Mr.C.S.G.Nair)

Vs.

1. Additional Commissioner of Central Excise & Customs
Cochin Commissionerate, Central Revenue Buildings
I.S.Press Road, Cochin-682018.
2. Commissioner of Central Excise & Customs,
Cochin Commissionerate, Central Revenue Buildings
I.S.Press Road, Cochin-682018.
3. Union of India, represented by the Secretary
Department of Revenue,
North Block, New Delhi - 110001.

...Respondents.

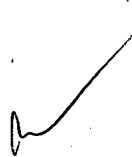
(By Advocate Mr.C.Rajendran, SCGSC)

The Application having been heard on 27th June, 2003,
the Tribunal on the same day delivered the following:

O R D E R

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

The applicant an Havildar of Central Excise was by Annx.A1 order dated 12.5.2003, transferred and posted to Air Cargo Complex (UB) Airport Trivandrum for a maximum period of 6 months with a stipulation that the department would be at liberty to transfer him earlier if administrative exigencies require. The applicant joined at ACC(UB) on 21.5.2003 while so he received Annx.A3 order dated 29.5.2003 which is impugned in this case transferring and posting him at Calicut Commissionerate on the alleged ground that in view of the decision taken in the JCM meeting held on 2.4.2003, the

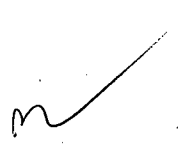


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applicant was not to be posted to ACC(UB) and that it was done by a mistake. Aggrieved by that the applicant has filed this O.A. It is alleged in the application that going by Annx.A1 order of transfer he could have been transferred from ACC(UB) Trivandrum where he has been posted for a maximum period of six months, within that period only on administrative exigencies. As no administrative exigencies of service exists the action of the respondents is arbitrary and liable to be struck down allege the applicant.

3. The respondents in their reply contended that in view of the decision taken in the JCM meeting held on 2.4.2003 it was agreed to by all cadres that officers who refuse promotion would be debarred from posting to the ACC/Airport/UB for a period of one year, that as the applicant had refused his promotion as Head Havildar in November 2002, he was ineligible to be posted at ACC(UB) Trivandrum and that the above posting having been inadvertently made without noting the consensus at the JCM meeting therefore, the impugned order has been issued to rectify the mistake. They also contended that the applicant who is holding a transferable job has no right to claim to be posted in a particular place and it is the absolute prerogative of the competent authority in the department to deploy its staff. The respondents contended that the application is not maintainable. With the agreement of the learned counsel I heard the matter for a final disposal at this stage.


3. On a careful scrutiny of the material produced on record and on hearing Mr.C.S.G.Nair, counsel of the applicant and



Mr.C.Rajendran, SCGSC, counsel of the respondents, I find that the impugned order Annx.A3 dated 29.5.2003 has not been issued under any administrative exigencies. It is not stated in Annx.A3 that it was done on administrative exigencies. It was stated that the applicant was transferred back from ACC(UB) Trivandrum in view of the decision taken by the JCM held on 2.4.2003. If as a matter of fact a decision was taken on 2.4.2003 not to post any officer who had declined promotion for a period of one year for such posting the Annx.A1 order should not have been issued. Further, it is an admitted case that the applicant refused promotion in November 2002 as Head Havildar. A copy of the proceedings of the JCM meeting held on 2.4.2003 was made available as Annx.R1. The point which is relevant is the last point which is shown as General Point. The consensus arrived at reads as follows:

"Point regarding debarring of Officers of all cadres from a posting to the ACC/Airport/UB for a period of one year if they refuse promotion was agreed to by all cadres in the JCM (emphasis added)."

First of all the above quoted shows that there was only a general agreement regarding debarring of officers of all cadres from a posting to the ACC/Airport/UB for a period of one year if they refuse promotion. There is no case for the respondents that pursuant to the consensus, the department issued orders debarring officers from a posting to the ACC/Airport/UB for a period of one year if they refuse promotion. Secondly, since the decision taken was only in prospective, the applicant who had refused promotion in November 2002 much before the date of



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JCM in 2003, could not be adversely affected by that. The applicant otherwise is a person senior and there is no case for the respondents that he is unsuitable for the job. To transfer the applicant back and post another person in his place may cause loss to the State Exchequer. Under these circumstances, I am of the considered view that the impugned transfer order is not issued in administrative exigencies and is in effect it is against the public interest.

4. In the light of what has been stated above, the application is allowed and the impugned order Annx.A3 dated 29.5.2003 is set aside. No costs.

A handwritten signature in black ink, appearing to read 'A.V. Haridasan', with a long horizontal line extending to the right.

(A.V. Haridasan)
Vice Chairman.