

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.482/07

Thursday this the 25th day of October, 2007

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HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

A.F.Motha,
Inspector of Central Excise (on leave)
Customs Preventive Unit,
Thodupuzha.

...Applicant

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

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- 1 The Commissioner of Customs (Preventive)
Central Revenue Buildings,
I.S.Press Road, Cochin.18.
- 2 The Chief Commissioner of Central Excise & Customs,
Central Revenue Buildings,
I.S.Press Road, Cochin.18
- 3 Union of India, represented by the
Secretary by the Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi.1.
- 4 The Chief Commissioner of Customs,
Central Revenue Buildings,
Queen's Road, Bangalore.2.Respondents

(By Advocate Mr. P.A.Azeez,ACGSC (through Mr. I.G.Manoharan)

This application having been finally heard on 11.10.2007, the Tribunal on 25.10.2007 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant who has been working a Inspector, Central
Excise in the Customs Preventive Unit (CPU for short), Thodupuzha from

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8.4.05 to 1.6.2007 is aggrieved by the Annexure.A6 transfer order dated 12.5.07 transferring him from CPU, Thodupuzha to CPU, Kasargod.

2 The main ground on which the applicant challenged his transfer was that it was against the Annexure.A2 "Transfer Guidelines regarding posting and transfers of Group 'B', 'C' and 'D' officers in the Attached & Subordinate Offices under Central Board of Excise and Customs" issued by the Central Board of Excise and Customs on 30.6.94. The aforesaid guidelines have prescribed the "period of stay at one station" in respect of executive officers, ministerial officers and Group D staff. The period of stay at one station of Executive Officers should "normally be 4 years". However "transfers may be made earlier if administrative requirements or compassionate grounds, so necessitate". The said guidelines also prescribes "the tenure of sensitive charges and requirement of cooling of periods" as under:

"(i) Officers posted in any of the following charges as mentioned below, on completion or his/her normal tenure, be posted to a formation/organization/assignment other than those mentioned here below:

- (a) Airports
- (b) DGRI
- (C) DGAE
- (d) NCB/ED(FERA)/EIB etc.

The officers are posted to any of the aforesaid charges/organization/assignments will be required to complete the "Cooling off" period of not less than two years before being considered for re-posting to any of the aforesaid charges."

3 According to the applicant, before the annual general transfer, 2007 in Central Excise and Customs Commissionerates in Kerala was ordered, the employees were given an option vide A3 letter dated 8.2.07. According to the said option, those who are not due for transfer and would

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like to be retained in the resent place of posting were also required to fill up the prescribed form. The applicant has also given A4 option on 27.2.07. As the first preference, he wanted to be retained at CPU, Thodupzuha as he had completed only 2 years in that station. Alternatively, he opted for posting at Muvattupuzha, Kolencherry or Perumbavoor. However, the respondents transferred him to CPU at Kasargod against his option. He has, therefore, made the Annexure A7 representation dated 16.5.2007 requesting the respondents to allow him to complete his tenure of four years at Thodupuzha. Meanwhile, he fell ill and admitted to the Govt. District Ayurvedic Hospital, Thodupzuha on 11.6.07 and got discharged only on 13.7.07. He submitted a leave application to the respondents along with medical certificate and requested for extension of his leave up to 30.7.07. The applicant's wife has also made representations to the respondents stating that she herself was a psychiatric patient and surviving with heavy doses of medicines and their only daughter who is a mentally retarded is attending the special school for handicapped children at Muvattupuzha and undergoing treatment of doctors at SAT Hospital, Trivandrum and Amrita Hospital, Ernakulam. She had also made Annexure A15 and 16 representations pleading for not transferring her husband from the present place of posting. Applicant has also made a request to the respondents to adjust him in the place of one Shri K. Somasekharan, Inspector who joined CPU, Thodupuzha on 11.6.07 and requested the respondents to post him in the Customs Preventive Formations at Ernakulam.

4 According to the respondents the main reason for the premature transfer of the applicant was that he was holding a sensitive

post in Thodupuzha and it was in terms of the Annexure A2 guidelines itself. In their additional affidavit filed on 9.10.2007 also, the respondents have submitted that all the Customs Preventive formations functioning under the 1st respondent are attending to anti-smuggling and anti-narcotic activities and that the work involved is sensitive in nature. The Preventive Units keep a watch on the activities of the other sensitive formations like Air Customs, Unaccompanied Baggage Units etc. from anti-smuggling point of view. Thus all the Customs Preventive Units including the Customs Preventive Unit, Thodupuzha where the applicant was working are sensitive formations. They have also relied upon an order of the coordinate Bench of this Tribunal in OA 365/07 filed by Shri Tomy Joseph, Supdt. Of Customs Working in the CPU, Thodupuzha where the applicant has been working. This Tribunal dismissed the aforesaid O.A stating as under:

"thus what is to be seen is whether the tenure as for a sensitive post has been compete in the case of the applicant. The answer is in affirmative. No other valid ground has been shown to assail the transfer. That the spouse of the applicant is self employed could hardly be a reason to allow the OA" ..

5 They have also submitted that the applicant's transfer was purely on administrative ground and officers are deployed as per the requirements based on their performance/aptitude and other suitabilities and that the 1st respondent is fully empowered to do so and the applicant cannot claim any exception whatsoever for his personal reasons. Further under F.R.11 "unless in any case it be other wise distinctly provided, the whole time of a government servant is at the disposal of the government which pays him, and he may be employed in any manner required by proper authority." According to them, Kasargod is a very sensitive area



and the respondents cannot close down the unit there because of the personal inconvenience of the officers being posted there in public interest. They have also relied upon the same guidelines dated 30.6.94 (supra) relied upon by the applicant and stated that transfers can be made even earlier than the stipulated period of stay, if administrative requirements or compassionate grounds so necessitate and heads of department have the full authority to order transfer in such cases. They have also produced Annexure R.2 letter dated 13.4.99 from the Central Vigilance Commission, according to which the tenure of an official in a sensitive formation should be only 2/3 years. The formation of the Preventive Commissionerates are highly sensitive as sensitive subjects like anti-smuggling are being dealt with by them. It is for this reason that the applicant who had completed 2 years in CPU, Thodupuzha, a sensitive formation, has been shifted to Kasargod. It is also their submission that as Inspector in the Comissionerate from 4.11.94, he had very rarely worked away from his native place and during the major part of his service, he was working in Muvatupuzha/Thodupuzha. As regards his protection under Anenxure A1 and A2 orders, respondents have submitted that it is to be read with the instructions of the Central Vigilance Commission dated 13.4.99 (R2). They have also submitted that in terms of Annexure R.4 option submitted by the applicant on 27.2.2007, he has since been posted at Airport,Trivandrum and fresh orders have already been issued vide Annexure.R.5 Office Order No.84/07 dated 13.7.07.

6 I have heard Shri C.S.G, Nair for the applicant and Mr.I.G.Manoharan representing Shri P.A.Aziz, ACGSC. Without going into the merits of the case and the rival contentions, this case could have been

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disposed of earlier in view of the Annexure.R.5 order dated 13.7.2007 passed by the respondents. It is noticed that the applicant has filed the present OA on 25.7.07. He did not mention anything about the said Annexure.R.5 order dated 13.7.07 transferring him to Airport, Trivandrum in terms of his own Annexure.R.4 option. It was the respondents who have brought up the above order to the notice of this Tribunal with their reply statement filed on 22.8.07. Assuming that the Annexure R.5 order dated 13.7.07 was not made available to the applicant before filing of the present O.A, as he was on leave upto end of July, 2007 as stated by him, he should have brought it to the notice of this Tribunal as soon as possible after he received the same or atleast any time before the reply was filed by the respondents on 22.8.07. In that case, this litigation need not have been prolonged any further. Applicant should have realized his responsibility to post with this Tribunal all relevant informations which have a bearing on the case instituted by him so that this Tribunal could take appropriate decisions at the earliest possible time. This is particularly important in transfer cases especially in this case where the applicant had obtained interim stay against his transfer order and continued to remain at his place of last posting. The applicant shall be careful in future. In view of the Annexure.R.5 order dated 13.7.2007, the present O.A has become infructuous and it is dismissed accordingly. The interim relief granted to the applicant on 27.7.2007 and continued from time to time permitting him to function at Thodupuzha is hereby cancelled. There shall be no order as to costs.

Dated this the 25th day of October, 2007



GEORGE PARACKEN
JUDICIAL MEMBER