

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERANKULAM BENCH**

Original Application No. 509 of 2007

Tuesday, this the 6th day of November, 2007

C O R A M :

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

P.R. Vijayan,
Deputy Commissioner of Customs (Under Suspension),
Office of the Commissioner of Customs (Preventive),
Central Revenue Buildings,
I.S. Press Road, Cochin - 18 ... Applicant.

(By Advocate Mr. C S G Nair)


v e r s u s

1. Union of India, represented by
The Secretary, Department of Revenue,
Ministry of Finance, North Block,
New Delhi - 110 001
2. S.P. Roy (Father's name not known to the applicant).
Under Secretary, Department of Revenue,
Ministry of Finance, North Block,
New Delhi : 110 001
3. The Commissioner of Customs (Preventive),
Central Revenue Buildings,
I.S. Press Road, Cochin : 18 ... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The short question involved in this case is whether the Respondents are justified in shifting the Headquarters of the applicant from Ernakulam to Chennai, during the period of suspension with a rider that the applicant shall not leave the Headquarters, save with the prior Permission of the Under Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi.



2. Brief facts : The applicant is functioning as Dy. Commissioner in the Customs Department and his present posting is as Dy. Commissioner (HQrs) Cochin and additional charge of Administration and Establishment matters relating to R & I Division, since 18-10-2006, vide order dated 18-10-2006 of the Commissioner of Customs (Preventive), Cochin (made available at the time of hearing). The applicant, vide Annexure A-1 impugned order dated 3-08-2007 has been placed under suspension and the order of suspension, inter alia, stipulates as under:-

"It is further ordered that during the period that this order shall remain in force the headquarters of Shri P.R. Vijayan, Deputy Commissioner Customs (Preventive) should be Chennai, I.C.E. and the said Shri P.R. Vijayan shall not leave the headquarters without obtaining the previous permission of the undersigned."

3. The above order has been signed 'by order and in the Name of the President' by the Under Secretary to the Government of India.

4. The applicant challenges the above part of the impugned order as according to him change of headquarters, during suspension would amount to punishment and in the instant case, the applicant being under Ayurvedic Treatment at his native place near Trichur for severe backache it is essential for him to undergo massage twice a week under the supervision of the Ayurvedic Physician for a substantial period and as such, it would be impossible for him to move to Chennai. The applicant has, therefore, prayed for quashing of that part of the impugned Annexure A-1 order, whereby his headquarters has been fixed at Chennai.

5. Respondents have contested the O.A. According to them, the

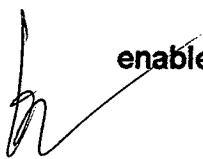
competent authority has shifted the headquarters of the applicant, after considering the report of the Central Bureau of Investigation which inter alia stated that continuance of the applicant presently working in a sensitive post with a jurisdiction of the entire State of Kerala would adversely affect the investigation process already undertaken by the CBI.

6. Applicant's counsel submitted that the investigation has started months in advance by the CBI and as such the investigation would have by and large been already over and as such, shifting of headquarters at this juncture is not appropriate. Further, such a shifting of Headquarters during suspension is not specifically provided for in the Rules. In fact, rules provide that during suspension an employee may seek change of headquarters which the Government would consider provided it is satisfied that such a course will not put the Government to any extra expenditure. Government of India O.M. 39/5/56-Ests.(A) dated 8.9.1956 refers. Except the above provision, there is no provision providing for change in Headquarters. Thus, insisting upon change of headquarters at Chennai is not served any specific purpose save harassing the applicant. The counsel further submitted that the applicant has been under medical treatment with an Ayurvedic Specialist near Thrissur and change in headquarters would unduly affect his treatment. Further, the condition that the applicant shall not leave headquarter except with prior permission of the Under Secretary, Ministry of Finance, Delhi, would unduly affect the applicant as apart from his medical treatment if he has to attend to any emergent requirement at his native place at Kerala, it may not be possible for him to seek previous sanction from New Delhi.

 7. Respondents counsel submitted that change of headquarters is the

discretion of the competent authority. In this instant case, the CBI having recommended, the competent authority chose to move the applicant from Kerala to Chennai so that the investigation may be conducted smoothly.


8. Arguments were heard and documents perused. Normally, the very suspension is resorted to with a view to ensuring that the suspended employee does not interfere with the process of investigation or enquiry. During suspension, the employee is entitled to subsistence allowance which has to be paid subject to the condition that he is not gainfully engaged. The period of suspension is normally limited to the period required for due investigation and filing of charge sheet. In so far as change of Headquarters, there is always an inherent power with the authority to shift the headquarter of any individual during suspension provided the same does not change any conditions of service of the affected employee and such a shift should be in public interest. In the instant case, if the investigation by the CBI has commenced about 10 months ago, as submitted by the counsel for the applicant, then, the investigation must be at the final stage by the CBI. If so, there is no pressing requirement of change of headquarters. Again, it appears that what prompted the authority to shift the Headquarters is the general view that an officer of the grade of Deputy Commissioner of Customs enjoys jurisdiction of the entire State especially when holding sensitive appointment like Deputy Commissioner, Customs (Preventive). The actual reality is that The applicant is not functioning as Deputy Commissioner (Preventive) and as stated earlier, he has been posted as Deputy Commissioner Headquarters, Cochin with additional charge of Administration and establishment matters relating to R&I Division. His present position does not enable him to move here or there. Thus, continuance at Cochin of the



applicant, will not result in his unduly obstructing the investigation process. Further, if the applicant's headquarter has to be shifted to Chennai, since it is not exactly known as to how long his suspension would continue, the shifting of the headquarters of the applicant would amount to a regular transfer in public interest which would mean that the TA & other benefit including transfer grant would have to be paid to the applicant as if he has been sent on a regular transfer basis. It may be seen from the existing order that at the instance of a suspended employee if change in headquarter is considered, his request can be acceded to if there be no extra expenditure. The same logic should hold good in respect of shifting of headquarters by the authority.

9. Suspension is not a punishment though it does prove to be a temporary stigma on the face of suspended employee (Ashoke Kumar Seth vs. State of Bihar, 1988 Vol.7 ATC 461). However, invoking the provisions of suspension should be resorted to only in exceptional circumstances and in so far as change of headquarter is concerned, it should be ensured that the suspended employee is not put to any undue inconveniences. In the instant case, the applicant being under medical treatment, it cannot be easy for him to move from Chennai to Thrissur every time he needs the medical treatment. If the authorities desire that the applicant's presence should not be there in any of the offices of the Customs, shifting of headquarters need not have to be resorted for this purpose. The applicant can well be suitably directed that he shall not, without prior permission of the head of department at Cochin visit any of the offices.

10. In view of the above, the O.A. succeeds. The order dated 3.8.2007 in so far as it stipulates Chennai as headquarter is hereby quashed and set

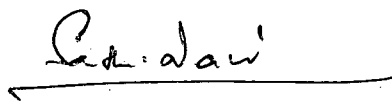


aside. The applicant is at liberty to remain in Kerala during the period of his suspension but he shall not, without permission from the Commissioner Customs, Cochin, enter any of the offices of the Customs Department in Kerala. He shall, however, be permitted at regular intervals for receipt of subsistence allowance during the period of suspension. The Commissioner of Customs (Respondent No. 3) may pass suitable orders in this regard.

11. No costs.

(Dated, the 6th November, 2007)


(Dr. K B S RAJAN)
JUDICIAL MEMBER


(SATHI NAIR)
VICE CHAIRMAN

cvr.