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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA Nos.569/96 & 609/96

Monday, this the 17th day of June, 1996.

C O R A M

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

....

OA No.569/96

KS Ravi, Inspector,
Air Customs, Trivandrum.

....Applicant

By Advocate Shri S Krishnamoorthy.

vs

1. The Chief Commissioner of Central Excise
and Customs, 121, Mahatma Gandhi Road, Madras-34.
2. The Commissioner of Customs
and Central Excise, Kochi.
3. The Deputy Commissioner (Personnel and Vigilance),
Office of the Commissioner of Central Excise
and Customs, Central Revenue Buildings,
IS Press Road, Kochi-11.

....Respondents

By Shri TPM Ibrahim Khan, Sr Central Govt Standing Counsel.

OA No.609/96

1. OA Muraleedharan, Inspector,
Air Customs, Trivandrum.
2. Nazim Subhan, Inspector,
Air Customs, Trivandrum.
3. P Sivadasan Pillai, Inspector,
Air Customs, Trivandrum.
4. PP Ravindran, Inspector,
Air Customs, Trivandrum.
5. John Mathew, Inspector,
Air Customs, Trivandrum.
6. G Sivanandan, Sepoy,
Air Customs, Trivandrum.

....Applicants

By Advocate Shri S Krishnamoorthy.

vs

1. The Chief Commissioner of Central Excise
and Customs, 121, Mahatma Gandhi Road, Madras-34.

contd.

2. The Commissioner of Customs and Central Excise, Kochi.
3. The Deputy Commissioner (Personnel and Vigilance), Office of the Commissioner of Central Excise and Customs, Central Revenue Buildings,, IS Press Road, Kochi-11.

....Respondents

By Shri TPM Ibrahim Khan, Sr Central Govt Standing Counsel.

The application having been heard on 12th June, 1996, the Tribunal delivered the following on 17th June, 1996:

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

These applications challenge the same orders of transfer A-2 dated 22.1.96 and A-10 orders (in OA 569/96) dated 27.4.96 (A-11 in OA 609/96) issued on a representation made in pursuance of directions of this Tribunal in OA 404/96. They are, therefore, disposed of by this common order. In what follows, a reference to A-10 would mean reference to A-10 in OA 569/96 and A-11 in OA 609/96.

2. Though several grounds are urged in the applications to support the challenge to the impugned orders A-2 and A-10, during the hearing, learned counsel for applicants restricted his submissions to the contention built upon the statement in para 5 of the reply statement filed in OA 569/96, namely, that the impugned order A-2 has been issued in accordance with the instructions under Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereafter referred to as the Rules). The instruction reads:

"(2) Limiting number of suspended officials to the minimum:- ...

(a)

(b)

(c) While placing an official under suspension the

competent authority should consider whether the purpose cannot be served by transferring the official from his post to a post where he may not repeat the misconduct or influence the investigations, if any, in progress. If the authority finds that the purpose cannot be served by transferring the official from his post to another post then he should record reasons therefor before placing the official under suspension."

[Page 172, Swamy's Compilation of CCS (CCA) Rules, 16th Edition]

Learned counsel for applicants contended that a plain reading of this instruction would indicate that the action to be taken is to suspend and then, if necessary, also transfer but not transfer in lieu of suspension. This action is to be taken pending enquiry. He argued that since the enquiry is over and charges having been issued, the *raison de etre* for transfer is no more available and the A-2 orders of transfer cannot survive.

3. Learned Senior Standing Counsel for respondents submitted that the impugned order need be considered only in the context of Rule 10 and the instructions and that the larger questions need not be considered. He submitted that the order of transfer is fully justified on the facts of the case; that the impugned order A10 was not vitiated on any grounds of illegality and that since the enquiry under Rule 14 of the Rules is in progress, the transfer orders should continue to be in force. He further stated that in terms of the instructions set out above in para 2, officers are required to consider whether transfer would not be adequate in a particular case before deciding on suspension, and that in this case, the Department had taken a decision to transfer rather than suspend, to ensure that the applicants are kept away during the enquiry from the station where the alleged misconduct took place.

4. We may at the outset express our unhappiness over the

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wording of the instructions referred to above. The phrase "while placing under suspension", would imply that transfer is to be resorted to in addition to suspension. Common sense, however, tells us that what was intended was that suspension being a serious step, involving, among other things, loss of emoluments, before taking such a step, the authorities should consider whether the purpose would not be achieved by a transfer; only if they are fully convinced that a transfer would not be adequate and that suspension was necessary, should suspension be resorted to. Apparently, the person who drafted the instructions has loosely used "while" when he meant "before".

5. Transfer is not contemplated in Rule 10 of the Rules; only suspension is. Rule 10(1)(a) reads:

"(1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension:-

(a) where a disciplinary proceeding against him is contemplated or is pending;.."

Transfer is indicated only in the instructions of the Government of India. Under Rule 10 of the Rules, the Department may resort to suspension as a means of keeping away the official against whom misconduct is alleged pending enquiry but that does not mean that in every case a person has to be kept away pending enquiry he has to be suspended. The Department has other courses open to it outside the Rules. These are administrative actions outside the ambit and reach of the Rules. These administrative acts are no doubt linked to an action taken or proposed to be taken under the

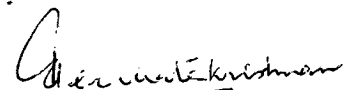
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Rules, but they do not for that reason become actions taken under the Rules. Therefore, order A-2 is not an order issued under the Rules, but an order issued in administrative interest, the objective being to keep the transferred officials away from the place where the alleged misconduct took place. No legally enforceable right can be found in the applicants to challenge the transfer orders issued on administrative grounds.

6. That being so, we do not find any reason to quash the orders A-10 issued in response to the representation made by the applicants.

7. We accordingly decline jurisdiction and dismiss the applications. No costs.

Dated the 17th June, 1996.



PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER



CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN

List of Annexures

DA-569/96

Annexure A 2 True copy of order No.28/96 of the 2nd respondent Vide No.C.No.II/3/1/96 Estt.I(pt) dated 22-1-96 issued to the applicant.

Annexure A10: True copy of the Decision No.C.No.II/39/30/96/Vig.CX dated 27.4.96 of the 2nd respondent issued to the applicant.

DA-609/96

Annexure A11: True copy of the Decision No.C.No.II/39/30/96/Vig.CX dated 27.4.96 of the 2nd respondent issued to the applicants.