

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 202 of 2009

Thursday, this the 23rd day of April, 2009

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

N. Sasidharan,
Deputy Commissioner of Customs,
Air Cargo Complex, Trivandrum,
Residing at GPRA,
Central Government Officer's Colony,
Qtrs. No. 12, Type-V, Melathummala,
Vattiyoorkavu, Thiruvananthapuram. ... Applicant.

(By Advocate Mr. R. Sudheesh Kumar)

v e r s u s

1. Union of India,
Secretary of Revenue,
Department of Revenue, New Delhi,
Represented by its Secretary,
Ministry of Finance.
2. Chief Commissioner of Central Excise,
Customs, Ernakulam.
3. Commissioner of Central Excise, Customs,
I.C.E. Bhavan, Press Club Road,
Thiruvananthapuram.
4. Deputy Commissioner Air Cargo Complex,
Shangumukam, Thiruvananthapuram. ... Respondents.

(By Advocate Mr. M.M. Saidu Mohammed, ACGSC)



The Original Application having been heard on 20.04.09, this Tribunal on 23.04.09, delivered the following :

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

The applicant functioning as Deputy Commissioner of Central Excise and Customs has been transferred from Air Cargo Complex Trivandrum to Central Excise Trivandrum Division vide Annexure A-3 and on the strength of the same stood relieved vide Annexure A-4. On the grounds as enumerated below, the applicant has challenged the aforesaid transfer/relieving orders: -

(A) Annexure A-3 and consequence are bad in law and are liable to be set aside;

(B) The applicant was posted, at the post he was holding, 8 months back. But he is transferred out from there illegally before the tenure period without any valid reason. This is patently illegal, arbitrary, unjust and liable to be set aside.


(C) The applicant cannot be posted out of Air Cargo Complex, Trivandrum, before completing the tenure period unless if there is any emergency administrative exigency. But no such reason is given in Annexure A3. This is clear injustice done to the applicant with malafide intention and does not stand the test of law.



(D) All transfers made, in violation of the Code of Conduct announced by the Election Commission, on the coming to effect of the Code is illegal, unjust, arbitrary and per se illegal.

2. Respondents have contested the O.A. According to them, the Transfer was ordered by the Chief Commissioner, based on administrative requirement and public interest and there is no Malafide involved. Nor is there any violation of rule or law or procedure or practice in the transfer, as alleged by the applicant. It has also been stated that the applicant has applied for voluntary retirement but the same could not be considered, as there are certain dues payable by the applicant. The respondents have further stated that in fact in his being posted to Central Excise Division, the applicant stands gained inasmuch as the distance involved in travel is halved.

3. The applicant has filed his rejoinder, in which he has annexed a copy of the transfer placement policy (Annexure A-5) and he has also annexed a copy of the representation dated 7th April 2009 submitted by him before the National Commission for Scheduled Caste, vide Annexure A-6. As regards the alleged dues to be paid, the applicant has stated that though he is prepared to pay the dues, he has not been furnished with the necessary bills for the same. In addition, the applicant has filed a copy of

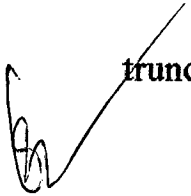


the circular dated 30th September 2008 as per which request for voluntary retirement shall be processed within 15 days.

4. Counsel for the applicant vociferously argued that the entire action on the part of the respondents is accentuated by Malafide as the applicant is not yielding to their evil desires and once he is out of the scene in the Air Cargo Complex, the respondents could indulge in such irregular activities, which could not be accomplished as long as the applicant was functioning as Dy. Commissioner, Air Cargo. According to the counsel, just within a few days of handing over the charge, confusion has already been created therein. Counsel for the applicant further made a statement at the bar that the applicant would make the payment due on provisional basis and his application for voluntary retirement should be considered by the authorities and in the meantime, he should be brought back to the original place of posting.

5. Counsel for the respondents on the other hand submitted that in so far as transfer is concerned, it is independent of the application for voluntary retirement and there is no legal flaw in the transfer order.

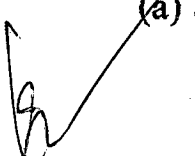
6. Arguments were heard and documents perused. This is an intra station transfer. By virtue of the transfer there is no depletion or truncation in the rights and privileges of the applicant. His scale of pay



remains the same, so is his basic pay and rank etc., As such, the applicant cannot justifiably challenge the order of transfer on any such ground. Only one thing has to be considered. In case of his application for voluntary retirement being considered favourably, his pension papers are to be processed on priority basis. If the present move of the applicant from Air Cargo to Central Excise Division involves change in the accounts officers or the like which may result in delay in finalization of his pension papers, then transfer may have to be avoided as the applicant would be serving only for a short duration till his date of voluntary retirement. If in the transfer, no such delay is anticipated, the question of his being transferred back to air cargo does not arise.

7. In view of the above, the OA is disposed of with the following directions:

- (a) The applicant may be permitted to pay the amount demanded by the respondents towards rent/electricity charges, on provisional basis.
- (b) Respondents shall make available the bills or other documents in support of their demand from the applicant.
- (c) The application for voluntary retirement be considered as per Annexure A-7 and subject to payment of the amount as stated in (a) above. If the application for voluntary retirement is rejected,

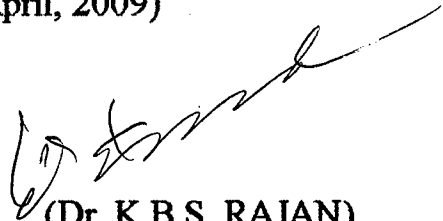


the applicant be informed of the same in which event, the transfer order and relieving order shall stand.

- (d) In the event of the respondents' accepting the request for voluntary retirement, it may be ascertained as to whether the shift of the applicant from Air Cargo to Central Excise Division is likely to delay processing of the pension papers of the applicant.
- (e) If the answer to (d) above is in affirmative, the applicant be transferred back to Air Cargo Division.
- (f) If answer to (d) above is in negative, the same be informed to the applicant.

8. Under the above circumstances, there shall be no orders as to costs.

(Dated, the 23rd April, 2009)



(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvt.