

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original application No. 381 of 2007

Tuesday, this the 19th day of June, 2007

C O R A M :

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

P. Manohar,
Superintendent of Central Excise,
Office of the Commissioner of Customs (Preventive),
I.S. Press Road, Cochin - 682 018. ... Applicant.

(By Advocate Mr. CSG Nair)

v e r s u s


1. The Commissioner of Customs (Preventive),
Central Revenue Buildings,
I.S. Press Road, Cochin - 18.
2. The Chief Commissioner of Central Excise,
Central Revenue Buildings,
I.S. Press Road, Cochin - 18.
3. Union of India,
Represented by the Secretary,
Department of Revenue,
Ministry of Finance, North Block,
New Delhi - 110 001.
4. The Chief Commissioner of Customs,
Central Revenue Buildings,
Queens's Road, Bangalore - 2. ... Respondents.

(By Advocate Mr. P.M. Sajl, ACGSC)

O R D E R

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

The applicant who stands transferred from Cochin to Manjeswar vide
Annexure A-16 order dated 12-05-2007 has challenged the said transfer order.

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2. Briefly stated, the applicant is functioning as Superintendent in the
Customs Preventive, Ernakulam. He had in the past few months been

transferred to various places as under:-

- (a) 03-07-2006: Air Customs Trivandrum to Commissionerate of Customs (Preventive), Cochin vide Order No. 99/06. Applicant joined the post.
- (b) 30-08-2006: Commissionerate Customs (Pre.) to CPU, Thodupuzha vide order No. 29/2006. Applicant joined the post.
- (c) 01-12-2006: CPU Thodupuzha to Commissionerate (Preventive) Cochin vide order No. 44/2006. Applicant joined the Cochin Office. This order contained that the earlier transfer order No. 29/06 is cancelled. However, the applicant as stated above already moved to that place.
- (d) 27-12-2006: Transferred from Cochin to Alleppey vide order No. 47/06 dated 27-12-2006. However, this did not materialize as the applicant was on leave at that time.
- (e) 25-05-2007: The present transfer order (Impugned) from Cochin to Manjeswar Issued.

3. The general rules of transfer provide for a station seniority of 6 years while in the event of holding sensitive posts, rotation should take place. In so far as Cochin Office where the applicant is serving, the same is not a sensitive post. Even assuming that the present posting at Cochin is one of sensitive posts, the applicant has not completed two years' service in the said post. In any event, he has not completed 6 years of service at Cochin.

4. The applicant submitted that on 11-05-2007, the then Commissioner had entrusted some translation work, of which majority of the work was completed by the applicant and one part of the work remained incomplete. The applicant had to suddenly visit his wife as she met with an accident. Hence, duly informing the Deputy Commissioner, the applicant left the office at about 3.30 p.m. when the Commissioner visited the office of the applicant and the next day, a memo dated 12-05-2007 (Annexure A-14) was issued and simultaneously, Impugned order dated 12-05-2007 had also been issued. The



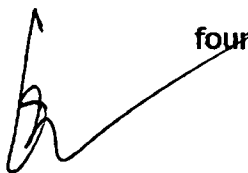
applicant had submitted his explanation to the Memo, vide Annexure A-15 and also preferred a representation dated 16-05-2007 against his transfer vide Annexure A-8 . In the said representation he had pointed about his four past transfer in quick succession within nine months and also his domestic circumstance of his spouse working at Colmbatore and his children studying there and thus, requested that his transfer be reconsidered and he be allowed to continue at Cochin itself or be posted to Palakkad.

5. By order dated 21st May 2007, a correction to the transfer order had been issued to state that the transfer of the applicant was on "administrative grounds". The applicant was also relieved vide order dated 31-05-2007 (Annexure A-19).

6. As there has been no response to the representation, the applicant has filed this OA on various grounds, including grounds of malafide against the then Commissioner. The said Commissioner has not, however, been impleaded in his personal capacity.

7. When the case came up for admission, time was granted to seek instructions and the respondents were directed to produce the relevant file to see as to how many times the applicant was transferred earlier in the recent past.

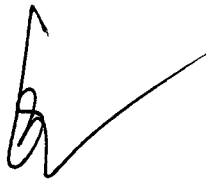
8. The respondents have filed counsel statement wherein in sequence the reasons effecting various transfers in the past of the applicant have been given. In so far as the latest transfer is concerned, it has been found from the file that alongwith various other individuals whose



transfer was discussed, the name of the applicant also figured in the list of those whose transfers considered on having completed 2 years of field service in the sensitive posts. There were in all 10 individuals under that category including the applicant. The names of 4 individuals figured in, under the category of those who are facing charge of dereliction of duty and also on completion of two years field posting. These 4 individuals have been transferred on administrative ground vide para 3 of the impugned order.

9. Learned counsel for the applicant submitted that his representation has not so far been disposed of and his transfer cannot be held to be covered under administrative ground since his explanation to the memo issued has not been disposed of and as such it cannot be considered that by the mere issue of memorandum dated 12.05.07 (A/14), which does not contain any of the rules of the CCS (CCA) Rules under which this memo was issued, that disciplinary proceedings are pending against the applicant.

10. Learned counsel for the respondents submitted that the applicant's transfer is within the ostensible powers of the Authority. The reason of the transfer was on administrative ground. The applicant has All India transfer liability and as such he cannot claim to be posted in a particular place. Learned counsel for the respondents has referred following decisions of the Apex Court and argued that in view of the said decisions, the scope of judicial review against the transfer order being very limited, the Original Application is liable to be dismissed:



- (i) 1993 (1) SCC 148
- (ii) 1993 (4) SCC 357
- (iii) 1995 (2) SCC 532
- (iv) 2004 (4) SCC 245
- (v) AIR 2004 SC 2665
- (vi) 2004 SCC (L&S) 1009
- (vii) 2006 (6) SCC 430
- (viii) 2006 (9) SCC 583

11. Arguments were heard and documents perused. On perusal of the records, it is clear that initially on 12.05.07, the name of the applicant was enlisted under the category of those who have done two years field service, and thus, his name was not included under the category of 'administrative ground' where disciplinary proceedings were pending. It was as late as on 21.05.07 that his case was brought under the 'administrative ground'. It is also observed that whereas various representations against the transfer in respect of other individuals have been considered, the representation dated 16-05-2007 of the applicant has not been discussed in this file. Of course, the explanation of the applicant to the memo dated 12-05-2007 is also not available in this record, presumably all these may be available in some other file. It is also observed that the applicant has come to the Commissionerate at Cochin barely a year ago on promotion as Superintendent and within a period of ten months or so, he has been subjected to a number of transfers. The applicant had not earlier objected to such transfer presumably as he could on the one hand perform his duty and on the other was in a position to attend his domestic affairs as well. Transfer from Cochin to Thodupuzha was within the span of three months. Of course, his transfer to Alleppey was only on paper as the applicant was at that time on leave. Thus the applicant cannot be stated to have done 2 years continuous field service in sensitive posts (assuming that the applicant was posted against the

sensitive post) and as such he cannot be brought under the category of two years service in a sensitive post.

12. The next question is whether transfer of the applicant could be considered as one coming under 'administrative ground'. The memo dated 12.05.07 does not show that the authorities have decided to proceed against the applicant under CCS (CCA) Rules. The memo at best could have served as a preliminary investigation. Explanations have been offered and the representation has not been disposed of. There has now been a change in the incumbent of the post of Commissioner in between. May be, the present incumbent may take a lenient view in which event the memo issued may be treated as closed. In that event, there is no question of 'administrative ground'. Even if the authorities decide to proceed against, at the material point of time, i.e. at the time of issue of the transfer order, it cannot be held that the applicant was facing disciplinary proceedings as others. Thus, the applicant's transfer as on 12.05.07 - why even today cannot be brought under the category of having done two years field service or under administrative ground.

13. It is true that the applicant cannot claim any right to stay in the same place, transfer being an incidence of service. The judgements of the Apex Court relied upon by learned counsel for the respondents are emphatic in this regard. The Tribunal bows before such judgements. At the same time, the Apex Court in the case of **B. Varadha Rao vs. State of Karnataka**, (1986) 4 SCC 131, has held as under :

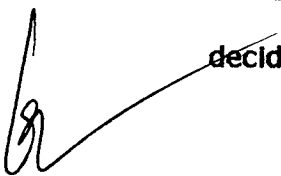
"6. One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a government servant and drive him to desperation. It disrupts



the education of his children and leads to numerous other complications and problems and results in hardship and demoralisation. It therefore follows that the policy of transfer should be reasonable and fair and should apply to everybody equally. But, at the same time, it cannot be forgotten that so far as superior or more responsible posts are concerned, continued posting at one station or in one department of the government is not conducive to good administration. It creates vested interest and therefore we find that even from the British times the general policy has been to restrict the period of posting for a definite period."

14. The case of the applicant thus on facts and circumstances as contained hereinabove (especially multiple transfers in a short span and the current transfer not coming under any of the valid requirements of transfer) and on the decision of the Apex Court in Varadha Rao's case, clearly speaks that the applicant's unreasonable transfer cannot be held to be either on the interest of the Administration or is justified. If at all, the decision of the Authority, which may consider the explanation of the applicant against the memo dated 12.05.07, goes against the applicant and the Authority decides to proceed against him, it could be said that the applicant can be transferred on that ground. But since the normal transfers are affected before the commencement of the academic session even if the authority decides as stated above, there is no justification to transfer the applicant at this point of time.

15. The Original Application is, therefore, **allowed**. Impugned order dated 12.05.07 (A/16) is hereby quashed and set aside in so far as the applicant's transfer is concerned. It is, however, left to the respondents to consider the case of the applicant for posting to Palakkad as requested by the applicant. If this is acceded to, that will be treated as a request transfer. Till the request of the applicant for posting is decided, the applicant shall not be disturbed from present station of



posting. No costs.

(Dated, the 19th June, 2007)



Dr. K B S RAJAN
JUDICIAL MEMBER

Cvr.