

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD.

OA. No. 622/96 619/96

Date of order: 31-5-1996

Between:-

R.K. Prasad Applicant.
K.P. Paul Singh

And

1. The Chief Commissioner, Customs & Central Excise, Hyderabad Zone, Lal Bahadur Stadium Road, Basheerbagh, Hyderabad.
2. The Commissioner-I, Customs & Central Excise, Lal Bahadur Stadium Road, Basheerbagh, Hyderabad.

.... Respondents.

Counsel for the Applicants: Shri P. Naveen Rao

Counsel for the Respondents: Shri N.R. Devaraj, Sr. CGSC.

CORAM:

THE HON'BLE JUSTICE SHRI M.G. CHAUDHARI: VICE CHAIRMAN

THE HON'BLE SHRI H. RAJENDRA PRASAD: MEMBER (a)



3. In pursuance of the aforesaid order, the applicant has been relieved by the Hyderabad Office on 22-5-96 vide relief report at Annexure A-I. The applicant is aggrieved with the action of the respondents requiring him to go back to Sirpurkagaznagar Range Office on the ground that the action of the respondents is illegal and causes prejudice to him. He has therefore sought for quashing the orders dt.17-5-96 and 20-5-96. He also prays for consequential benefits including a direction to the respondents to re-admitt him to duty at the place of new posting i.e. Hyderabad Dealers Range Division X.

4. On the face of it, the order of stay dt.17-5-96 was prospective in operation. That means that those persons who ~~were~~ were already transferred between 25-4-96 and 17-5-96 under the original order of transfer could not be affected by the order of stay. Since the applicant was relieved from Sirpurkagaznagar on 15-5-96, the stay could not apply to him. Moreover his transfer had been on compassionate ground. The order passed by the Commissioner dt. 20-5-96 cannot be legally sustained for the reason that it is not an order staying the original order dt.25-4-96 nor it is an order cancelling the original order. It merely purports to make a clarification that the order dt.17-5-96 should be read as restoring the status quo ante. Such effect cannot be brought about by means of such a clarification nor the order dt.17-5-96 can be converted thereby into an order with retrospective effect. It further follows that the action taken by the respondents for relieving the applicant

W.D.

(Orders per Hon'ble Justice Shri M.G.Chaudhari,
Vice-Chairman).

29

-- -- --

Heard Sri Y.Suryanarayana with sri P.Naveen Rao, learned counsel for the applicants and Sri NR Devaraj, learned standing counsel for Respondents 1 to 5. By consent O.A. is admitted. ~~NOTICE WAIVED.~~ working as Inspector of Central Excise was transferred from Sirpurkagaznagar, Warangal Division to Hyderabad Dealers Range, Hyderabad-X Division vide Establishment Order No.42/96 dt.25-4-96 issued by the Office of Commissioner of Customs & Central Excise. The transfer was on compassionate ground, Pursuant to that order he was relieved from the Sirpurkagaznagar Office on 15-5-96 and joined duty at Hyderabad on 20-5-96 in the post to which he was transferred. Thus the order dt.25-4-96 became effective on 20-5-96.

2. The Chief Commissionerate of Customs & Central Excise Hyderabad, issued an order on 17-5-96 staying the aforesaid order dt.25-4-96 with immediate effect. By Establishment Order (NGO) No.46/96 dt.20-5-96 issued by the Commissioner-I of the Customs & Central Excise Department it was purported to be that clarified/the stay order issued by the Chief Commissioner dt.17-5-96 restores the status quo ante and that in otherwords the stay order was effective from 25-4-96.

W.M.

....3.

from the Hyderabad posting impliedly requiring him to go back to Sirpurkagaznagar by reason of clarification that the status quo ante was to be restored would not also be sustainable.

5. Sri NR Devaraj, learned counsel for the respondents did not find it easy to support the order dt.20-5-96. On instructions of Sri Naresh Penumaka, Assistant Commissioner, he submitted that the Respondents have already issued fresh orders retaining the applicants in OA 614/96 and OA 597/96 regularly at the places of their new posting pursuant to the interim order passed by the Tribunal on 23-5-96. In view of the same, the learned counsel conveys to us that the instant case may also be finally disposed-of.

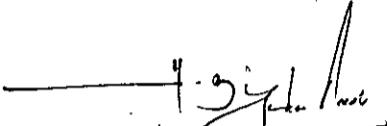
6. In the light of the foregoing discussion, following orders is passed :-

- (a) It is hereby declared that the order dt.17-5-96 was prospective in operation and did not apply to the applicant whose transfer under the original order dt.25-4-96 had become effective on 15-5-96.
- (b) The Establishment Order No.46/96 dt.20-5-96 issued by the Commissioner-I containing the clarification in respect of the order dt.17-5-96 is hereby quashed ~~as~~ qua the applicant.
- (c) As a consequential measure the order relieving the applicant dt.22-5-96 is hereby quashed and the respondents are directed to allow the applicant to resume duty at the same post at Hyderabad, where he was transferred by the order dt.25-4-96.



7. It is clarified that this order is confined only in respect of the orders referred to above.

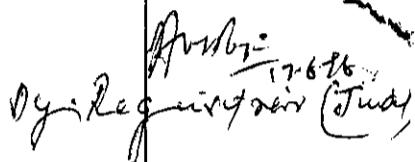
8. Original Application is disposed of in terms of the above orders. No order as to costs.


(H. RAJENDRA PRASAD)

Member (A)


(M.G. CHAUDHARI)
Vice-Chairman

Dated: 31st May, 1996.
Dictated in Open Court.


Dy. Registrar (Jud)

av1/

23
OA. No. 619/96.

Copy to:-

1. The Chief Commissioner, Customs & Central Excise, Hyderabad Zone, Lal Bahadur Stadium Road, Basheerbagh, Hyderabad.
2. The Commissioner-I, Customs & Central Excise, Lal Bahadur Stadium Road, Basheerbagh, Hyderabad.
3. One copy to Shri P. Naveen Rao, Advocate, CAT, Hyderabad Bench, Hyderabad.
4. One copy to Shri N.R. Devaraj, Sr. CGSC, CAT, Hyd.
5. One copy to Library, CAT, Hyd.
6. One spare copy.

W.M.

26/6/96

I COURT

TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE M.G.CHAUDHARI
VICE-CHAIRMAN

AND

THE HON'BLE MR.H.RAJENDRA PRASAD :M(A)

Dated: 3/ - 1996

ORDER/JUDGMENT

M.A/R.A./C.A.No.

O.A.No.

619/196

T.R.A.No.

(w.p. _____)

Admitted and Interim Directions
issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for Default

Ordered/Rejected.

No order as to costs.

pvm

