

(27)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

Original Application No.623 /96.

Dt. of Order:31-5-96.

Between :-

R.V.Prasad

And

... Applicant

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

... Respondents

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Counsel for the Applicants : Shri P.Naveen Rao

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

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CORAM:

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

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

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

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Heard Sri Y. Suryanarayana with Sri P. Naveen Rao,
learned counsel for the applicant and Sri N.R. Devaraj,
learned standing counsel for Respondents 1 to 5. By consent
OA is admitted. Notice waived. Finally heard. The applicant
who is working as Inspector of Central Excise was transferred
from Cement Nagar, Kurnool Division to Kurnool-I, Kurnool Di-
vision vide Establishment Order No. 42/96 dt. 25-4-96 issued
by the Office of Commissioner of Customs & Central Excise.
Pursuant to that order he was relieved from the existing post
on 14-5-96 ~~on 6-5-96~~ and joined duty at the new posting on
15-5-96. Thus the order dt. 25-4-96 became fully effective on
15-5-96. The transfer was effected at applicants' request on
medical ground.

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 clarified that the stay order issued by the Chief
Commissioner dt. 17-5-96 restores the status quo ante and that
in other words the stay order was effective from 25-4-96.

3. In pursuance of the aforesaid order, the applicant
has been relieved from the new posting on 27-5-96 vide relief
report at Annexure A-V. The applicant is aggrieved with the

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action of the respondents requiring him to go back to Cementnagar on the ground that the action of the respondents is illegal and causes ~~xxx~~ prejudice to him. He has therefore sought quashing of the orders dt.17-5-96 and 20-5-96. He also prays for consequential benefits including a direction to the respondents to readmit him to duty at the pre-transfer post. 1

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 already transferred between 25-4-96 and 17-5-96 under the Original order of transfer and had joined duty at the new posting could not be affected by the order of stay. Since both the applicants had joined at new posting on 7-5-96, the stay ^{did} ~~may~~ not apply to them. 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 ~~canceling~~ cancelling the original order. It merely purports that to make clarification that the order dt.17-5-96 should be read as restoring the status quo ante. Such effect cannot be brought ^{about} ~~out~~ by means of such a clarification nor the order dt.17-5-96 can be converted ^{hereby} into an order with retrospective effect. It further follows that the action taken by the respondents ^{relieving} ~~on relieving~~ the applicants who are impliedly required to go back to Cementnagar, Kurnool Office by reason of clarification that ^{the} ~~his~~ status quo ante was to be restored ^{is} ~~may~~ not also be sustainable.

5. Sri N.R.Devaraj, learned counsel for the respondents did not find it easy to support the order dt.20-5-96. On

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instructions of Sri Naresh Penumaka, Assistant Commissioner , submitted that the respondents have already issued fresh orders retaining the applicants in OA 614/96 and OA 597/96 regularly at the place of 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.

5. Before parting with the case we would like to record that even though in the order dt.17-5-96, it has been stated that the stay was being issued "in view of the fact that the matter is taken up with the Central Board of Customs & Excise, New Delhi" and even after having informed the learned (Single) Member at the hearing of the earlier OAs (mentioned above) that since the transfer was related to nearly 151 persons and many of them had approached the Tribunal and more are likely to approach the Tribunal, the respondents will try to resolve the entire controversy departmentally so that the ~~xxx~~ unrest among those employees could be removed and further that an affidavit in reply would be filed, the respondents have not enlightened us about any of these steps taken till today. Such matters are essentially required to be dealt with departmentally and the Government Department is not expected to take shelter behind orders of the Tribunal and avoid facing the task of removing the grievances of the aggrieved persons. Had the concerned authorities shown prompt attitude, they should have been ~~xxx~~ able to resolve the controversy and should not have re-



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quired us to pass orders, which we are constrained to pass in a batch of cases because of the unsustainable orders which have been passed from time to time adding havoc to confusion. We hope that better awareness in such matters will be visible in future in the interest of the service itself and even now the respondents may take suitable steps taking an over all view of the matter so as to avoid further litigation on the part of some more persons concerned with the transfer order.

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

(a) It is hereby declared that the order dt.17-5-96 was prospective in operation and did not apply to the applicants whose transfer under the original order dt.25-4-96 had fully become effective and active 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 ~~in~~ qua the applicant.

(c) As a consequential measure the order relieving the applicant dt.27-5-96 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 order dt.25-4-96.

7. It is clarified that this order is confined only ^{to} ~~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

Dy. Registrar (Judl)

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

avl/

O.A.No.623/96.

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, Hyd.
4. One copy to Shri N.R.Devaraj, Sr. CGSC, CAT, Hyd..
5. One copy to Library, CAT, Hyd.
6. One spare copy.

23/6/96

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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: 31/5 -1996

ORDER/JUDGMENT

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

O.A.No.

R.A.No.

in

(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

P/w copy of order

केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal बेचन/DEPT. 100 20 JUN 1996 NSX हैदराबाद बेंच HYDERABAD BENCH
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