

(29)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

Original Application No.668 /96.

(SR 1653/96)

Dt. of Order:31-5-96.

Between :-

1. R.Nageswara Reddy
2. D.Srinivas Reddy

... Applicants

And

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

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

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... 2.

(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 applicants and Sri NR Devaraj,
learned standing counsel for respondents 1 to 5. By con-
sent O.A. is admitted. Notice waived. Finally heard. The
two applicants who are working as Inspectors of Central
Excise were transferred from Divisional Office, Kurnool to
posts at Hyderabad vide Establishment Order No.42/96
dt.25-4-96 issued by the Office of Commissioner of Customs
& Central Excise. Pursuant to the order they were relieved
from the Divisional Office at Kurnool on 6-5-96 and joined
duty at Hyderabad on 7-5-96, in the respective posts to which
they were transferred. Thus the order dt.25-4-96 became fully
effective from 7-5-96. Applicant No.1 R.Nageswar Reddy has
been posted at Charminar SRPI, Hyderabad II Office and
applicant No.2 D.Srinivas Reddy has been posted at
Anti-Evasion Hqrs. at Hyderabad.

2. The Chief Commissionerate of Customs & Central Excise,
Hyderabad, issued an order on 17-5-96 staying the afore-
said order dt.25-4-96 with immediate effect. By Establish-
ment 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 No.1 has been relieved by the Hyderabad Office on 22-5-96 (vide relief report). Likewise applicant No.2 has been relieved from the Hyderabad Office on 21-5-96. The applicants are aggrieved with the action of the respondents requiring them to go back to Kurnool Division Office on the ground that the action of the respondents is illegal and causes prejudice to them. They have therefore sought quashing of the orders dt.17-5-96 and 20-5-96. They also pray for consequential benefits including a direction to the respondents to re-admit them to duty at the place of posting, obviously at Hyderabad.

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 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 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 for the order dt.17-5-96 can be converted thereby into an order operating with retrospective effect. It further follows that the action taken by the respondents of relieving the applicants who are thereby required to go back to Kurnool Office by reason of clarification that the

(32)

status-*quo ante* was to be restored can not also be sustained.

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 new posting pursuant to the interim order passed by the Tribunal on 23-5-96 in these OAs. 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 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 on 7-5-96;
- (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 applicants;
- (c) As a consequential measure the orders relieving the applicants dt.22-5-96 and 21-5-96 respectively are hereby quashed and the respondents are directed to allow the applicants to resume duty at the respective posts at Hyderabad, where they were transferred ~~as~~ by order dt.25-4-96.

[Signature]

33

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.

15/5/96
(H. RAJENDRA PRASAD)

Member (A)

M.G. CHAUDHARI
(M.G. CHAUDHARI)
Vice-Chairman

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

Prabhakar
17/5/96
Dy. Legal Adviser (D)

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34

OA. No. 668/96

1. The Chief Commissioner, Customs & Central Excise, Hyderabad Zone, Lal Bahadur Stadium Road, Basheerbagh, Hyderabad.
2. The Commissioner-I, Customs & Central Excise, Hyderabad Zone, 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, Hyderabad
5. One copy to Library, CAT, Hyd.
6. One spare copy.

kku.

25/6/1996
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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: 81-5-1996

ORDER/JUDGMENT

M.A/R.A./G.A.NO.:

O.A.No.

668/96

T.A.No.

(V.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.

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NO Space copy

Central Administrative Tribunal

DESPATCH

18 JUN 1996 N.Y.

HYDERABAD BENCH