

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT HYDERABAD.

O.A.No.593/99.

DATE OF ORDER:- 26-7-1999.

BETWEEN :

1. K. Manik Rao,
S/o K. Prabhakara Rao,
aged 38 years,
Air Customs Officer,
H.No.1-2-288/36, Gaganmahal,
Domalguda, Hyderabad-29.
2. A.S.N. Murthy,
S/o A. Kameswara Rao,
aged 35 years,
Air Customs Officer,
H.No.6-6-73/7, Devi Complex,
Kawadiguda, Hyderabad-80.
3. N. Sreedhar,
S/o Late N.R. Rao,
aged 32 years,
Air Customs Officer,
H.No.8/63, Dilsukhnagar,
Hyderabad-29.
4. K.V.S. Murthy,
S/o Late K.Venkata Rao,
aged 46 years,
Air Customs Officer,
Lotus Enclave, Near RBI Quarters,
Yellareddyguda, Hyderabad.
5. O. Raghuramayya,
S/o Late O. Krishna Rao,
aged 49 years,
Air Customs Officer,
Prakashnagar, Hyderabad.
6. D. Madangopal,
S/o D. Rangaiah,
aged 49 years,
Prakashnagar, Hyderabad.
7. G.J.Kiranbabu,
S/o G.J. Prabhakar,
aged 34 years,
Air Customs Officer,
H.No.12-5-149/12-2A,
South Lallaguda,
Secunderabad-17.
9. B. Srikrishna,
S/o Narasimharao,
aged 34 years,
Air Customs Officer,
Prakashnagar, Hyderabad.

9. C. Vijaya Bhaskar,
S/o C. Lakshmanna,
aged 34 years,
Air Customs Officer,
Yousufguda, Hyderabad.
10. S. Tarasingh,
S/o G. Singh,
Air Customs Officer,
H.No.21/2, KPHB Colony,
Hyderabad.
11. P. Venkateswara Rao,
S/o Yedukondalu,
Air Customs Officer,
B.K. Guda, Hyderabad.
12. N.R. Aparna,
W/o C. Ramesh Kumar,
aged 34 years,
Air Customs Officer,
H.No.1-1-687/A/1, Gandhinagar,
Hyderabad.
13. P. Ravindranath,
S/o P.J. Anand, aged 34 years,
Air Customs Officer,
H.No.24-4-32/1, Shipuri,
Malkajgiri, Hyderabad.
14. K. Madhusudhana Rao,
S/o K. Prabhudas,
aged 35 years,
Air Customs Officer,
Prakashnagar, Hyderabad.
15. A. Aruna Faristha,
W/o K. Upendrarao, aged 33 years,
Air Customs Officer,
H. No.16-10-228/2, Mallakpet,
Hyderabad.
16. B. Papa Rao,
S/o Papaiah,
aged 36 years,
Air Customs Officer,
Vyasaganagar, Seethafalmandi,
Secunderabad.
17. P. Digvijayam,
S/o P. Chanchaiah,
aged 31 years,
Air Customs Officer,
Plot No. 4 & 5, Vanitha Coop.
Society Colony,
New Bowenpally,
Hyderabad.
18. D.B.B.Sarma,
S/o late D.S.R.Sastry,
aged 35 years,
Air Customs Officer,
New Nallakunta, Hyderabad.

19. N. Chakradhar,
S/o Venkatarao, aged 36 years,
Air Customs Officer,
P.V.N.Colony, Mirjalaguda,
Malkajgiri, H.No.10-467/1,
Hyderabad.

.. APPLICANTS

A N D

1. Government of India,
Represented by Secretary,
Ministry of Finance,
(Department of Revenue),
New Delhi.
2. Chief Commissioner,
Customs and Central Excise,
Hyderabad Zone,
Lalbahadur Stadium Road,
Basheerbagh, Hyderabad-4.
3. Commissioner of Customs &
Central Excise, Hyderabad-I,
Lalbahadur Stadium Road,
Basheerbagh, Hyderabad-4.

.. RESPONDENTS

Counsel for Applicants : Mr. G. Ramachandra Rao

Counsel for Respondents : Mr. B.N.Sharma, SrCGSC

CORAM :

THE HONOURABLE MR. JUSTICE D.H. NASIR, VICE-CHAIRMAN

THE HONOURABLE MR.H.RAJENDRA PRASAD, MEMBER(ADMN.)

O R D E R.

Justice D.H. Nasir, VC :

1. The applicants, 19 in number, are questioning in this O.A. the legality and validity of the action of the respondents 2 and 3 proposing to prepare a panel of Customs Superintendents and Air Customs Officers at Hyderabad International Airport in spite of the applicants having expressed their willingness to continue as Air Customs Officers for a period of two years.

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2. The short question before us is whether it is incumbent upon the respondents to allow the applicants to continue for a period of two years to work as Air Customs Officers in spite of the fact that initially their posting as Air Customs Officers was made only for a period of one year.

3. The respondents issued a circular dated 11.9.1997 for preparing a panel of Superintendents and Inspectors of Customs and Central Excise of Hyderabad/I, Hyderabad/II and Hyderabad/III, Guntur and Sisakhapatnam Commissionerates and common cadre to fill up the posts of Air Customs Superintendents and Air Customs Officers at Hyderabad Airport/Unaccompanied Baggage Unit, Hyderabad. The tenure of office of the Air Customs Superintendents and Air Customs Officers drawn up from the controlling Commissionerates was two years according to the modified policy and guidelines issued by the first respondent. Further according to the applicants, as per the notification dated 11.9.1997 the applicants were selected and it was clearly stated that the normal period of posting at Airport/Unaccompanied Baggage Unit was for a period of two years. Though in the order of posting it was stated that they were posted for a period of one year only, but the applicants were expecting that they would be continued beyond one year and that the same would automatically stand extended on expiry of period of one year. But no orders were issued modifying the tenure of the applicants as Air Customs Officers for a period of two years. This O.A. has been filed seeking redressal of their grievance that their tenure as Air Customs Officers was not extended beyond the period of one year. The alleged inaction on part of the respondents, according to the applicants, was unjust,

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arbitrary and contrary to the Air Pool Policy circulated by the first respondent under the proceedings dated 21.10.1993, 17.7.1993 and 20.8.1998.

4. The Commissioner of Customs and Central Excise, Hyderabad by his order dated 12.6.1998 posted several officers including the applicants as Air Customs Officers at Hyderabad Airport with immediate effect. It was also made abundantly clear in the same order that until further orders, the posting was for a period of one year. In Clause (ii) of the said order it was also clarified that the period of posting at the Airport normally was for one year and an officer posted at the Airport could be reverted before completion of one year without assigning any reason and that in any case, on completion of one year tenure the officers will have to go back to the Commissionerate from which they came.

5. With these short facts before us, as stated above, there is no ambiguity that the applicants' tenure was one year only and therefore, they are not entitled to claim as a matter of right their extension for a period of two years.

6. The Air Pool Policy was enunciated by the Circular dated 17th July, 1995 by which fresh guidelines were issued. In paragraph-I(iii) it was provided that Air Customs Superintendents/ Air Customs Officers drawn from the controlling Commissionerates would have a tenure of two years as against the existing provision of one year. However, it was only on 20.8.1998 that the aforesaid Air Pool Policy was extended to the International Airport at Hyderabad which is evident from the circular bearing No. F No.A-11019/25/98-Ad.IV dated 20.8.1998 appearing at

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Annexure-V at page 25 of the OA. From the circular dated 4.2.1999 issued by the Office of the Commissioner of Customs and Central Excise, Hyderabad/I, a proposal was communicated regarding the terms and conditions of the posting of Air Customs Superintendents and Air Customs Officers, the first condition of which was as under :

- (i) Normally the period of posting at Airport is two years. However, an officer at the Airport can be reverted at any time before completion of two years on administrative exigencies.

It was also mentioned in para-4 of the said circular that willingness of eligible Superintendents and Inspectors may be obtained and sent to the office of the Commissioner, Customs and Central Excise, Hyderabad in the proforma enclosed with the circular latest by 5.3.1999 and in response to the said circular, some of the applicants had given their willingness. However, the benefit of extension by two years was not given to the applicants and therefore, a representation dated 18.2.1999 was made by the applicants to the second respondent. It is inter alia stated in this representation that vide Ministry's letter F.No.A-11019/25/98-Ad.IV dated 20.8.1998 the Air Pool Policy had been extended to the remaining five International Airports at Bangalore, Hyderabad, Ahmedabad, Goa and Cochin and that when the intention of the Government was to have a uniform policy for all International Airports, fixing one year tenure for the applicants by the Commissioner-I of the Customs and Central Excise, Hyderabad was unjustified. By a further letter dated 30th March, 1999 issued by Shri M.V.S.Prasad, Commissioner, addressed to Sri Ipe Mathews, Commissioner of Customs and Central Excise, Hyderabad/II, a

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decision was communicated that the present rate of officers currently working in the Airport may also be permitted to apply for posting to Hyderabad Air Pool Scheme coming into effect from 1.4.1999 in relaxation of the cooling-off period as a special case and that if their applications were considered favourably, the period of Airport posting should be two years less the period already spent in the Airport. The learned Standing Counsel for the respondents, however, argued that there was no established policy regarding the tenure because it was left to the discretion of the respondent-Commissioners depending upon the requirements and that the arrangements were being made by the third respondent regarding the tenure and other facilities taking into account the convenience of the staff as well as the compulsions of the administration. It was also argued by the learned counsel for the respondents that though the circular dated 11.9.1997 mentioned two years tenure ~~normally~~, it was specifically mentioned that the said period could be reduced for administrative exigencies and that in the instant case, after due consideration of the administrative requirement and also taking into consideration the representations of the recognised Associations, it was decided that the tenure of the empanelled officers was to be one year only.

7. The learned Standing Counsel for the respondents also submitted that the guidelines notified in Circulars dated 21.10.1993 and 17.7.1995 relate to the International Airpool Policy and the same had been made applicable to the Hyderabad Airport only with effect from 10.8.1998 and therefore, the contention of the applicants that their tenure should be two years as per the circular dated

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17.7.1995 was not correct keeping in view the fact that the Airpool Policy has been made applicable to Hyderabad Airport with effect from 10.8.1998 which may be necessary to prepare a fresh panel of Air Customs Superintendents/ Air Customs Officers by following the guidelines and procedures as notified in the circulars dated 21.10.1993 and 17.7.1995.

8. The learned Standing Counsel for the respondents also emphasized that the applicants were estopped from questioning the impugned orders in view of the fact that after careful examination of the representations made by the applicants and after consulting the Office bearers of the Associations of the Superintendents and Inspectors, it was decided to allow the present batch of officers currently working in the Airport also to apply for posting to Hyderabad Airport and a special relaxation/ of cooling off period was also granted to these applicants as a special case. He further submitted that all the applicants of this O.A. except applicant No.16 Sri P. Papa Rao applied for posting to Hyderabad Airport prior to the date of filing of this OA. However, the said fact was not stated in the OA and therefore, according to the learned Standing Counsel, this was suppression of material fact which necessitated ^{drawing of} ~~to draw~~ an adverse inference for rejection of their claim. It is further argued on behalf of the respondents that none of the applicants had any right or claim beyond the said tenure as the said orders were fully in force and not under challenge.

9. While this contention raised by the learned Standing Counsel for the respondents that the applicants were estopped from claiming a tenure of two years cannot be

accepted if the applicants are found to have acquired a right of continuing for two years, such right is not defeated merely by virtue of the fact that they made a representation for extension of their tenure from one year to two years. We are not, however, inclined to concede to the submission made by the learned counsel Mr.G.Ramachandra Rao for the applicants that the applicants acquired a "right" to continue to hold the posts for a period of two years. The applicants cannot be treated as having any vested right to claim their continuance for a period of two years. In this OA we are confronted only with the question of "posting" and not the "transfer". Even in case of transfers, such right cannot be pleaded and it was more eloquently so in case of posting. This is always a matter of administrative exigencies and functions. When posting of the applicants was done by order dated 12.6.1998, it was not only clarified that the posting was for a period of one year only but it was also pointed out that an officer could be reverted before completion of one year without assigning any reason.

10. The main question, however, is whether the applicants acquired any right by virtue of the order dated 20.8.1998 by which Airpool Policy was extended to the International Airport, at Hyderabad along with four other Airports and subsequent to the circular dated 4.2.1999 in which the period of posting at the Airport was fixed at two years. However, even by allowing longer period of two years, it was clarified in the circular dated 4.2.1999 that an officer at the Airport could be reverted back to his Commissionerate at any time before completion of two years on administrative exigencies. Mere guidelines do not impose or restrict the right of the respondents to curtail the period of posting. The guidelines do not have an imperative character and the same are framed and may be changed from time to time looking to the administrative exigencies. The department is always at liberty to deviate

from the guidelines in the interest of the effective functioning of the department as a whole. In the instant case, when the posting was done, the guidelines in fact were not in force which, in our opinion, operates as a negative factor to claim extension upto the period of two years. If it was alleged and shown that the proposed action was a vindictive action or that it was tarnished by any mala fides against the applicants, the intervention of the Tribunal would have been justified. But in the instant case, since the action in question, is not challenged on those grounds, we are least inclined to interfere with the administrative orders of the department. We cannot also resist revealing our concern that these are very sensitive matters and the right of the department so long as it is not blatantly in violation of any statute or rules, should not be allowed to be invaded in the interest of effective functioning of the department.

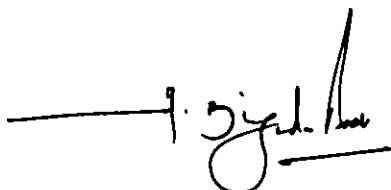
11. The learned counsel Mr. Ramachandra Rao for the applicants, on the question of estoppel, pressed into service a decision of the Supreme Court in the case of RAJ KUMAR & ORS. etc. v. SHAKTI RAJ & ORS. etc. (1997(2) SLR 130) in which the Hon'ble Court held the principle of estoppel by conduct or acquiescence has no application to the facts of the case before it and therefore, the Supreme Court considered that the procedure offered under 1955 Rules adopted by the Government or the Committee as well as the action taken by the Government were not correct in law. In the instant case, we have already expressed our view which falls in line with the ratio of this decision of the Supreme Court. However, in respect of the question of estoppel though not answered negatively, the applicants still not be declared to be entitled to the extension of posting for a period upto two years.

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The same view is expressed by the Punjab & Haryana

High Court in AJIT SINGH v. PUNJAB UNIVERSITY, PATIALA (1997(3) SLR 798) and for the reasons as stated above, in spite of the fact that the principle of estoppel does not come in the way of the applicants, the applicants can still be held ~~to be~~ not entitled to the extension of their posting upto the period of two years.

12. In the result, therefore, the O.A. deserves to be dismissed and it is hereby dismissed. No costs.

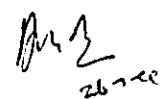


(H. RAJENDRA PRASAD)
MEMBER (ADMN.)



(D. H. NASIR)
VICE-CHAIRMAN.

DATED THE 26 DAY OF JULY, 1999.



DJ/

COPY TO:-

1. HDHND ✓
2. HHRP M(A) ✓
3. HBSJP M(J) ✓
4. D.R. (A) ✓
5. SPARE ✓

1st AND 11nd COURT.

TYPED BY
COMPILED BY

CHECKED BY
APPROVED BY

9/8/99

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH, HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR
VICE - CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD
MEMBER (ADMN)

THE HON'BLE MR. R. RANGARAJAN :
MEMBER (ADMN)

THE HON'BLE MR. D.S. JAI PARAMESHWAR :
MEMBER (JUDL)

ORDER. Date. 26.7.99

ORDER / JUDGMENT

MA./RA./CP.NO

IN

CA.NO. 593/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED.

C.P. CLOSED

R.A. CLOSED.

D.A. CLOSED

DISPOSED OF WITH DIRECTIONS

-DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/ REJECTED

NO ORDER AS TO COSTS.

(8 copies)

