

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 639 of 2004

Jabalpur, this the 13th day of September, 2004

Hon'ble Shri M.P. Singh, Vice Chairman

R.P. Meena, S/o. Late Ganga Ram
Meena, aged about 49 years, Occupation : Addl. Commissioner, Central Excise, Raipur, Raipur Commissionerate, Resident of Raipur. ... Applicant

(By Advocate - Shri P.S. Nair, Sr. Advocate assisted by Shri B.P. Mishra and Shri S.K. Nagpal)

V e r s u s

1. Union of India, through : The Revenue Secretary, Department of Revenue, Ministry of Finance & Company Affairs, Government of India, North Block, New Delhi.
2. The Central Board of Excise & Customs, represented by its Chairman, North Block, New Delhi.

(By Advocate - Shri Om Namdeo)

O R D E R (Oral)

By filing this Original Application the applicant has claimed the following main relief :

"1) to quash the order dt. 29.7.2004 Annexure A-2 and office order No. 93/2004 issued by the respondent No. 3 vide reference No. F. No. A-22012/JC/9/2004-Ad-II dt. 9.7.2004 Annexure A-1 so far as it relates to the applicant, declaring it as illegal, arbitrary and unconstitutional by holding that he is entitled to be retained at Raipur."

2. The brief facts of the case are that the applicant who is working as Additional Commissioner in the Central Excise & Customs Department has been transferred from Raipur office to DGICCE, Chennai. As the applicant had some personal problems to join at Chennai, he had submitted a representation before the respondents. Thereafter, the applicant approached this Tribunal by filing OA No. 536 of 2004. The Tribunal vide its order dated 15th July, 2004 has given the following direction :

"4. Keeping in view the above facts. we feel that ends of justice would be met if we direct the respondents to consider and decide the representation of the applicant dated 12th July, 2004, by passing a speaking, detailed and reasoned order, within a period of six weeks from the date of receipt of copy of this order. We do so accordingly. The applicant is also directed to send a copy of this order alongwith the petition to the respondents within 15 days from the date of receipt of copy of this order. Till then the applicant will not be displaced from his present place of posting."

In pursuance of this order the applicant has sent a copy of this order to the respondents alongwith a copy of the petition on 27th July, 2004. Vide another letter dated 27th July, 2004 (Annexure A-11) the applicant has also requested the Chairman, CBEC, New Delhi to give him an opportunity of personal hearing so that he could explain his genuine problems, before deciding his representation. The respondents without giving him personal hearing and also without waiting for the receipt of the petition alongwith the copy of the order of the Tribunal, have passed the order dated 29th July, 2004 (Annexure A-2) rejecting the representation of the applicant dated 12th July, 2004. Aggrieved by this the applicant has filed this Original Application claiming the aforesaid reliefs.


3. Heard the learned counsel for the parties and perused the records carefully.

4. The learned counsel for the applicant has drawn my attention towards the guidelines issued by the Ministry of Finance regarding transfer/placement policy of IC&CES Group-A officers under the Central Board of Excise & Customs (CBEC). He has stated that one of the grounds taken by the respondents for transferring him to Chennai from Raipur is that he is being departmentally proceeded. As per Para 9.1(b) of the transfer policy dated 19th February, 2004 "an officer should not be posted to any



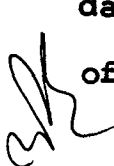
Class 'A' Station if the CVC had recommended initiation of vigilance proceedings". He has further submitted that as per Annexure-II to this policy Chennai is in Category 'A' station. The applicant, vide order dated 9th July, 2004 has been transferred from Raipur to Chennai, which is an 'A' class station and this action of the respondents is in violation of their own transfer policy as the applicant cannot be transferred to a category 'A' station i.e. Chennai. On this ground alone the transfer order is required to be set aside. He has also submitted that the applicant on 27th July, 2004 has sent a copy of the order of the Tribunal alongwith the petition and also a representation requesting for personal hearing with the Chairman, CBEC, New Delhi to explain his genuine problems. But the respondents have neither given him the opportunity of personal hearing nor they have waited to consider his representation, as before the letter dated 27th July, 2004 sent by the applicant ^{could} reaches the office of the Chairman, CBEC, the CBEC, Department of Revenue, Ministry of Finance vide order dated 29th July, 2004 have rejected the representation of the applicant dated 12th July, 2004.

5. On the other hand, the learned counsel for the respondents has stated that the applicant has communicated the respondents vide his letter dated 27th July, 2004 about the decision of the Tribunal in OA No. 536/2004 granting stay of the transfer order in respect of the applicant. However, the order of the Tribunal dated 15.7.2004 was already placed before the Commissioner, Bhopal on 16.7.04 and he has forwarded the same to the office at New Delhi. After receipt of the said order of the Tribunal, the Board has



passed the order dated 29th July, 2004 rejecting the representation of the applicant dated 12th July, 2004.

6. I have given careful consideration to the rival contentions made on behalf of the parties and I find that as per the guidelines of the transfer policy issued by the Ministry of Finance, a person cannot be transferred to a Class-A station, if CVC has recommended initiation of vigilance proceedings. The respondents while rejecting the representation of the applicant dated 12th July, 2004 has taken one of the ground that the applicant has been charge-sheeted for major penalty vide CBEC order dated 11.3.2004 and it is considered to be in public interest that the applicant should not be allowed to continue in a major revenue earning formation with regular interaction with the tax payer. Thus, they have rejected the representation of the applicant. I find that the applicant has been transferred from Raipur to DGICCE, Chennai vide order dated 9th July, 2004. Chennai is a 'A' category station ^{DI} ~~grade~~ as per the Annexure-II to the transfer policy issued by the Ministry of Finance on 19th February, 2004. This action of the respondents is in violation of Para 9.1(b) of their own guidelines. Hence, this order of transfer is not sustainable in the eye of law. Moreover, the applicant has sought an opportunity of personal hearing with the Chairman, CBEC vide his representation dated 27.7.2004, but the ^{opportunity of} personal hearing has not been granted to the applicant for ^{considering} ~~hearing~~ his genuine problems, and the respondents have rejected the representation of the applicant dated 12th July, 2004 by passing the impugned order dated 29th July, 2004. This order of the respondents rejecting the representation of the applicant dated 12th July, 2004, without considering the representation dated 27th July, 2004 is also not sustainable in the eye of law.



7. In view of the aforesaid, the order passed on 9th July, 2004 so far it relates to the applicant, and the order dated 29th July, 2004 passed by the respondents are quashed and set aside. However, the respondents are directed to grant the applicant an opportunity of personal hearing and thereafter consider his representation dated 12th July, 2004 in terms of the transfer policy dated 19.2.2004 (Annexure A-4) and take a decision in the matter accordingly.

8. Accordingly, the Original Application stands allowed. No costs.

M.P. Singh
(M.P. Singh)
Vice Chairman

"SA"

पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....
पतिलिपि अद्योषित:-

(1) सचिव, उच्च न्यायालय वार एसोसिएशन, जबलपुर

(2) आदेश नं./दीवानी/कु.....के काउंसल

(3) आदेश नं./दीवानी/कु.....के काउंसल

(4) सचिव, उच्च न्यायालय, जबलपुर न्यायपीठ

समझा एवं आवश्यक कार्यवाही हेतु

उप प्रजिस्ट्रार

S.K. Mehta
for Number

दीवानी
उप प्रजिस्ट्रार

Issued
on 15.9.04
BS