

**mCENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD**

CP/20/53/2018 in OA/20/642/2017

Date of Order: 20/09/2018

BETWEEN

G.S. Muralidhar,
S/o. Raghavulu,
Aged about 50 years,
Working as Assistant Commissioner of
Customs (under transfer)
ICD, Marripalem,
Guntur District,
Andhra Pradesh.

.... Applicant

AND

1. Union of India,
Ministry of Finance,
Rep. by its Secretary to Govt.,
3rd floor, Jeevandeep Building,
Sansad Marg,
New Delhi.
2. The Chairman,
Central Board of Excise & Customs,
Ministry of Finance,
North Block,
New Delhi.
3. The Chief Commissioner of Central Excise &
Service Tax,
Port Area,
Visakhapatnam.
4. Smt. Koka Sudha,
The Commissioner of Customs,
Preventive Commissionerate,
Auto Nagar, Vijayawada,
Krishna district,
Andhra Pradesh.
5. The Chief Commissioner,
Customs & Central Tax,
Vizag Zone,
Visakhapatnam.
6. Sri M. Shreekanth,

Deputy Commissioner,
O/o Commissioner of Customs, V
Preventive Commisionerate,
Auto Nagar, Vijayawada,
Krishna district,
Andhra Pradesh.

..... Respondents

(Respondents No.1, 2, 3, 5 & 6 are not necessary parties
to this Contempt Petition)

Counsel for the Applicant ... Mr. J. Sudheer

Counsel for the Respondents ... Mrs. K. Rajitha, Sr. CGSC

CORAM :

Hon'ble Mr. Justice R. Kantha Rao, Member (Judl.)
Hon'ble Mrs. Naini Jayaseelan, Member (Admn.)

ORAL ORDER

(Per Hon'ble Mr. Justice R. Kantha Rao, Judicial Member)

Heard Shri Prem Joy, learned proxy counsel for the petitioner and Smt.
K. Rajitha, learned Senior Standing Counsel appearing for the respondents.

2. MA/20/401/2018 filed seeking condonation of delay in filing the
Contempt Petition is allowed.

3. The Contempt Petition is filed against the interim order dated
04.08.2017 whereunder this Tribunal suspended the transfer order dated
27.7.2017. Thereafter it is submitted by the petitioner to the Tribunal that

prior to transfer he was working as Assistant Commissioner but he was not entrusted with the same duties after passing of the interim order. On the contrary, the version of the respondents appears to be that the Chief Commissioner by virtue of the said authority's powers and jurisdiction, can entrust the applicant any of the duties. Further, according to the respondents, though the applicant was accommodated in the same station, he was not attending to duties. However, subsequently, the petitioner made a representation to the respondents to transfer him to any other place. On his request, the petitioner was transferred to Visakhapatnam.

4. The respondents also filed an application to vacate the interim order passed by this Tribunal. By then, the Contempt Petition was not filed. Subsequently, the O.A. came for hearing on merits and it was heard and was reserved for orders. When the matter was reserved for orders, the petitioner seems to have filed the Contempt Petition which was returned by the Office with some objections. Subsequently, the O.A. was dismissed by the Tribunal on 5.3.2018. The Office, therefore, now took an objection on the ground that the main O.A. which was filed assailing the transfer order dated 27.7.2017 was

dismissed, the C.P. filed by the applicant is not maintainable. As to this, the submission made by the learned counsel appearing for the petitioner is that even though the O.A. was dismissed, there were some observations made by this Tribunal in the O.A. that there was an element of bias against the petitioner. But ultimately the Tribunal in O.A. No.642/2017 recorded the following findings in para 23 and dismissed the O.A.:

“23. However, having said that, we cannot ignore the fact that the applicant has been blowing hot and cold in respect of the relief sought for in the O.A. After the filing of the O.A. seeking quashing of the transfer order, he has addressed the Chief Commissioner of Central Tax and Customs, Visakhapatnam, for transfer from ICD Marripalem on 6.12.2017, and the said authority has agreed to his request. As such, his transfer to Customs House, Vizag, has been allowed as per his own request. Therefore, when the applicant himself has sought a transfer from his present post, we find no reason for setting aside the impugned order transferring him from ICD, Marripalem. As the Chief Commissioner, Customs and Central Tax, Visakhapatnam Zone, has considered his request transfer and that this later order supersedes the impugned order of the 4th respondent, we do not think it necessary to give a finding on the issue as to whether the 4th respondent had jurisdiction to issue the impugned transfer order. Although the learned counsel for the applicant has brought to our notice a further letter addressed by the applicant to the Chief Commissioner praying for keeping the transfer order in abeyance, we are not inclined to take cognizance of this as this is clearly an afterthought and the applicant himself does not seem to be sure as to what relief he actually wants.”

5. Learned proxy counsel for the petitioner relied on 2016 SCC Online

Bom 89: (2016) 2 Bom CR 678 wherein the Bombay High Court held as follows:

“26. Therefore, it will depend on the nature of jurisdiction exercised and the content and subject matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. On the facts and circumstances of the present case the direction in the interim order to make payment of 12% interest on Rs.65.7 crores to be made within a stipulated time, i.e. 3 weeks, cannot be said to have merged with the final order. By the said order the respondents were directed to pay the amount within 3 weeks. On the expiry of 3 weeks period, the break has occurred. Once a breach has occurred or once a party has committed a breach of an order, the party cannot come back and say the offence is undone only because the final order has been passed in the matter. It will be useful to quote paragraphs-9 & 15 of a judgement of the Karnataka High Court in New Hope Granites v. Shri Lokanath, The Deputy Conservator of Forest.”

5. Basing on the judgement, the learned counsel appearing for the petitioner argues that even though by passing the final order, the Tribunal dismissed the O.A., the respondents can be held liable for violation of the interim order.

6. On the other hand, Smt. K. Rajitha, learned Senior Central Govt. Standing Counsel would submit that the decision relied on by the learned counsel for the applicant was rendered altogether on different facts and cannot be made applicable to the facts of the present case. Learned Senior Standing Counsel also submits that the O.A. was disposed of without affording an

opportunity to the respondents to argue on the Vacate Stay Petition and, therefore, the Contempt Proceedings cannot be taken up basing on the interim order passed by the Tribunal.

7. Curiously, the applicant, though consented for transfer to Visakhapatnam and his transfer was made on his request, approached the Hon'ble High Court by filing W.P.No.18726/2018. The Hon'ble High Court in para 3 of its order held as follows:

“3. We have perused the impugned order, which reveals that upto paragraph No.22 of the order, the learned Tribunal came at the rescue of the petitioner and held that the impugned order dated 27.7.2017 is bad in law. However, the learned Tribunal took note of the representation dated 6.12.2017 made by the petitioner to the Chief Commissioner of Central Tax and Customs, Visakhapatnam, for transfer from ICD, Marripalem, basing on which, the petitioner was posted at Customs House, Vizag, as Assistant Commissioner of Customs, vide order dated 8.1.2018. In paragraph 23, the learned Tribunal recorded as under:

“23. However, having said that, we cannot ignore the fact that the applicant has been blowing hot and cold in respect of the relief sought for in the O.A. After the filing of the O.A. seeking quashing of the transfer order, he has addressed the Chief Commissioner of Central Tax and Customs, Visakhapatnam, for transfer from ICD Marripalem on 6.12.2017, and the said authority has agreed to his request. As such, his transfer to Customs House, Vizag, has been allowed as per his own request. Therefore, when the applicant himself has sought a transfer from his present post, we find no reason for setting aside the impugned order transferring him from ICD, Marripalem. As the Chief Commissioner, Customs and Central Tax, Visakhapatnam Zone, has considered his request transfer and that this later order supersedes the impugned order of the 4th respondent, we do not think it necessary to give a finding on the issue as to whether the 4th respondent had jurisdiction to issue the impugned transfer order. Although the learned counsel for the

applicant has brought to our notice a further letter addressed by the applicant to the Chief Commissioner praying for keeping the transfer order in abeyance, we are not inclined to take cognizance of this as this is clearly an afterthought and the applicant himself does not seem to be sure as to what relief he actually wants.”

8. The Hon’ble High Court also observed that since no posting order was given to the petitioner, he made a representation to the Chief Commissioner of Central Tax and Customs, Visakhapatnam for transfer to any other place. As per his request, he was transferred to Customs House, Vizag. Thereafter, till date the petitioner could not join at Customs House, Vizag. It is also further observed by the Hon’ble High Court that it is also not in dispute that the petitioner has been getting salary continuously till November, 2017 and was transferred on 8.1.2018 to Vizag. The Hon’ble High Court went on to say that the petitioner continued his battle against the said order for which he has a legal right. Therefore, awaiting the result, he could not join duty at Customs House, Vizag. Finally, the Hon’ble High Court held as follows:

“7. In view of the above facts, we hereby direct the respondents that if the petitioner has not joined at Customs House, Vizag during the pendency of this writ petition, it will not come in the way of his service career in any manner. We further made it clear that the respondents shall not withhold his salary of any month.

8. We also direct the petitioner to join at Customs House, Vizag within 10 days from today.”

9. Thus the petitioner, by instituting one case or the other, has been not discharging his duties but getting salary for all the above mentioned period covered by the proceedings before this Tribunal as well as the Hon’ble High Court.

10. It is settled law that unless the disobedience is wilful and intentional, the authorities cannot be punished for contempt. That whether the disobedience is wilful or intentional can be gathered from the facts and circumstances of the case. The Tribunal simply suspended the order passed by the respondents but did not direct specifically the respondents to continue him in the same post for a specified period. Further, soon after passing of the order, the respondents filed a petition to vacate the interim order. As already said, as the applicant specifically gave consent for transfer to some other place and was not interested in pursuing the matter for his retention at Vijayawada, the Tribunal disposed of the O.A. by dismissing the same.

11. Before parting with the order, we wish to say that the Tribunal cannot be made a platform to settle the personal scores of the officials. Unless there is a clear case of contempt borne out from the facts of the case as held by the Hon'ble Apex Court in a catena of judgements, the Court shall not punish the authorities for contempt. This is a case wherein the petitioner took precarious stands at various stages of the case before the Tribunal and the High Court. More particularly, he did not join at Customs House, Vizag even after he was transferred there on his request and was pursuing his case in the High Court and was submitting to the High Court that since he was legitimately pursuing his case, the pay and allowances cannot be denied to him though he did not work at all.

12. Having regard to the facts and circumstances of the case and also in view of the fact that the respondents have not been given opportunity to argue on the vacate stay petition and that the petitioner taking different stands at various stages of the case, we consider that the interim order, against which the Contempt Petition is filed, merged with the final order and the Contempt

Petition is not maintainable against the respondents. Therefore, the Contempt

Petition is dismissed at the stage of admission.

(NAINI JAYASEELAN)
ADMN. MEMBER

(JUSTICE R. KANTHA RAO)
JUDL. MEMBER

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