

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. No.020/00642/2017

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M.A.No.614/2017 in O.A.No.020/00642/2017

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Date of CAV: 30.01.2018.

Date of Order : 05.03.2018.

Between :

G.S. Muralidhar, S/o. Raghavulu,
Aged 50 years, Working as Asst. 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. 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,
Preventive Commissionerate, Auto Nagar,
Vijayawada, Krishna District, Andhra Pradesh.

... Respondents

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

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

Mr. M.C. Jacob for R-6

CORAM:

THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)

THE HON'BLE MRS.MINNIE MATHEW, MEMBER (ADMN.)

ORDER

{ As per Hon'ble Mrs.Minnie Mathew, Member (Admn.) }

The applicant is aggrieved by the Annexure-I Establishment Order (G.O.) No.05/2017 dated 27.07.2017 issued by the 4th respondent transferring him from ICD Mairipalem without giving him any posting.

2. The facts of the case according to the applicant are that he was posted as Assistant Commissioner of Customs at ICD Mairipalem, Guntur District on 14.06.2017. On 28.06.2017, the Director of Leapp International Pvt Ltd, Chennai gave a complaint against him to the 4th respondent stating that he should be transferred to a non-sensitive place immediately. Accordingly, he was transferred and relieved of the charge on 27.07.2017 without issuing him any posting orders.

3. The applicant submits that he had issued instructions to the Exporters and the Custodian of ICD Mairipalem for facilitating customs clearance vide his Annexure III Circular dated 20.06.2017. Thereupon, the Director, LEAAP International Pvt Ltd submitted a representation to the 4th respondent that the instructions given by the applicant are causing undue hardship to the trade and is hampering the smooth customs clearance at the ICD and requested the 4th respondent to review the instructions. It has also been alleged that the applicant was agreeing to clear containers only for huge "considerations" and on that ground, requested the 4th respondent to transfer him out of the ICD. The applicant contends that the instructions given by him are in consonance with the guidelines given by the Department from time to time. Against the complaints made by him to the 4th respondent, the applicant had given reply on 10.07.2017 and 30.07.2017 stating that he had acted only in accordance with the Rules and also brought to the notice of the 4th respondent the unruly behaviour of the complainant. It is the case of the applicant that at the instance

of a third party and without causing any enquiry into the allegations made against him, the 4th respondent passed the impugned order transferring him from ICD Marripalem and giving additional charge to the 6th respondent. Thus, the impugned order which has been passed without giving any opportunity to the applicant is stigmatic and punitive in nature. The impugned order is also vitiated by lack of inherent power by an authority lower than the appointing authority who was not competent to pass the impugned order of transfer. The applicant prays for setting aside the transfer order on the ground that it was issued by an incompetent authority without jurisdiction at the behest of a third party with a malafide intention and that the order is punitive and stigmatic in nature. It is also submitted that the impugned order does not contain any reasons for the transfer.

4. At the stage of admission, this Tribunal had suspended the impugned order of transfer.

5. The respondents have filed a reply statement. They submit that when the applicant was on deputation from Visakhapatnam Customs Commisisonerate to the Commissioner of Customs (AIR), Chennai in the grade of Superintendent, he was repatriated to his parent zone as there was a complaint against him while he was on deputation to Chennai Airport. A preliminary enquiry into the complaint against the applicant about his unruly behaviour, tampering of documents and unauthorized absence of 164 days is being conducted in the office of the Commissioner of Customs (AIRPORT & AIR CARGO). After being posted as Assistant Commissioner, ICD, Marripalem, the applicant tried to change the export procedure in violation of the guidelines prescribed for handling of cargo commodities by issuing Annexure R-12 Circular dated 20.06.2007. The complaints against the said Circular were brought to

the notice of the 4th respondent. The respondents have also filed Annexure R-16 which has been issued by Leaap International Private Limited addressed to the 4th respondent stating that they have received many requests from the Exporters of cotton/ cotton linters and chillies seeking the transfer of the Assistant Commissioner of Customs because of harassment. The letters of the various exporters have been annexed as Annexures R-16A to 16Q. Further, the Custodian M/s. Leaap International Pvt Ltd has communicated a complaint of Sri Sampath Reddy, Director of Vangala Logistics that the applicant had taken away the keys of the truck, which was parked outside the ICD premises and had retrieved the original documents related to the cargo in the truck at about 8 PM of 27.06.2017. It is submitted that the area outside the ICD precincts was not within the administrative control of the applicant and that he had no mandate to check the vehicles on the road. An explanation was called for from the applicant and he submitted that he had taken away the keys of the truck because he observed some suspicious activity. The respondents point out that even if any suspicious activity is noticed, the same should have been informed to the Preventive Wing of the Office of the Customs Preventive Commissionerate, Vijayawada for investigation and if immediate action is required, he should have taken permission from the competent authority before detaining the truck containing export cargo outside his jurisdiction. Illegal detention of the truck outside his jurisdiction has resulted in harassment to the trade. The explanation submitted by the applicant in this regard was not accepted and the incident is under preliminary investigation. Likewise, complaints have been received from other exporters such as M/s, Cartel Tobaccos and M/s. ITC Agri Business Division on 24.07.2017 regarding withholding/ stopping of export consignments without any valid ground causing extreme harassment to the established trade. The respondents have also stated that they have received Annexure R-25 representation dated 27.06.2017 in which it has been complained that

the applicant had agreed to clear their containers for huge considerations and had sought for the transfer of the applicant. In view of the continuous complaints by the trade, the 4th respondent ordered a preliminary enquiry into the complaints against the applicant on 26.07.2017. The 4th respondent also ordered for the shifting of the officer from the ICD which is stated to be in accordance with para No.4.4 of Chapter IV of the Annexure R-28 Vigilance Manual (Vol. I) of Central Vigilance Commission. Further, as per Question and Answer (No.9) of Chapter 7 of Hand Book for Inquiry Officers and Disciplinary Authorities, 2013, it is stated that when preliminary enquiry is ordered against public servants, it may be advantageous to transfer the suspected public servants from the charge they are holding to pre-empt prospects of the evidence being tampered or destroyed. Thus, the transfer of the applicant from the ICD, Marripalem against the background of many complaints was in public interest as export clearance and trade facilitation was hampered.

6. The respondents have denied the contentions of the applicant that the transfer was motivated by a single entity's representation against the applicant. As there were large number of complaints against him, a preliminary enquiry was ordered to verify the veracity of the complaints. He was relieved of his charge in ICD Marripalem for the reasons that his presence was not conducive to the preliminary enquiry being undertaken on the representations against him. They also point out that transfer orders are never speaking orders and are only administrative decisions which are issued as per norms and exigencies and does not cast any stigma on the career of the applicant.

7. The respondents have refuted the contention of the applicant that the 4th respondent has no jurisdiction to issue the impugned order of transfer. They submit

that transfer within a Commissionerate is issued by the jurisdictional Commissionerate as per the administrative exigencies of the Commissionerate. They point out that the applicant never questioned the transfer order issued by the 4th respondent when he was transferred from Headquarters Office, CPC, Vijayawada to ICD Marripalem vide Annexure R-11 Establishment Order dated 09.06.2017. Thus, giving transfers within the Customs Commissionerate is within the control of the executive head who is the 4th respondent. They submit that the transfer of an employee without preliminary enquiry is an approved procedure as per the DOPT guidelines and have denied that the transfer order is a malafide order.

8. The 6th respondent filed a separate reply statement praying for deletion of his name from the array of the respondents as no allegations have been made against him in the OA.

9. The applicant has filed a rejoinder pointing out that a period has been prescribed for continuing an employee in a place of posting so as to avoid arbitrary exercise of the power of the transfer. It is his case that there were never any complaints against him. He has refuted the contention that he has started demanding bribes. He points out that it has been specifically admitted in the reply statement that he was transferred because of complaints and that when a transfer is made, based upon a complaint without any enquiry, it amounts to punitive transfer. He also contends that even if the instructions given by him are not in accordance with law, it is a rectifiable mistake and cannot be a ground for transfer. Further, the question of tampering with evidence would come only if a charge memorandum had been issued to him. He has however, neither been suspended nor charge-sheeted. Hence, the question of tampering with evidence would not arise. It is also submitted that abuse of

power is clear from the fact that complaints were subsequently obtained by the 4th respondent only to support the contention that there were several complaints against the applicant and that the traders had given complaints with ante-date. It is further submitted that when his transfer was suspended, he is entitled to work in the place where he was working prior to transfer and cannot be directed to perform other duties. When he objected to do the work, he was given memos for unauthorised absence.

10. The respondents have also filed an MA.No.776/2017 for bringing on record their additional reply statement to the rejoinder. The additional reply statement largely reiterates the averments in the reply statement. They also submit that since the preliminary inquiry is in progress and the applicant indulged in tampering with evidence at Chennai Customs, non-sensitive charges were allotted to him, while retaining him at ICD, Marripalem and that there is no disobedience of the interim orders of this Tribunal dated 4.8.2017. It is also submitted that the applicant has been on unauthorised absence from 8.8.2017 and that it is proposed to recommend initiation of disciplinary action by the competent authority for his unauthorised absence.

11. Heard learned counsel for the Applicant and Smt. K. Rajitha, learned Senior Central Government Standing Counsel.

12. Learned counsel for the applicant relied upon judgment in **Ram Lakhan Singh Vs. State of Uttar Pradesh, (2015) 16 SCC 715**, in which, the Hon'ble Supreme Court had held that sometimes upright officers resist corruption and become victims of frequent punitive transfers and that it is necessary to maintain a fine balance between prosecuting a guilty officer and protecting an innocent officer from vexatious

prosecutions and that the protection to an honest public servant is required not only in his interest but in the larger interest of society. As the applicant was strict in enforcement of his duty, he has invited the wrath of the exporting community. Learned Counsel argued that he should be given protection and not be victimised by way of punitive transfer. He also relied on a judgment of the Hon'ble Apex Court in **Somesh Tiwari Vs. Union of India, (2009) 2 SCC 592**, in which, the Hon'ble Apex Court had held that when an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal. In the instant case, the impugned transfer is a punitive transfer which has been ordered at the behest of an exporter and is liable to be set aside.

13. Learned Senior Central Government Standing Counsel however, argued that the applicant has not participated in the preliminary enquiry into the complaints against him in spite of giving three opportunities for attending personal hearing. She also placed before us the request made by the applicant on 06.12.2017 to the Chief Commissioner of Visakhapatnam Zone requesting for transfer from Customs Preventive Commissionerate, Vijayawada so as to enable him to discharge his duties without any obstructions. Accordingly, the Chief Commissioner had considered his request and transferred him to Customs House, Vizag with immediate effect vide Establishment Order dated 08.01.2018.

14. However, on the date of the adjourned hearing, learned counsel for the applicant produced a copy of the letter of the applicant dated 19.01.2018 requesting the Chief Commissioner of Vizakahapatnam Zone to keep the transfer order in abeyance until his OA is decided. He also prayed that the Tribunal may interfere as the impugned order is punitive in nature and has been passed without jurisdiction and is tainted with bias and malice.

15. We have considered the submissions of both sides and also perused the records. The applicant has admittedly joined as Assistant Commissioner of Customs, ICD, Marripalem on 14.06.2017 and he has been transferred without being given another posting on 27.07.2017. Although there is no mention of public interest involved in the sudden transfer within a period of just over a month, the respondents have, in their reply statement, given the circumstances which led to the transfer. M/s. LEAAP International Pvt Ltd, who is the Custodian of the ICD has addressed a letter dated 25.07.2017 to the 4th respondent stating that many requests have been received from the Exporters of Cotton / cotton linters and chillies seeking the transfer of the Assistant Commissioner of Customs because of harassment and have enclosed the letters received for the perusal of the 4th respondent. The respondents have also enclosed Annexures R-16A to 16Q representations of various exporters. We have perused the representations enclosed by M/s LEAAP International Pvt Ltd. The representations dated 28.6.2017 are clearly against the new instructions issued by the applicant vide Circular dated 20.06.2017. The representations have highlighted the need to withdraw the Circular and continue the present practice of house-stuffing. They have also stated that if the earlier procedure of House stuffing facility is not restored, they cannot use the ICD and will have to look for alternative options to ship their products from other ports. In none of the enclosed representations has there been any request for the transfer of the applicant or a complaint about any demands made by him. It is further seen that earlier on 28.06.2017, M/s. LEAAP International Pvt Ltd as Custodian had brought to the notice of the 4th respondent that the applicant had taken away the keys of a Truck which was parked outside the ICD and had pulled out documents at 8 PM in the night. In this letter, signed by Director, M/s. Leaap International Pvt Ltd, there is an appeal in the interest of the trade, the CHAS and in the interest of LEAAP to transfer the Assistant Commissioner to a non-sensitive post immediately and that

they are not willing to “look at his demands favourably”. The respondents have also relied upon the Annexure R-25 letter dated 27.06.2017 addressed by the Custodian of the ICD i.e. M/s. LEAAP International Pvt Ltd again stating that the applicant had agreed to clear containers for huge considerations.

16. From the aforesaid material placed before us, it is clear that the exporting community found the new circular instructions issued by the applicant to be erroneous, retrograde and irksome and requested to rescind the same. There is, however, no request from other exporters seeking his transfer on the ground of harrassment or other extraneous demands. It is only M/s LEAAP International acting as custodian of the Inland Container Depot, who has been repeatedly alleging that the applicant should be transferred as he was making demands for clearing containers. It is necessary to observe that there is no other complaint on this ground against the applicant. Further, even if such a complaint was there against the applicant, the 4th respondent should have applied her mind and taken a decision after verifying the veracity of the complaint. In this case, no such exercise seems to have been done and the impugned transfer order has been issued in haste.

17. In the ordinary course, if a Government servant has erred in issuing erroneous instructions, the mistake should have been rectified by rescinding or cancelling such order. The respondents are also well within their rights to proceed against the applicant in accordance with the provisions of the Disciplinary Rules. The mere issuance of an erroneous circular cannot be a ground for a transfer, and that too within just over a month of assumption of charge of the post. Such a transfer is undoubtedly hasty, erroneous and punitive in nature.

18. The respondents have tried to justify the transfer on the ground that a preliminary enquiry was ordered and that in such circumstances, as per the DOPT instructions it would be advantageous to transfer the suspected public servants from the charge they are holding to pre-empt prospects of the evidence being tampered or destroyed. From the material which has been placed before us by the respondents, it is clear that the applicant was transferred even before the conduct of the preliminary enquiry. From the Note produced by the respondents at page No. 140 of the reply statement, it is seen that the 4th respondent has recorded as follows:

“As the activities of the Assistant Commissioner Mr. G.S. Muralidhar are causing serious impediment to trade facilitation measures and creating hurdles in ensuring ease of doing business by delaying export consignments, and sanction of export incentives, a preliminary enquiry may be conducted on the complaints against the Assistant Commissioner. Meanwhile Assistant Commissioner shall be transferred from ICD. “

19. A plain reading of the aforesaid note shows that both the preliminary enquiry and the transfer have been simultaneously ordered without waiting to see whether the preliminary enquiry had established a prima facie case against the applicant. The transfer is therefore punitive in nature. Further, all the relevant documents for conduct of preliminary inquiry have been handed over to the Additional Commissioner only on 04.08.2017, which is much after the impugned transfer order issued on 27.07.2017 and the preliminary inquiry report has been submitted to the 4th respondent only on 9.1.2018. It is also relevant to point out that even as per the Hand Book for Inquiry Officers and Disciplinary Authorities, 2013, relied upon by the respondents, preliminary investigation is a fact finding enquiry and a process for assessing the veracity of the

complaint. Thus, the purpose of the preliminary investigation is to check the veracity of the complaint and if the complaint is true, to collect evidence in support of the charge. In the instant case, there is nothing on record to show that a preliminary investigation was conducted to check the veracity of the complaint against the applicant before issuing the impugned transfer order.

20. Further, the instructions relied upon by the respondents only state that “at times, it may be advantageous to transfer the suspected public servants from the charge they are holding to pre-empt prospects of the evidence being tampered or destroyed”. The respondents would also contend that if the applicant is continued in the same place, he would tamper the evidence. But in the Note put up by the Additional Commissioner on 04.07.2017 to the Commissioner, it has been stated as follows:

“It is clear from the above, the AC, ICD demanding money for clearance of consignment allegation cannot be proved as there is no written documentary evidence on this count.

However, it is proved and concluded that the officer is “discourteous” towards the public by virtue of his act.

In view of the above facts, the officer has violated the Rule 3-A of CCS (Conduct) Rules. The rules is re-produced below:

“3A.

No Government servant shall

(a) in the performance of his official duties, act in a discourteous manner;

(b) in his official dealings with the public or otherwise adopt dilatory tactics or wilfully cause delays in disposal of the work assigned to him.”

On both the count, action is warranted against the officer.

Submitted for suitable orders, please. “

This note clearly shows that the complaint against the applicant is that he is discourteous towards the public and that he is liable for action on account of his

behaviour as well as his dilatory tactics and wilful delays. If discourtesy and wilful delay are the main allegations, the ground that the applicant would tamper with evidence if he is retained at Marripalem, appears to be far fetched.

21. The respondents have strenuously tried to argue that the applicant had a previous history of tampering of records while working at Commisisonerate of Customs (ARI), Chennai as Superintendent and they have enclosed Anneuxre R-2, i.e. Report of the Dy. Commissioner of Customs (CIU-AIR), Chennai asking for his repatriation in the light of a complaint made against him by one lady Inspector, CIU regarding his unruly and abusive behaviour and removal of certain letters and photographs regarding the complaint made against him by a person who claimed to be his wife and who had lodged a dowry and sexual harassment case. The narration of all these events which are extraneous and have no relevance at all to the present complaint against the applicant would suggest that there is an element of bias and prejudice against the applicant.

22. For all the aforesaid reasons, the impugned order is held to be bad.

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 OA. After the filing of the OA seeking quashing of the transfer order, he has addressed the Chief Commissioner of Central Tax and Customs, Visakhapatnam, for transfer from ICD Marripalem on 06.12.2017, 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.

24. In this view of the matter, the applicant is not entitled to the relief prayed for in this OA. The OA is accordingly dismissed.

25. In view of the disposal of the main OA, M.A.No.614/2017 for deletion of R-1, R-2, R-3 & R-5 and M.A.No.615/2017 for vacation of interim orders stands disposed of.

26. There shall be no order as to costs.

(MINNIE MATHEW)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated: this the 5th day of March, 2018

Dsn.