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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

C.A. No.2389 of 2003

New Delhi, this the 22nd day of October, 2003

HON'BLE SHRI SHANKER RAJU, JUDICIAL MEMBER
HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

S.S.Meena,
S/o Shri Phool Chand Meena,
R/o U-23/28,
DLF Phase-III,
Gurgaon-122002

....Applicant

(By Advocate : Shri Sanjeev Kumar)

Versus

1. Union of India
through Secretary,
Ministry of Finance,
Government of India,
North Block,
New Delhi
2. Chief Commissioner of Customs (DZ),
New Custom House,
New Delhi-110037
3. Additional Commissioner of Customs,
Indira Gandhi Airport,
New Delhi-110037
4. Deputy Commissioner (Technical),
Indira Gandhi Airport,
New Delhi-110037

.....Respondents

(By Advocate : Shri R.N.Singh)

ORDER (ORAL)

SHRI R.K.UPADHYAYA ADMINISTRATIVE MEMBER

The applicant has filed this application under section 19 of the Administrative Tribunals Act, 1985 claiming the following reliefs:-

"(a) after perusal quash and set aside the order dated 18.9.2003.

(b) call for the relevant records of the case from the Respondents and

(c) any other order or relief which the Hon'ble Court may deem fit and proper may also be passed in favour of the applicant and against the respondents."

2. The order dated 18.9.2003 (Annexure-A1) reads as follows:-

C. N. Singh

"Shri Sube Singh Meena, Air Customs Officer; presently on deputation at IGI Airport, New Delhi stands relieved with immediate effect i.e. 18.9.2003 (afternoon) with the direction to report to Commissioner of Customs, Cochin. The Officer is advised to make himself available for any further enquiry/investigation where his presence is required.

This issue with the approval of the Commissioner of Customs (Import & General), IGI Airport, New Delhi.
sd/Deputy Commissioner(Tech)"

3. It is claimed by the applicant that initially he was appointed as Preventive Officer in the Department of Customs at Cochin on 22.3.85. He was sent on deputation to the Indira Gandhi International (IGI for short) Airport, New Delhi in November, 2001 as Air Customs Officer from the Cochin Commissionerate for a period of two years. The appointment order of the applicant on deputation as Air Customs Officer is stated to be containing the following conditions:

".....

(5) Normally the period of posting at the Airport is 2 years. However, an Officer at the Airport can be reverted before completion of two years without assigning any reason or prior information.

(6) In the event of their promotion to higher grade, the officers will be reverted from the Airport."

4. The case of the applicant is that while on deputation, he was promoted as Superintendent of Customs (Preventive) w.e.f. 23.9.2002. On promotion, he was also ordered to be relieved by Office Order dated 10.10.2002. However, when the applicant submitted representation the order dated 10.10.2002 directing the relief of the applicant was stayed by another order dated 18.10.2002. Learned counsel of the applicant stated that subsequently by letter dated 24.10.2002 (Annexure-A4), the borrowing department

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asked the lending department seeking 'no objection certificate' for the applicant being retained on deputation. It is stated that the parent department issued a No Objection Certificate for retention of the applicant on deputation upto 31.12.2003 as per letter dated 14.7.2003, a copy of which was produced and has been kept on record.

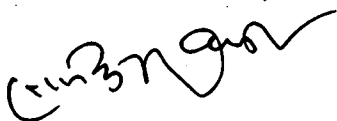
5. The grievance of the applicant is that inspite of the earlier order of his being relieved having been kept in abeyance and inspite of the fact that his parent department had given no objection for the applicant being retained on deputation, he has been served a copy of the order dated 18.9.2003 (Annexure-A1)relieving him, as referred to in para 2 above.

6. Learned counsel of the applicant stated that this impugned order dated 18.9.2003 is punitive in nature. When the FIR was lodged against Head Constable Jai Prakash of Delhi Police for unauthorised possession of foreign currencies on 9.9.2003, the applicant was asked to appear before the SHO, PS IGI Airport on 17.9.2003. The applicant had appeared before the SHO inspite of the fact that the applicant had no role in the above referred case. The notice was issued to him only on the basis of the fact that his name was found in the diary of accused H.C. Jai Prakash. Immediately after that on the next day, i.e., on 18.9.2003, the impugned order of relief of the applicant from deputation has been issued. It is also stated that several persons who have longer stay in the borrowing department in the similar

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circumstances have been retained. Therefore, the applicant is being discriminated which has put him in hardship as there are compelling family circumstances which require his presence in Delhi. On these facts, the applicant has moved this original application and has claimed the reliefs as mentioned above.

7. Misc. Application No.2103/2003 has been filed under Rule 24 of the Central Administrative Tribunal (Procedure) Rules,1987 seeking execution of the interim order dated 25.9.,2003. On this Misc.Application, by order dated 25.9.2003, the applicant was granted interim relief of maintenance of the 'status quo' as on that date. It is stated that by order dated 18.9.2003 the applicant was relieved with the direction to report to Commissioner of Customs,Cochin but this order of relief of the applicant dated 18.9.2003 had not been served on the applicant till 25.9.2003, i.e., the date for hearing of the case in the Tribunal. It is, therefore, stated that the applicant was not legally relieved. Therefore, the respondents intentionally misinterpreted the interim order dated 25.9.2003 and were refusing to allow the applicant to perform his duties as Air Customs Superintendent at IGI Airport, New Delhi. The applicant was on leave from 18.9.2003 to 1.10.2003. Therefore, the applicant had reported for duties on 1.10.2003 but the respondents refused to allow him to rejoin the duties. Therefore, the applicant filed this MA No.2103/2003 seeking direction to respondents to allow him to join duty as Air Customs Officer at IGI, Airport, New Delhi till the final disposal of the OA.



2. The respondents have opposed the OA No.2389/2003 and Misc.Application No.2103/2003. In the reply filed, the respondents have stated that the applicant has got no vested right to remain posted at a particular place of his choice. It is not a case of transfer. The applicant belongs to the cadre of Customs and Central Excise Commissionerate, Cochin. He was sent on deputation to IGI, Airport, New Delhi from Cochin Commissionerate for a period of two years as Air Customs Officer. According to the terms and conditions of appointment on deputation, an officer posted on deputation could be reverted back before completion of two years without assigning any reason or prior information or in the event of their promotion to the higher grade. Learned counsel pointed out that when the applicant was promoted, he was directed to be relieved to his parent cadre at Cochin as per order dated 10.10.2002. However, on his representation, the same was kept in abeyance till further orders vide order dated 18.10.2002. According to the respondents, the continuation of the applicant at the IGI, Airport as Superintendent, was subject to approval of the Commissioner of Customs, Import and General, New Customs House, New Delhi. In these circumstances, the impugned order of reversion to the parent cadre is in conformity with the terms and conditions of appointment on deputation and rules on the subject. It is also pointed out that the receipt of No Objection Certificate from applicant's parent Commissionerate for retention of applicant for further period upto 31.12.2003 could not automatically vest

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right in favour of applicant if the borrowing department does not want to retain the applicant on deputation.

9. Learned counsel of the respondents has also invited attention to the decision of the Hon'ble Supreme Court in the case of Kunal Nanda Vs. UOI & Ors. ((2000) 5 SCC 362) wherein the Hon'ble Supreme Court has observed that "a deputationist can always and at any time be repatriated to his parent department, at the instance of either borrowing department or parent department. There is no vested right in such a person to continue for long on deputation or get absorbed in borrowing department." He also invited attention to the decision of the Hon'ble Supreme Court in the case of State of Punjab and others Vs. Inder Singh and Ors. ((1997) 8 SCC 372) wherein the Hon'ble Supreme Court has held that it may be really harsh on the part of an employee who has been sent back after having served with the borrowing department for quite sometime but such employee on deputation could be repatriated to his parent department.

10. Regarding Misc.Application No.2103/2003 for compliance of the order dated 25.9.2003, the respondents have stated that this Tribunal only directed the respondents to maintain the 'status quo' as on 25.9.2003. Since the applicant was not on duty on that date, he could not be taken back on duties. However, it is stated that the respondents complied with the interim order dated 25.9.2003 which reads as under.-

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"In this view of the matter, issue notice to the respondents both on OA and on interim relief making returnable on 1.10.2003. In the meantime, status quo as of today be maintained."

11. We have considered the facts of the case and contentions of learned counsel of both the parties.

12. It is admitted fact that the applicant was initially taken on deputation for a period of two years. This period of two years is coming to end in the first fortnight in November, 2003. Therefore, at the most the applicant could claim for being retained on deputation upto the expiry of the period of two years. Even though his parent department has given no objection certificate, it will not automatically entitle him for being retained on deputation with the borrowing department. The learned counsel of the respondents stated that on promotion this period of two years would be curtailed without assigning any reason or prior information. Therefore, in view of the condition of appointment on deputation, the applicant was ordered to be relieved on 10.10.2002 as he was promoted. The respondents themselves kept this order in abeyance. It means that they deferred their decision merely on ground of his being promoted. The contention of the learned counsel of the respondents is that his relieving was deferred considering his family circumstances. There is no change in those circumstances even now. Therefore, there is no justifiable reason to warrant passing of the order dated 18.9.2003. Merely because the respondents have right to curtail the deputation period, it will not automatically entitle them to relieve the applicant

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unless there is some reason for the same. The applicant had been taken on deputation for a period of two years and on promotion he was allowed to continue. The applicant's parent department had no objection for extension of the deputation period of the applicant. In the circumstances, there is no apparent reason to suddenly direct the applicant to be relieved and join his parent department. There is no demand from his parent department also. It is stated that there are surplus officers in the rank of Superintendent, IGI Airport, but it has not been illustrated in as much as further details have not been given. Whether this surplus is available from the date when the applicant was promoted or it has recently been observed. Unless there is apparent reason to justify the discrimination given to the applicant, the same is arbitrary. In view of this matter, the impugned order dated 18.9.2003 is quashed and set aside. The respondents will be at liberty to repatriate the applicant on completion of his tenure of two years provided his work is satisfactory.

12. In view of our decision to set aside and quash the order dated 18.9.2003 (Annexure-A4), the Misc.Application no.2103/2003 for compliance of the interim order dated 25.9.2003 automatically stands allowed.

13. Subject to above, the OA is partly allowed and the MA No.2103/2003 is allowed without any order as to costs.



(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER
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(SHANKER RAJU)
JUDICIAL MEMBER