

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD.

Original Application No.1452 of 2003.

Allahabad this the 28th day of November 2003.

Hon'ble Maj Gen K.K. Srivastava, A.M.
Hon'ble Mr. A.K. Bhatnagar, J.M.

1. Tripta Bhatia w/o Sri Upendra Kumar Bhatia
aged about 53 years R/o 124A/491, Govind Nagar,
Kanpur.
2. Nirmal Sharma w/o S.R. Sharma
aged about 50 years R/o C-676 Panki,
Kanpur.

.....Applicants.

(By Advocate Shri Ashish Srivastava)
Versus.

1. Union of India
through Secretary,
Ministry of Finance,
New Delhi.
2. Chief Commissioner,
Customs and Central Excise 19-C
Tulsi Ganga Minor, Vidhan Sabha Marg,
Lucknow.
3. Commissioner,
Customs and Central Excise, Kanpur Office at
Sarvodaya Nagar, Kanpur Nagar.

.....Respondents.

(By Advocate: Sri R.C. Joshi)

O R D E R

(Hon'ble Maj Gen K.K. Srivastava, A.M)

In this O.A., filed under section 19 of
Administrative Tribunals Act 1985, the applicants have
challenged the transfer order dated 21.11.2003 (Annexure A-1)
posting the applicants from Central Excise, Kanpur to
Central Excise, Lucknow.

2. The facts of the case, in short, are that the
applicants were working in the respondent's establishment
as Office Superintendent. On merger of post of Office
Superintendents as Administrative Officers vide Circular

dated 27.09.2002 (Annexure A-10), the applicants have been re-designated as Administrative Officer.

3. The grievance of the applicants ^{h.b} ~~are~~ that earlier when the post of Office Superintendent and Administrative Officer were not merged they refused for promotion as Administrative Officer on the ground of family circumstances, spouse posting at the same station and education of children, ^{and now they are being posted out again} Hence this O.A.

4. Sri Ashish Srivastava, learned counsel for the applicants submitted that applicant No.1 refused promotion from Office Superintendent Grade II to the post of Administrative Officer thrice, for the first time in 1996 then again in 1998 and finally in June 2002 and applicant No.2 refused promotion ^h ~~once~~ in the year 2002. The learned counsel for the applicant submitted that applicant No.2 ^h was posted from Delhi to Kanpur on the ground of her posting of her spouse at Kanpur. Learned counsel for the applicant also submitted that firstly on promotion from Office Superintendent to Administrative Officer, the applicant requested for adjustment at Kanpur against the existing vacancies and once the administration could not accommodate them at Kanpur they had no option but to refuse the promotion. The learned counsel for the applicants submitted that in case the applicants are moved at this juncture it would adversely affect the education of children of the applicant. ^h Invisting our attention to Annexure A-15 which is letter dated 31.10.2003 of Commissioner Customs & Central Excise, Kanpur addressed to the Additional Commissioner (C.C.O), Lucknow, ^{learned} counsel for the applicants submitted that the case of the applicants were recommended for retention at Kanpur. Besides the learned counsel for the applicants argued that perusal of Annexure A-16 would reveal that the transfer of four ladies Inspectors was cancelled

by order dated 22.05.2003 on the ground of their spouse posting at the same station.

5. Learned counsel for the applicants finally submitted that even guidelines have been laid down by the Chief Commissioner, Customs & Central Excise, Lucknow that if the husband and wife are working in the same station that would be kept in mind while deployment is done. This guidelines has been spelt out in the last para of minutes of meeting taken by the Chief Commissioner, Customs and Central Excise, Lucknow with the Staff Association of Zone on 26.11.2002.

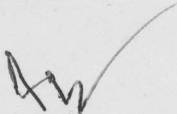
6. Sri P.D. Tripathi learned counsel for the respondents submitted that the applicants have filed a representation before the Chief Commissioner, Customs & Central Excise, Lucknow on 21.11.2003. Instead of waiting for the decision of Chief Commissioner on the representations of the applicants, the applicants have prematurely filed this O.A. on 27.11.2003 itself. Learned counsel for the respondents further submitted that the guidelines cited by the applicant's counsel is of year 2002 and he does not know as to what are the latest guidelines. Besides guidelines are not mandatory in nature.

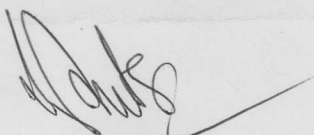
7. We have heard counsel for the parties and perused the records. While we agree with the respondent's counsel that the guidelines are not mandatory, we would like to observe that guidelines are not mere waste papers. Therefore, the cases of the applicants deserve to be considered sympathetically, specially when the applicants refused their promotion earlier because of family circumstances. The Chief Commissioner, while deciding the deployment, may not be fully aware of the various difficulties ^{due to their refusing promotion earlier} including the family circumstances of the applicants. We would like to observe that the transfer of the applicants during the mid-academic session would adversely affect the education of children.

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7. In the facts and circumstances, we consider it appropriate to remit back the case of the applicants to respondent No.2 to consider and decide the representation of the applicants by a detailed, reasoned and speaking order within specified time, ⁱⁿ order to apprise the Chief Commissioner Lucknow about the various facts and also hardships which the applicants would be subjected, ^{to} if they are posted out of Kanpur, The applicants are directed to file a detailed representation before the respondent No.2 who should decide the same within six weeks by a reasoned and speaking order. The applicants are allowed two weeks time to file a fresh representation. We also provide that the applicants shall be continued at Kanpur till the final disposal of the representation of the applicants.

8. With the above direction, the O.A. stands disposed of finally at the admission stage itself with no order as to costs.


Member-J.


Member-A.

Manish/-