

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 14th DAY OF JULY, 2004

Original Application No. 680 of 2003

CORAM:

HON.MR.JUSTICE S.R.SINGH,V.C.

HON.MR.D.R.TIWARI, MEMBER(A)

Y.N.Mishra, Son of
Shri G.P.Mishra, r/o 117/805,
M.Block, Kakadeo, Kanpur.

.. Applicant

(By Adv: Shri Ashish Srivastava)

Versus

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

.. Respondents

(By Adv: Shri N.C.Tripathi)

Along with Original Application No.691 of 2003

Shiromani Sujan, Son of
Late Kishan Lal, R/o 31,
Panchsheel Colony, Dauretha
No.2, Shahganj, Agra

.. Applicant

(By Adv: shri Ashish Srivastava)

Versus

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

.. Respondents

(By Adv: Shri Ashish Gopal)

..p2

Along with Original Application No.1460 of 2003

Meera Devi sharma, W/o Shri M.B.
Sharma, a/a 51 years, R/o Maruti Enclave
Badla Sarganj Road, Agra.

.. Applicant

(By Adv: 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 Minar,
Vidhan Sabha Marg, Lucknow.
3. Commissioner,
Customs and Central Excise,
Kanpur Office at Sarvodaya Nagar
Kanpur.

.. Respondents

(By Adv: Shri V.K.Pandey)

Along with Original Application No.1473 of 2003

Smt. Bhagwati Ludhani,
W/o Late P.D. Ludhani, a/a 51 years,
R/o 124/6-A, Govind Nagar,
Kanpur.

.. Applicant

(By Adv: 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 Minar, Vidhan Sabha
Marg, Lucknow.
3. Commissioner, Customs and Central
Excise, Kanpur office at Sarvodaya
Nagar, Kanpur.

.. Respondents

(By Adv: Shri S.C. Mishra)

O R D E R (Reserved)

JUSTICE S.R.SINGH,V.C.

These original applications are directed against transfer order dated 9.6.03 impugned in OA No.680/03 and OA No.691/03 and transfer order dated 20.11.03 impugned in OA No.1460/03 and OA No.1473/03. The grounds of challenge to the impugned order being common, it would be convenient to dispose them of by a common order.

Briefly stated the facts giving rise to the OAs are these: Applicant Shri Y.N.Sharma started his career as Inspector of Central Excise and Customs and initially he was posted at Lucknow Commissionerate vide Establishment order No.1/A/41/01 dated 18.5.01 but later on he was transferred to Kanpur Commissionerate where he earned promotion to the post of Superintendent Central Excise and Customs. Shiromani Sujana, applicant of OA No.691/03 started his career as Lower Division Clerk in Central Excise and Customs department w.e.f. 31.5.1973 and was later promoted to the post of Inspector w.e.f. 10.3.1988. He was posted at different places including Lucknow Commissionerate from where he was transferred to Kanpur Commissionerate in the month of May 2001 where he earned promotion to the post of Supdt.w.e.f. 23.9.02. In pursuance of the Chief Commissioner of Customs and Central Excise Lucknow's order dated 6.6.03, the Addl.Commissioner(P&V) Central Excise Kanpur by means of Establishment order No.1/A/7/03 dated 9.6.03 transferred certain officers including the applicants OA Nos 680/03 and 691/03 from Kanpur Commissionerate to Lucknow Commissionerate and vice versa. Similarly, Meera Devi Sharma, the applicant of OA No.1460/03 and Smt.Bhagwati Ludhani applicant of OA No.1473/03 have been transferred

:: 4 ::

from Kanpur Commissionerate to Lucknow Commissionerate vide order dated 20.11.03.

So far as Meera Devi Sharma is concerned, she was initially appointed as LDC w.e.f. 9.10.1972 and during course of time she earned promotion to the post of UDC and finally to the post of Office Superintendent on 30.9.1996 and transferred from Agra to Kanpur where she joined on 14.1.1997. By impugned order dated 20.11.03 Meera Devi Sharma and Bhagwati Ludhani have been transferred from the office of Central Excise Kanpur to the office of Central Excise Lucknow. The challenge to the validity of the transfer orders is basically on three grounds:

- i) that transfer from one Commissionerate to another is impermissible;
- ii) that the applicants have been transferred in flagrant violation of the Guidelines; and
- iii) that, so far as applicants Meera Devi Sharma and Bhagwati Ludhani are concerned, they had earlier refused their transfer on promotion thrice on the ground of family circumstances which still prevail and therefore it was not open to the respondents to transfer them without taking into reckoning their family circumstances under which they had earlier declines to accept their promotions.

We have heard Shri Ashish Srivastava learned counsel appearing for the applicants and S/Shri S.C.Mishra, Ashish Gopal and V.K.Pandey learned Addl.Standing counsel representing the department. While entertaining the original applications the Tribunal had granted interim order of stay but the same has since been quashed by the High Court with the direction that the Tribunal would ensure expeditious final disposal of the OAs.

The statutory rules governing service conditions of the applicants were not brought to the notice of the Tribunal either by the counsel appearing for the applicants or the additional standing counsel representing the

Raj

department. Legal position well settled is that in the absence of any statutory inhibition against transfer from one Commissionerate to another, the transfer of the applicants from Kanpur Commissionerate to Lucknow Commissionerate cannot be held to be illegal and without jurisdiction. The office of the Chief Commissioner of Customs and Central Excise, U.P. Lucknow has formulated certain guidelines for posting and transfer of Group 'B', 'C', & 'D' officers in Customs and Central Excise Commissionerate of Uttar Pradesh vide CMO II(3)CCO/LKO/429/02 pt dated 4.3.03 (Annexure A 3 to OA 691/03) in partial modification of the guidelines issued vide this Office No II(3)CCO/LKO/49/02 dated 7.5.02. It is, inter alia, provided therein that tenure of posting in Gr. 'B' & 'C' executive at Kanpur will be for 9 years and 3 years in Agra and Jhansi, keeping in view 3 to 1 ratio of the sanction strength at these places while status quo will be maintained in Lucknow and Allahabad Commissionerate. It also provides for inter Commissionerate transfer within the zone and for that purpose it is visualised that an open ended policy shall be adopted meaning thereby that such transfers shall be based on individual requests and subject to other parameters as laid down in terms of Board's instructions in this regard. Annexure A-II to Oa No. 691/03 Shiromani Sujan Vs. Union of India and Others contains guidelines for inter-Commissionerate transfer in the Commissionerates of UP and Uttaranchal within the multi Commissionerate zone having single cadre and inter alia provides that officers seeking inter-Commissionerate transfer will make a request in writing to the Commissioner under whose jurisdiction they are posted alongwith detailed reasons viz medical, compassionate or similar grounds supported by documentary evidence. From these documents it can reasonably be said that inter-Commissionerate transfer of Group 'B', 'C' and 'D' officers of Customs and Central

:: 6 ::

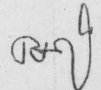
Central Excise department is permissible in law and accordingly we do not find any substance in the first submission made by learned counsel appearing for the applicant. We, however, hasten to add that normally transfer from one Commissionerate to another is to be made on individual request and subject to other parameters as laid down by Board's instructions in this regard."

Coming to the second and third submissions we are of the view that it would be but proper to direct the Competent Authority to consider and dispose of the pending representations filed on behalf of the applicants after proper self direction to the facts and circumstances, if any, indicated in individual representations making our medical, compassionate or similar grounds for recalling transfer orders of the applicants. Admittedly, the applicants have preferred representations pointing out therein their family problems and other circumstances including violation of the guidelines which if found true in individual cases, may warrant reconsideration at the level of the departmental authorities for they are in a better position to ascertain the truth and strike a reasonable balance between hardships, if any, to the individual applicants and the larger interest of the administration which necessitated issuance of impugned transfer orders. It may pertinently be stated that in the counter affidavit filed in OA No.1460/03, it is admitted that the representation of the applicant therein is under consideration. The applicants are, however, given liberty to supplement their representations.

...p7

Before parting we would like to observe that the decision in OA No.574/04(Tripta Bhatia Vs.Union of India & Ors) relied on by counsel for the applicant is not very helpful. In that case the representation had been rejected and in the opinion of the Tribunal the Competent Authority had failed to consider the family problems of the applicant therein. The decision in the said case was rendered by a single Member bench on the facts of that case. Similarly, the decision in OA 1502/03 Chhedi Lal Saroj Vs. Union of India and Ors relied on by the counsel for the applicant too is not very helpful. There in that case the learned Member(A) found, on perusal of the record, that no reason had been advanced by the department as to what prevented the department to transfer the respondents 5 & 6 therein to Lucknow Commissionerate in terms of guidelines dated 7.2.02. The transfer of the applicant therein was found to have been made in violation of the guidelines. The question whether applicants herein had been transferred in violation of any of the guidelines may be specifically raised before the Competent Authority by means of supplementary representation and if any such violation of guidelines is pointed out it would be obligatory for the Competent Authority to take into consideration the effect of such violation while deciding the representation in terms of this order.

In view of the above discussion the original applications are disposed of with a direction to the Chief Commissioner of Customs and Central Excise Lucknow to consider and dispose of the applicants representation, in

 ..P*

accordance with law as early as possible preferably within a period of one month from the date of receipt of a copy of this order after proper self direction to the issues raised in the representations. Parties are directed to bear their own costs.

and in the opinion of the Tribunal the Competent Authority had failed to consider the family problems of the applicant therein. The decision in the said case was reversed by a single Member bench on the facts of that case. Similarly, the decision in CA 1502/03 Chahal (al Savy) vs. Union of India and Ors relied on by the counsel for the applicant too is not very helpful. There in that case the learned Member (A) found, on perusal of the record, that no reason had been advanced by the department as to what prevented the department to transfer the respondents 2 & 3 therein to Lucknow Commissionerate in terms of guidelines dated 7.1.02. The transfer of the applicant therein was found to have been made in violation of the guidelines. The question whether applicants herein had been transferred in violation of any of the guidelines may be specifically raised before the Competent Authority by means of supplementary representation and if any such violation of guidelines is pointed out it would be obligatory for the Competent Authority to take into consideration the effect of such violation while deciding the representation in terms of this order.

In view of the above discussion the original applications are disposed of with a direction to the Chief Commissioner of Customs and Central Excise Lucknow to consider and dispose of the applicants representation in