

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 24th day of May 2004.

Original Application no. 1502 of 2003.

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

Chhedi Lal Saroj, S/o Late Nankoo,
R/o 128/549 K-Block, Kidwai Nagar,
KANPUR.

... Applicant

By Adv : Sri M.K. Sharma
Sri M. Prakash

V E R S U S

1. Union of India through Secretary,
Ministry of Finance, Department of Revenue,
Central Board of Excise and Customs, North Block,
NEW DELHI.
2. Chief Commissioner, Customs and Central Excise,
Tulsi Ganga Minar, 19-C Vidhan Sabha Marg,
LUCKNOW.
3. Commissioner Central Excise and Customs,
117/7 Sarvodaya Nagar,
KANPUR.
4. Additional Commissioner (P&V) Central Excise and Customs,
117/7 Sarvodaya Nagar,
KANPUR.
5. Smt. Nazma Tahir, W/o Mod. Tahir,
Administrative Officer, Central Excise and Customs,
117/7 Sarvodaya Nagar,
KANPUR.
6. Prem Singh Chandel, Administrative Officer,
Central Excise and Customs ,
117/7 Sarvodaya Nagar,
KANPUR.

... Respondents

By Adv : Sri G Prakash

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O R D E R

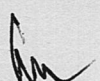
Maj Gen K K Srivastava, AM.

In the present OA, instituted under Section 19 of the A.T. Act, 1985, the applicant has challenged the order dated 20.11.2003 (Ann A1) whereby the applicant has been transferred from Central Excise Kanpur to Central Excise Lucknow. The applicant has prayed for quashing the same.

2. The facts of the case, in short, are that the applicant after his initial appointment as Lower Division Clerk (in short LDC) after due promotion was promoted as Administrative Officer on 03.12.1997 and was posted at Kanpur Commissionerate. The case of the applicant is that Govt. of India on 30.06.1994 formulated transfer guidelines providing that routine transfer of Ministerial Officer should be avoided from one station to another and they are liable to be transferred from one charge to another at periodic intervals. The guidelines dated 30.06.1994 is annexed as annexure 3 to the OA. In addition to guidelines dated 30.06.1994 the respondent no. 2 also framed guidelines dated 07.05.2002 to the effect that transfer of staff from Kanpur Commissionerate should be done by willingness of staff concerned and remaining vacancies shall be filled up by promotion or by option and the routine transfer should be avoided.

3. Yet another guidelines dated 10.12.2002 were issued by the department in the form of minutes of meeting in which it was stipulated that transfer from one zone to another zone should be made on the basis of juniority.

4. If is further submitted by the applicant's counsel



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that respondent no. 3 is the competent authority to transfer the applicant. However, respondent no. 2 on 19.11.2003, vide annexure 7, directed respondents no. 3 & 4 to transfer the applicant from Kanpur to Lucknow and consequently respondent no. 4 without application of mind transferred the applicant to Lucknow vide order dated 20.11.2003. The applicant urged that the order dated 20.11.2003 has been passed only to accomodate respondents no. 5 & 6 who have been promoted and his transfer is not in administrative exigencies and the same is in violation of transfer guidelines dated 07.05.2002 in as much as that respondents no. 5 & 6, though promoted, were retained at Kanpur, whereas in terms of the guidelines they were liable to be adjusted at Lucknow. It is further submitted by the applicant's counsel that principle of juniority, as contained in letter dated 10.12.2002, has also not been followed in as much as his several juniors are still working at Kanpur and they have not been transferred.

5. The applicant has also submitted that his wife is ill and is under the treatment of Dr. Anil Gupta for nose bleeding and High blood pressure. The applicant has annexed the prescription of doctor in support of his submission and stated that on humanitarian grounds also he should not be transferred out of Kanpur due to sickness of his wife.

6. The claim of the applicant has been resisted by respondents no. 1 to 4 by filing counter affidavit followed by suppl counter affidavit. In counter affidavit the respondents have taken stand that guidelines have been issued by the department in order to avoid routine transfer of Ministerial staff from one station to another but the same cannot be

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treated as ban or restrictions on transfer of its employees. The respondents further submitted that these guidelines are not statutory in nature and employees can always be transferred in administrative exigencies. Similar minutes dated 10.12.2002 were also issued after consultation with the Staff Association and it was decided that staff of Lucknow and Kanpur Commissionerate shall be transferred on the basis of juniority and after conclusion it does not debar the department from transferring the employee without his consent. However, in para 14 of the counter affidavit the respondents have tried to demonstrate that the applicant was not transferred in routine manner. Infact, six officers were found in excess of sanctioned strength in A.O. grade at Kanpur and there was a shortage of five officers at Lucknow and in order to balance the staff situation at Kanpur and Lucknow six junior most officers were considered for transfer. Out of these six officers two officers are physically handicapped and, therefore, on humanitarian ground those two officers were exempted from transfer. Two other officers immediately senior to them were picked up.

7. The applicant has filed rejoinder affidavit denying the contention of the respondents and reiterated the facts of the OA.

8. We have heard learned counsel for the parties, considered their submissions and closely perused records.

9. Sri M.K. Sharma, learned counsel for the applicant argued that circular dated 30.06.1994 and guidelines dated 07.05.2002 imposed complete bar on the department from transferring the employee without their consent or willingness and, therefore,

the applicant cannot be transferred in routine manner.

The applicant's counsel submitted that respondents no. 5 & 6 were promoted to the post of A.O. and, therefore, even

assuming that the Lucknow Commissionerate was having shortage of staff, in terms of guidelines dated 07.05.2002 they were liable to be absorbed at Lucknow instead of retaining them at Kanpur. Applicant's counsel relied upon the judgment of Hon'ble High Court in case of Deepa Vashistha Vs. Director of Education, Allahabad and others 1996 (3) UPLBEC 2064, wherein it has been held that at least efforts should be made to follow the guidelines. In the present case the respondents have not shown any reason for not following the circular dated 07.05.2002. More over the minutes dated 10.12.2002 provides that the transfer would be done on the basis of juniority i.e. junior most would be transferred first which the applicant is not.

10. The learned counsel for the respondents on the other hand resisting the claim of the applicant submitted that in administration, in regard to transfer, no hard and fast rule can be imposed and department can always transfer its employees in the exigency of service. The respondent's counsel further submitted that guidelines dated 07.05.2002 had been modified by the department after meeting with Staff Association and the same were modified vide minutes dated 10.12.2002 (Ann A5 to the OA) . We have perused the minutes dated 10.12.2002. It appears that several agenda items were discussed and minutes were prepared. However, in the minutes there is no whisper that the guidelines dated 07.05.2002 have been modified in any manner. From the record it is established that respondents no. 5 & 6 were promoted to the post of A.O. No reason has been advanced by the respondent's

counsel as to what prevented the respondents to transfer respondents no. 5 & 6 to Lucknow. Commissionerate in terms of guidelines dated 07.02.2002. Respondent's counsel placed reliance in case of Union of India and others Vs. S.L. Abbas reported in AIR 1993 SC 2444, wherein the Hon'ble Supreme Court has held that the guidelines are not mandatory. However, a close look of the judgment would show that the Apex Court while propounding this law has categorically held that parties must keep the guidelines in mind while making transfer. Similar view was expressed by the Hon'ble High Court in case of Deepa Vashista (supra).

11. In the present case the respondents have not disclosed any reason as to why the guidelines dated 07.05.2002 could not be followed rather it has been given a complete go-by. The respondents have merely stated that guidelines dated 07.05.2002 have been modified by minutes dated 10.12.2002, but this statement is not supported by any documentary evidence.

12. Sri M.K. Sharma, learned counsel for the applicant invited my attention to an order and judgment of this Tribunal passed in OA 1459 of 2003, Ravi Kumar Batra Vs. Union of India and others, wherein similar guidelines dated 10.12.2002 were issued containing the provisions for transfer on the basis of juniority and the order was passed in violation of guidelines. This Tribunal in its order dated 25.3.2004 has held as under :-

"....The origin of his complaint lies on non-compliance of the guidelines. From the transfer order itself it is clear that many junior persons like ones at sl nos 112, 113, 116, 117, 119 etc. are much junior to the applicant who have been retained at Kanpur. The respondents have thus, do not appear to follow the guidelines and if criteria of juniority was followed,

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the applicant's name would not fall under the officials, who have been transferred from Lucknow Zone to Meerut Zone in the list of 191 Senior Tax Assistants."

The Tribunal further held as under :-

"I am very much conscious of the decision of the Apex Court about the role of the Tribunal in so far as the cases of transfers are concerned. The apex court has in a catena of decisions have clearly laid down that transfer is an incident of service and courts and tribunals should not interfere in the matters relating to transfer. They have stated that the transfer order would require interference only in case the transfer is violative of some statutory rule or malafide....."

The facts of the case of Ravi Kumar Batra (supra) and the present case are similar and I do not find any good reason to differ with the judgment and order of this Tribunal in case of Ravi Kumar Batra (supra).

13. Learned counsel for the applicant contended that the guidelines dated 10.12.2002 provide that staff would be transferred on the basis of their seniority and the junior most would be liable to be transferred. The respondents did not dispute this position. In the counter affidavit it has been stated by the respondent's counsel that six persons were identified for transfer to Lucknow Commissionerate, but two of them were handicapped and, therefore, they could not be transferred. The nature and percentage of the handicap has not been explained. Moreover if that was the case, the next junior ought to have been transferred in view of the minutes dated 10.12.2002. In this view also the applicant deserves to be detained at Kanpur.



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14. Apart from it the applicant submitted that his wife is ill and under treatment at Kanpur and the applicant is only male member to look after his wife and family. The applicant has also annexed prescription of Dr. Anil Gupta who was attending to her. In such a situation no harm would be done, if the transfer of the applicant is differed for some times so that he may continue the treatment of his wife.

15. For the aforesaid reasons I am of the view that the respondents while passing the impugned order dated 20.11.2003 did not make any effort to comply with the guidelines dated 07.05.2002 and 10.12.2002 of the department and the transfer order dated 20.11.2003 is in clear violation of these guidelines. Therefore, the order dated 20.11.2003 is quashed so far as it relates to the applicant only.

16. The OA is accordingly allowed with no order as to costs.



Member (A)

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