

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.669 OF 2003
ALLAHABAD THIS THE 14th DAY OF May, 2004

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A

Ajay Pal Singh,
S/o Late Mahabir Singh,
R/o F-21, Ranjit Nagar,
Central Excise Colony,
Kanpur Nagar.Applicant

(By Advocate Sri A.C. Tiwari & Sri A.Srivastava)

Versus

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

.....Respondents

(By Advocate Shri P.D. Tripathi)

ORDER

In this O.A. filed under section 19 of Administrative Tribunals Act 1985, the applicant has challenged the transfer order dated 9.6.2003 passed by respondent no.3 which was approved by respondent no.2 by order dated 06.06.2003. The

applicant has been transferred from Kanpur Commissionerate to Lucknow Commissionerate and has prayed that the impugned transfer order dated 9.6.2003 in respect of applicant be quashed.

2. The facts, in short, are that the applicant was initially appointed as Lower Division Clerk in the year 1992 and was promoted as Upper Division Clerk in the year 1975. The applicant was further promoted as Inspector in the year 1984 and is presently holding the post of Superintendent Group 'B' post after promotion on the recommendation of departmental promotion committee. He is holding the post since 24.09.2002 and is working in the office of respondent no.3. He is aggrieved with the impugned transfer order dated 09.06.2003 and has filed this O.A. which has been contested by the respondents by filing CA.

3. Heard counsel for the parties, considered their submissions and perused records as well as the pleadings.

4. The learned counsel for the applicant submitted that transfer policy has been published by respondent no.2 on 07.05.2002 in pursuance of which guidelines have been issued on 31.05.2001 (Annexure A-1A) for inter-commissionerate transfers.

5. The learned counsel for the applicant further submitted that after ^a meeting with all staff associations the transfer policy dated 17.02.2003 was formulated and issued on 18.02.2003 in which it has been laid down that transfer should be done on request in different commissionerate Offices in zone and lays down that the tenure at Kanpur should be for nine years. The respondents issued amended guidelines for transfer

and posting vide office order dated 04.03.2003 (Annexure A-2).

6. The learned counsel for the applicant keeping in view the above, submitted that 71 superintendents were transferred vide establishment order dated 46/03 dated 24.04.2003 in which the name of the applicant was not there. However, the order of transfer dated 24.04.2003 was not given effect to, and another list was prepared on 08.05.2003 in respect of 44 superintendents including the applicant's name. The order dated 08.05.2003 was prepared in pursuance to the order of Chief Commissioner dated 05.05.2003. Again a transfer order was issued on 09.05.03 amending certain names. The entire exercise ~~was~~ conducted by the respondents in issuing the transfer order, then not implementing it, prepare another list, modify the same and ultimately issue the impugned order shows that the respondents have not carefully applied their mind and have not cared to follow the guidelines laid down by them resulting into issue of an order dated 24.04.2003 and its non-implementation etc.

7. We find substance in the submission of the learned counsel for the applicant and we observe that in the matter of transfer Pick and Choose policy cannot be adopted by the respondents. We are fully aware that we should not intervene in the transfer matters as any intervention by the court creates administrative hassles but we would certainly like to observe that if order appears to be arbitrary without adhering to the guidelines/principles laid down by the respondents themselves. Such an order cannot sustain in the eyes of law.

8. It has been submitted by the respondents counsel that the transfer order was required to be issued because there were surplus superintendents in Kanpur Commissionerate whereas



there was shortage in Lucknow Commissionerate. If that be so, it would have appeared correct on the part of the respondents if they had issued the orders only to the extent of surplus superintendents in Kanpur Commissionerate. Contrary to it in the impugned transfer order dated 09.06.2003 20 superintendents have been transferred from Kanpur Commissionerate to Lucknow Commissionerate and 14 superintendents have been transferred from Lucknow Commissionerate to Kanpur Commissionerate. We fail to understand as to why the respondents could not issue the transfer orders only to the extent of surplus superintendents in Kanpur Commissionerate i.e. six in number. The applicant has been working on the promotional post of Superintendent in Kanpur Commissionerate since 24.09.2002 and the tenure of posting at Kanpur ~~has~~ been decided to be for nine years, the respondents are not able to justify their action in transferring the applicant just after the applicant worked on the provisional post for less than one year.

9. We also find substance in the argument of the learned counsel for the applicant that as per guidelines laid down by the respondents themselves the junior most should have been transferred. The contention of the respondents that in administration no hard and fast rule can be imposed and department has the right to transfer its employees in the exigency of the administration is not acceptable to us in the present case. The perusal of guidelines dated 31.05.2002 (Annexure A-1A) and the guidelines dated 04.03.2003 (Annexure A-2) leaves no doubt in our mind that the respondents have acted against what they have themselves laid down in regard to the transfer policy. In the present case the respondents have not disclosed any reason as to why the guidelines could not be followed. Rather, it has been given a complete go-by.

The respondent's counsel has placed reliance on the judgment of Hon'ble Supreme Court in the case of U.O.I. Vs. S.L. Abass reported in 1993 SC 2444 wherein the Hon'ble apex court has held that guidelines are not mandatory. However, a close scrutiny of the judgment would show that the apex court, while propounding this law has categorically held, that "authorities must keep the guidelines in mind while making transfer". Similar view was expressed by the Hon'ble High Court of Allahabad in the case of Deepa Vishnatha Vs. Director of Education, Allahabad and Ors. reported in 1996(3) UPLBEC page 2064, and, therefore, the contention of the respondents cannot be accepted. The learned counsel for the applicant cited the judgment and order of this Tribunal passed in O.A. No.1459/03 in the case of Ravi Kumar Batra Vs. U.O.I. And Ors. wherein the Tribunal allowed the O.A. on the ground that the transfer order had been issued in complete violation of the guidelines dated 10.12.2002. For convenience sake the order of this Tribunal is reproduced below:-

Para 6

"The origin of his complaint lies in non-compliance of the guidelines. From the transfer order itself it is clear that many junior persons like once 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, 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.

Para 8. I am very much conscious of the decision of the Apex court about the role of the Tribunal in so far as the case 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 of transfer is violative of some statutory rule of malafide."

The facts of the case of Ravi Kumar Batra (Supra) and the present O.A. are similar and I am in respectfull agreement with the same. The ratio laid down in the above case shall be



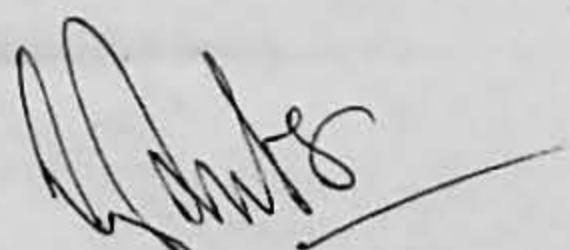
applicable in this case also.

10. During the course of the arguments the applicant submitted that the order has been issued during the mid-academic session. The applicant has school going sons and daughter and in case the applicant leaves from his present location it is bound to adversely affect the career of his children. We find substance in the contention of the applicant.

11. For the reasons stated above, I am of the view that the respondents while passing the impugned order dated 06.06.2003 did not make any effort to comply with the guidelines on the subject and the transfer order dated 06.06.2003 is in clear violation of the guidelines laid down by the respondents themselves.

12. In the facts and circumstances, the D.A. is allowed. The impugned order dated 09.06.2003 is quashed in respect of applicant transferring him from Kanpur Commissionerate to Lucknow Commissionerate.

13. There shall be no order as to costs.



Member-A

/ Neelam/