

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 28th day of May 2004.

Original Application no. 674 of 2003.

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

1. N.K. Das, S/o Sri H.K. Das, 124 B/486,
Govind Nagar, Kanpur.
2. O.P. Shukla, S/o Sri Pahalwan Shukla,
R/o 117/K/9, R.S. Puram, Kanpur.
3. S.L. Dixit, S/o Late Sri K.L. Dixit,
R/o 151 Rajeev Nagar, Vinayak Puram,
Kanpur.
4. Roopchand, S/o Late Lala Ram alias Ram Bali,
R/o 10, Central Excise Colony, Ranjeet Nagar,
Kanpur.
5. A.K. Tiwari, S/o Sri S.S. Tiwari,
124/94 D-Block, Govind Nagar,
Kanpur.
6. K.N. Tiwari, S/o Late Sri G.N. Tiwari,
117 N/802, Kakadev, P.O. Rawatpur,
Kanpur.

... Applicants

By Adv : Sri A. Srivastava

V E R S U S

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,
Office at Sarvodaya Nagar, Kanpur Nagar.

... Respondents

By Adv : Sri V V Mishra

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O R D E R

Maj Gen K.K. Srivastava, AM.

In this OA, filed under Section 19 of the A.T. Act, 1985, the applicants have prayed for quashing the transfer order dated 09.06.2003 (Ann A-1) passed by respondent no. 3 i.e. Commissioner, Customs and Central Excise, Kanpur, after getting approval dated 06.06.2003 of respondent no. 2.

2. The facts, in short, are that the applicants are working as Superintendents in Central Excise Commissionerate Kanpur. Applicant no. 1 is working as Superintendent since 14.08.2002, applicant no. 2 since 21.10.2002, applicant no. 3 since 23.09.2002, applicant no. 4 since 23.09.2002, applicant no. 5 since 23.09.2002 and applicant no. 6 since 23.09.2002. They are aggrieved with the transfer order dated 09.06.2003 by which they have been transferred from Kanpur Commissionerate to Lucknow Commissionerate. The claim of the applicants has been contested by the respondents by filing counter reply.

3. Heard Sri A. Srivastava, learned counsel for the applicant and Sri V.V. Mishra, learned counsel for the respondents and perused records as well as pleadings.

4. The learned counsel for the applicant at the outset, assailing the action of respondents, submitted that the impugned transfer order is illegal and it has been issued against the policy decision of the respondents themselves. Transfer policy was issued on 18.02.2003 after meeting with All Staff Association and the amended guidelines issued on 4/8.03.2003.

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5. The learned counsel further submitted that by Establishment order No. 46/2003 dated 24.04.2003 (Ann A4) 71 Superintendents are shown to have been transferred in which the applicants name (except that of applicants no. 3 & 5) figure at different places. However, the order dated 24.04.2003 was not given effect to and a list of 44 Superintendents for transfer was prepared on 08.05.2003 (Ann A5) which includes the names of the applicants at sl no.43, 05, 14, 40, 18 and 15 respectively. The applicants aggrieved by the same, moved representation against the proposed transfer order which is still pending and instead of first deciding the representation of the applicants, the impugned transfer order has been issued on 09.06.2003 (Ann A1) after approval of respondent no. 2 i.e. Chief Commissioner of Customs and Central Excise, Lucknow dated 05.06.2003. The learned counsel for the applicant argued that it is not under-stood as to what were the considerations that the order dated 24.04.2003 was not implemented. Besides in case of shortage, which is stated to be six, in Lucknow Commissionerate the respondents should have transferred only upto the extent of shortage in Lucknow Commissionerate instead of transferring 20 Superintendents from Kanpur Commissionerate to Lucknow Commissionerate and 14 Superintendents from Lucknow Commissionerate to Kanpur Commissionerate.

6. The learned counsel for the applicants finally submitted that the applicants have ^{been} transferred much before their tenure which is 09 years at Kanpur as per the guidelines without considering the family problems of the applicants. Therefore, the transfer order is liable to be set aside. Relying on the judgment of Hon'ble Allahabad High Court in case of Dr. Lakhte Mustafa Kazmi Vs. State of

UP and another, 2003 (3) ESC (All) 1340, submitted that it is a law of nature that one should not be enriched by the loss or injury to another. The learned counsel has also placed reliance on the judgment and order of this Tribunal (Lucknow Bench) in case of Vinod Sahi Vs. Union of India & Others (1996) 34 ATC 255, wherein it has been held that transfer of an employee to accommodate another employee is not a bona fide exercise of power. Learned counsel for the applicant has also placed reliance on the order of this Tribunal dated 25.03.2004 passed in OA no. 1459 of 2003 in case of Ravi Kumar Batra Vs. Union of India & others by which the OA has been allowed.

7. Opposing the the claim of the applicant Sri V V Mishra, learned counsel for the respondents submitted that the transfer of the applicants has been ordered on administrative grounds and exigencies of service. Transfer is an incidence of service and if the transfer has been done in public interest, the same does not require any judicial intervention only on the ground of non observance of norms and guidelines. Placing reliance on the judgment of Hon'ble Supreme Court in case of Gujarat Electricity Board Vs. Atomaram Sungomal Poshani reported in 1989 (2) SCC 602, learned counsel for the respondents submitted that the policy and guidelines in regard to transfer are only intended for the guidelines of the Competent Authority in effecting transfers. The official holding a transfereable job has no right to approach the Court of law. in the matters of transfer, unless it is vitiated by malafide or colourable exercise of the power. Learned counsel for the respondents also submitted that the impugned transfer order dated 09.06.2003 has been issued on the basis of decision

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taken in the meeting held on 21.05.2003, wherein it has been decided with consensus that criterion of juniority is required to be followed for transfer between Kanpur and Lucknow Commissionerate and the junior most Superintendent would be transferred from Kanpur to Lucknow. Consequently, the senior Superintendent working at Lucknow, who belongs to Kanpur Commissionerate, will be transferred back to Kanpur and certain junior may have to continue at Lucknow.

8. Learned counsel for the respondents has placed reliance on the following cases :-

- a. State of M.P. and another Vs. S.S. Kourav and others, (1995) 3 SCC 270
- b. Rajendra Roy Vs. Union of India & Others, AIR 1993 SC 1236
- c. Mrs. Shilpi Boas and others Vs. State of Bihar and others, AIR 1991 SC 532
- d. State of Punjab and others Vs. Joginder Singh Dhatt, AIR 1993 SC 2486
- e. Union of India & others Vs. S.L. Abbas, AIR 1993 SC 2444
- f. State of Punjab and others Vs. Ram Lubhaya Bagga and others, (1998) 4 SCC 117.

Relying upon the above judgments, learned counsel for the respondents submitted that the Court should not interfere in the matter of transfer unless it is vitiated by malafide or is made in violation of statutory provisions. The impugned order has been made in public interest and also for administrative reasons and not against any mandatory statutory rules. Therefore the impugned transfer order is valid and the pleas of the applicants ^{L L}are to be rejected.

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9. Learned counsel for the parties have brought on record ~~the~~ innumerable case law of the Hon'ble Supreme Court and of this Tribunal. I have gone through the case law cited by the learned counsel for the parties. The learned counsel for the applicant has basically placed reliance on the judgment of this Tribunal dated 25.3.2004 in case of Ravi Kumar Batra (supra). The same is easily ~~not~~ distinguishable as in case of Sri Ravi Kumar Batra (supra) the applicant suffered the pain of three transfers within a short span of one and half years, which is not so in the matter. The respondents on the other hand have argued that in the matter of transfer the scope of judicial review is very limited and the Court normally should not interfere. I would like to observe here that once the respondents have already formulated a policy in regard to the transfer, the same cannot be ignored totally. The policy and the guidelines laid down by the respondents cannot be treated as waste paper.

10. In view of the above, I consider it appropriate to direct the applicants to file a detailed representation bringing out the various points of their grievance, which should be looked into by the respondent no. 2 i.e. Chief Commissioner of Customs and Central Excise, Lucknow, and the same shall be decided within specified time.

11. In the facts and circumstances, the OA is finally disposed of with direction to the applicants to file representation alongwith copy of this order, if so advised,

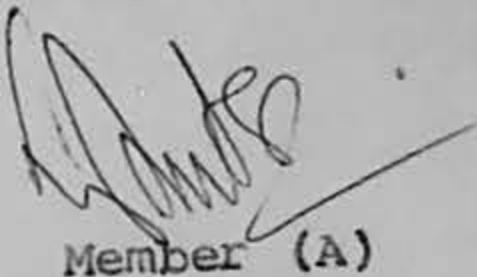
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before respondent no. 2 within three weeks and the respondent no. 2 i.e. Chief Commissioner of Customs and Central Excise, Lucknow, is directed to decide the same by a reasoned and speaking order within a period of two months. I also provide that till the representation of the applicants is decided, ^{by} the status quo ^{has on 8.06.03} in respect of the applicants shall be maintained.

12. There shall be no order as to costs.


Member (A)

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