

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 386 OF 2011

Friday, this the 3rd day of February, 2012

CORAM:

HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER

Anjali Sudershan
Tax Assistant, Central Excise,
Customs and Service Tax
Cochin.

- Applicant

(By Advocate Mr. M.R. Anison)

Versus

1. Union of India represented by its Secretary
Department of Revenue, Ministry of Finance
North Block, New Delhi – 110 001.
2. The Chairman, Central Board of
Excise and Customs, North Block
New Delhi – 110 001.
3. The Chief Commissioner of Central Excise,
Customs and Service Tax, Kerala Zone
Central Revenue Building
I.S. Press Road, Kochi – 682 018.
4. The Commissioner of Central Excise,
Customs and Service Tax, Kerala Zone
Central Revenue Building
I.S Press Road, Kochi – 682 018. - Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

The application having been heard on 03.02.2012, the Tribunal on
the same day delivered the following:

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ORDER**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER**

The applicant has approached this Court challenging the Annexure A-16 as arbitrary and illegal and prays for a direction to Respondent 2 & 4 to permit the applicant to work under the Cochin Commissionerate until the 3rd respondent takes a decision as directed in Annexure A-13 order.

2. Annexure A-16 impugned order in this Original Application was passed by the Commissioner dated 05.05.2011 by which order the applicant has been relieved in the afternoon of 05.05.2011 to repatriate her to Central Excise Commissionerate, Allahabad on completion of her deputation period to join at her parent Commissionerate. The Annexure A-16 order was stayed by this Tribunal and the stay continues even as on today. The correctness or otherwise the Annexure A-16 relieving order has to be tested in the light of Annexure A-13 order passed by this Tribunal in O.A No. 82/2011 filed by the applicant on an earlier occasion. The applicant had approached this Tribunal for a direction to the respondents to grant Inter-Commissionerate Transfer (ICT) from Allahabad Commissionerate to Cochin Zone invoking Annexure A-3. Annexure A-3 contains two parts. First part includes where a husband and wife are, as far as possible, and within the constraints of administrative convenience, posted at the same place where his or her spouse is employed. The 2nd part, however says that on such transfer, he or she will not lose the seniority. The 2nd part of the order was the subject matter of challenge



before this Tribunal on earlier occasion at the time of disposing Annexure A-13. The applicant was appointed as LDC in Vadodara Commissionerate under the 2nd respondent on 10.06.1998 while she was in the Allahabad Commissionerate from December, 1998 to May 2006. She was promoted to UDC. Her husband was working in Bank of Baroda and she was transferred to Kerala in 2006 as she could not live alone with her small child, she requested for a transfer on compassionate ground. This was extended upto May 2011, when the Annexure A-13 was passed. The deputation cannot be granted for more than five years. The ban on Inter-Commissionerate Transfer in Group B, C & D posts was lifted by Annexure A-3 which granted certain relaxation for transfer on spouse ground. The applicant submitted a representation dated 06.04.2009 and the same is produced as Annexure A-4. Annexure A-3 order of the Central Board of Excise and Customs was challenged in O.A 643/2009 and connected cases before this Tribunal and this Tribunal stayed the operation of Annexure A-3. Those cases were pending and subsequently disposed of. Respondent No. 2 issued Annexure A-9 with reference to Annexure – 13 stating that the fixation of seniority of the beneficiaries of the Inter-Commissionerate Transfer will be subject to the outcome of the O.As in O.A 643/2009 and other connected cases filed before this Tribunal.

3. The counsel for the applicant submitted that the case of the applicant is exactly similar and hence he prays for a similar consideration as

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was granted to the applicant in O.A 88/2010. By following the earlier orders passed, this Tribunal directed to consider the request for transfer of the applicant leaving the issue of her seniority to be decided on disposal of the O.As pending before this Tribunal. The order was issued on 14.03.2011 and without considering the request for transfer as directed in Annexure A-13, Annexure A-16 was issued on 05.05.2011 and therefore on this short ground A-16 is liable to be quashed. It is however, to be stated that the question regarding the correctness of Annexure A-3 and the seniority question is concerned O.A 643/09 was decided in favour of the existing employees working in the unit. It was contended that the person coming on transfer on request should join as junior most in the unit and it cannot take away the seniority of others in the unit. This was accepted by this Tribunal. Under the circumstances, the present O.A is virtually an application for implementation of Annexure A-13.

4. I have heard the learned counsels for the parties. The respondents are directed to consider the request of the applicant for a transfer to Cochin Commissionerate in the light of the Annexure A-3 with reference to Annexure A-13 judgment without any seniority benefit to the applicant. In this connection, it may be mentioned that the Review Application filed by the respondents in O.A 82/2011, the only change made was applicant's inter-se seniority in the Cochin Commissionerate is yet to be decided. On the other hand, it was found that there is no justifiable reason for the Chief

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Commissioner, Kochi not to grant permission/NOC to the applicant regarding ICT on spouse ground. O.A was allowed as above. In view of the fact that consequent upon the inter se seniority question having been decided by this Tribunal in O.A 643/2009, I direct that consideration of IC Transfer of the applicant will be considered in the light of Annexure A-3 and Annexure A-13 without getting benefit of any seniority to the applicant . The above shall be done within a period of one month. The applicant is permitted to continue in Cochin Commissionerate until orders are passed in compliance with the direction of this Tribunal in O.A 82/2011 and the above order.

5. No costs.

(Dated 3rd February, 2012)



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

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