

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 288 of 2011

This the 13th the day of January, 2012

Hon'ble Mr. S.P. Singh, Member-A

Rupinder Kumar Pahwa, Aged about 59 years, S/o Sri H.S. Pahwa, R/o 7/104, Vikas Nagar, Lucknow (Posted as Superintendent in Range- Barabanki-1 Central Excise Department, Barabanki

.....Applicant

By Advocate : Sri R.C. Singh.

Versus.

1. Union of India through Secretary, Ministry of Finance (Revenue Department), New Delhi.
2. Commissioner, Central Excise Commissionerate, 7-A Ashok Marg, Lucknow.
3. Additional Commissioner (Incharge of Division-II), Central Excise, Lucknow.
4. Assistant Commissioner, Central Excise Division II, Lucknow.

.....Respondents.

By Advocate : Sri S.P. Singh for Sri R. Mishra

ORDER

This O.A. has been instituted seeking the relief for issuing/passing of an order or direction setting side the transfer order dated 14.7.2011 issued by respondent no.4 transferring the applicant from Range Barabanki-I of the Central Excise to Range Chinhath-II in so far as it relates to the applicant.

2. The brief facts of the case are that the applicant is working as Superintendent (Group 'B' post) in the Central Excise Department and is due for retirement on superannuation on 29.2.2012. It is pleaded by the learned counsel for the applicant that the applicant submitted an application dated 24.2.2011 to the Commissioner, Central

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Excise Commissionate, Lucknow for posting at Range Barabanki-I (Annexure-2). After due consideration of the application of the applicant, he was posted vide Estt. Order 09/2011 dated 5.5.2011 to Range Barabanki-I under Central Excise Division-II, Lucknow with the approval of Commissioner, Central Excise, Lucknow (Annexure-3). In compliance of transfer order dated 5.5.2011, the applicant joined his duty at Range Barabanki-I on 11.5.2011. Suddenly, after a gap of two months of his joining at Range Barabanki-I, the respondent no.4 with the alleged approval of respondent no.3 transferred the applicant from Range Barabanki-I of the Central Excise to Range Chinhath-II by the order dated 14.7.2011 (Annexure-1), which is under challenge in this O.A. This transfer order dated 14.7.2011 was issued with the approval of the Additional Commissioner (Incharge of Division II), Central Excise, Lucknow

3. Supplementary Affidavit has been filed by the applicant enclosing therewith the transfer guidelines as Annexure SA-I to the Supplementary Affidavit. According to para 6 of this Transfer guidelines as applicable to Group 'B', 'C' and 'D' officials in the department of Customs & Central Excise, Additional Commissioner/Deputy Commissioner may issue transfer orders in consultation with and with the approval of Commissioner subject to the guidelines that the officer gets opportunity to work in the Range for two years.

Preliminary Objection on the maintainability of O.A. was filed by the respondents on 5.8.2011 saying that the applicant has been relieved from the post of Superintendent, Central Excise Range I Barabanki in the forenoon of 18.7.2011 with direction to report to his new place of posting at Central Excise Range-II Chinhath Division-II, Lucknow (Annexure-4 to the Preliminary Objection). In reply, the counsel for the applicant pleaded that the preliminary objection are not in conformity with the provisions contained in Rule 12(2) of CAT (Procedure) Rules, 1987 read with order 16 and Rule 15 of Civil Procedure 1908 and pleaded that this may be rejected as it not tenable in the eyes of law.

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Thereafter, a detailed Counter Reply has been filed by the respondent nos. 1 to 4 on 28.9.2011. In para 3 of the Counter Reply, the respondents have clearly conceded that the impugned order was issued as per the approval of answering respondent no.3 with the remark "Commissioner was kept apprised on the matter". The copy of the transfer order was sent to the Commissioner after issuance of the order. The applicant has since complied with the order dated 14.7.2011, which has been confirmed by the department in para 13 of Counter Reply as a consequence thereof, he had joined in Central Excise, Range Chinhat II on 16.8.2011. In the second para of his joining report dated 16.8.2011 it has been mentioned that he had joined under protest as his superannuation on 29.2.2012 and his pension papers are to be prepared and he has no other option, but to join at Chinhat Range II without prejudice his right and subject to orders of this Tribunal.

I have heard the learned counsel for the parties and have perused the material on record.

In para 4 of Rejoinder Reply, the applicant has stated that that the impugned transfer order was issued by respondent no.3 who had endorsed the remark that the "Commissioner was kept apprised on the matter". It was further stated that apprising the Commissioner does not mean "approval of Commissioner". As claimed by the respondents in para 4 of the Supplementary Counter Reply filed on 22.11.2011 that the Commissioner herself posted a new incumbent in place of the applicant at Barabanki does not meet the requirement of obtaining prior approval of Commissioner in the case of the impugned order before issue. Hence there is sufficient force in what has been stated by the applicant. It is found that the impugned order has not been issued after prior approval of Commissioner, Central Excise and hence void-abinitio.

Learned counsel for the applicant has relied upon the decision rendered in the case of **Dr. Jitendra Pratap Singh vs. State of U.P. & Others reported in 2009 (27) LCD 1425** wherein it has been held that the order transferring the petitioner at the fag end of his career as only 10 months are left

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for his superannuation is against the policy of State Government and quashed the same subject to availability of post.

It is argued by the learned counsel for the applicant that any transfer order is vitiated if it is found to be based on contravention of the statute, or lacks jurisdiction or malafide. He has relied upon the judgment rendered in the case of **Vinod Kumar Pandey Vs. State of U.P. & Others reported in 2010 (28) LCD 232** wherein it has been held that the law is well settled that transfer being exigency of service can be effected by the employer concerned in accordance with its administrative exigency, in the interest of administration and public interest at any point of time and that cannot be monitored and guided by this Court unless it may be shown that transfer order is vitiated on account of the contravention of the statute, or lacks jurisdiction or malafide.

In view of the position as discussed above and also in view of the preposition of law relied upon by the learned counsel for the applicant, transfer order dated 14.7.2011 (Annexure A-1) is quashed in so far as it relates to the applicant. However, this will be subject to availability of post on which the applicant was working at Barabanki.

O.A. stands allowed in the aforesaid terms. No order as to costs.



(S.P. Singh)
Member-A

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