

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 672 of 2005

Original Application No. 673 of 2005

Qualior this the 13th day of September, 2005

Hon'ble Shri M.P. Singh, Vice Chairman

Hon'ble Shri Madan Mohan, Judicial Member

1. **Original Application No. 672 of 2005 -**

Mahendra Singh Sikarwar & Anr. Applicants

2. **Original Application No. 673 of 2005 -**

Central Excise Group-B Executive Officers
Association & 6 Ors. Applicants

(By Advocate – Shri M.K. Verma in both the OAs)


Versus

1. Union of India, through Revenue
Secretary, Ministry of Finance,
Department of Revenue, North Block,
New Delhi.

2. Chairman, Central Board of Excise
and Customs, North Block, New Delhi.

3. Chief Commissioner, Customs & Central
Excise, M.P. & Chattisgarh, 48,
Administrative Area, Arera Hills,
Bhopal, M.P. Respondents
in both the OAs

(By Advocate – Shri S.A. Dharmadhikari in both the OAs)



ORDER (Common)

By Madan Mohan, Judicial Member -

As the issue involved in both the aforementioned cases is common and the facts and grounds raised are identical, for the sake of convenience these Original Applications are being disposed of by this Common order.

2. By filing these Original Applications the applicants have claimed the following main reliefs :

“8.1 to quash the order dtd. 31.3.2005 (Annexure A-4) in the interest of justice,

8.2 to hold that the order dtd. 8.7.2005 passed by respondent No. 2 is cryptic, non-speaking and unreasoned,

8.3 to hold that the respondent No. 3 do not have any authority or power to pass inter zone transfer order, in respect of applicants in the interest of justice. It may further be pleased to hold that the action of passing impugned order (Annexure A-4) is bad in the eye of law.”

3. For the purpose of brevity, only the facts of Original Application No 672 of 2005 are given.

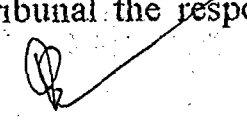
4. The brief facts of the case are that the applicants are persons who have been affected by the illegal/beyond jurisdiction order passed by the respondent No. 3 transferring them to Nagpur Zone. The Bhopal zone comprising the State of Madhya Pradesh and Chhattisgarh has been created by the Department of Customs and Central Excise giving administrative control to the Chief Commissioner of Central Excise. The Bhopal Zone comprises of three Commissionerates namely Bhopal, Indore and Raipur. Similarly there exists another zone of Nagpur which also comprises three Commissionerates i.e. Aurangabad, Nagpur and Nasik. It means that the respondent No. 3 is the cadre controlling authority for the State of Chhattisgarh and Madhya Pradesh having three Commissionerates in her administrative control. Despite there being clear



mandate of responsibilities for Chief Commissioner and description of two different zones the respondent No. 3 has in total defiance of the policy in excess use of her powers has passed the order dated 31.3.2005 by which the applicants have been transferred to different zone i.e. Nagpur zone. The applicants have submitted categorical representations to the respondent No. 2. The order dated 31.3.2005 (Annexure A-4) is passed absolutely in violation of the notification issued by the Ministry and is also an order which is beyond powers and jurisdiction conferred in respondent No. 3. Against the impugned order dated 31.3.2005 the applicants have filed Original Application No. 368/2005. The Tribunal vide its order dated 15.4.2005 (Annexure A-8) directed the respondent No. 2 to consider and decide the representation of the applicants. Despite being clear order of the Tribunal the respondents have not passed clear order and have passed a vague order on incorrect facts which is against the transfer guidelines, instructions and notifications issued by the Department from time to time. Hence, this Original Application is filed.

5. Heard the learned counsel for the parties and carefully perused the pleadings and records.

6. It is argued on behalf of the applicants that the Bhopal zone comprises of the State of Madhya Pradesh and Chhattisgarh. Its administrative control is given to the Chief Commissioner of Central Excise. The Bhopal zone comprise three Commissionerates namely Bhopal, Indore and Raipur. There exists another zone i.e. Nagpur zone and it comprises Aurangabad, Nagpur and Nasik. According to the policy the Chief Commissioner, Bhopal has no authority to transfer the applicants beyond her jurisdiction to Nagpur Zone. The applicants submitted representations to the respondents in this regard and the respondents have passed an order dated 31.3.2005 in violation of the notification issued by the Ministry. The applicants preferred an OA No. 368/2005. On compliance of the order of the Tribunal the respondents



have passed the impugned order dated 8th July, 2005 which is passed against the transfer guidelines, instructions and notifications issued by the Department from time to time. This order is a vague order. Hence, the applicants are entitled for the reliefs claimed by them.

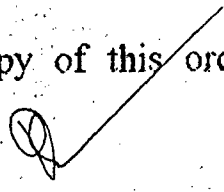
7. In reply the learned counsel for the respondents argued that the respondents have passed the impugned order dated 8th July, 2005 (Annexure A-9) and in which the respondents have considered the directions of the Tribunal passed in OA No. 357/2005 and 368/2005 decided on 12th April, 2005 and 15th April, 2005 respectively. The respondents have considered each and every aspect as mentioned by the applicants in their representations as well as the representation of the association. The representatives of the association and other applicants were given an opportunity of personal hearing by the Chairman, CBEC, New Delhi on 17th May, 2005. The submissions of the association and other applicants were carefully considered in the light of the comments submitted by the Chief Commissioner. The functions and powers of Principal Collector (now Chief Commission) have been defined in the instructions issued by the Central Board of Excise and Customs on 10.8.1990. In this instruction it is clearly provided that the Principal Collector (now Chief Commissioner) may order, in respect of common cadre collectorates in his charge, inter-collectorate transfer of Group-B and C officers. As already stated above, Superintendents of Nagpur Commissionerate form part of the common cadre of Superintendents in respect of which the Chief Commissioner, Bhopal is the Cadre Controlling authority. Therefore, the transfer of Superintendents out of Raipur or Indore Commissionerates to Nagpur Commissionerate is well within the defined ambit of powers and jurisdiction of the cadre controlling authority namely Chief Commission, Bhopal. The contention of the association and other applicants that the Chief Commissioner, Bhopal has no authority to order inter commissionerate transfers in the grade of Superintendents from Raipur or Indore Commissionerates to

Nagpur Commissionerate is baseless and devoid of any substance. He further argued that there is no loss of seniority and in the end of the said letter it is clearly mentioned that 'this issues with the approval of the Chairman, CBEC, New Delhi. Hence, all the representations of the applicants were rejected. Therefore, the action of the respondents is perfectly legal and justified and this OA deserves to be dismissed.


8. After hearing the learned counsel for both the parties and on careful perusal of the pleadings and records, we find that in the impugned order dated 8th July, 2005, the respondents have considered each and every aspect of the case including the contentions raised by the applicants. This is a speaking, reasoned and detailed order which is passed in compliance of the orders passed by the Tribunal in OAs Nos. 357/2005 and 368/2005. We further find that this order is issued with the approval of the Chairman, CBEC, New Delhi. Hence, no irregularity or illegality has been committed by the respondents while issuing the transfer orders of the applicants. The Hon'ble Supreme Court, regarding the interference of the Courts/Tribunals in transfer cases, has laid down that the Courts/Tribunals generally are not required to interfere in the cases of transfer unless the transfer is malafide or in violation of the statutory rules or it is made beyond the powers of the competent authority. The applicants' cases do not come within any of the grounds mentioned above for interference of the Courts/Tribunals.

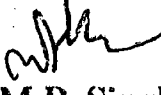
9. In view of the aforesaid facts and circumstances of the case, we are of the considered opinion that these Original Applications deserves to be dismissed as having no merits. Accordingly, the Original Applications are dismissed with no order as to costs. The Interim order dated 26.7.2005 passed in both the aforesaid OAs are vacated.

10. The Registry is directed to place a copy of this order in the connected file.



11. The Registry is also directed to enclose the copy of memo of parties with the present order and further issue the copy of memo of parties to the concerned parties while issuing the certified copies of this order.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

“SA”