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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH,
CHANDIGARH.**

O.A.No.060/00693/2014

Date of Decision : 26.3.2015

Reserved on: 20.03.2015

**CORAM: HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER
HON'BLE DR. BRAHM A. AGRAWAL, JUDICIAL MEMBER**

1. Yogamber Singh S/o Sh. Gabbar Singh, Havaldar.
2. Balam Singh S/o Sh. Kundan Singh, Havaldar.
3. Banwari Lal S/o Sh. Dhundi Ram, Havaldar.
4. Dalip Singh S/o Sh. Sunder Singh, Havaldar.

All working in the office of Custom Preventive Commissionerate (CPC), The Mall, Amritsar.

Applicants

Versus

1. Union of India through its Secretary, Ministry of Finance, Department of Custom & Central Excise, North Block, New Delhi.
2. Chief Commissioner, Custom & Central Excise, Chandigarh Zone, Central Revenue Building, Plot No.19, Sector 17-C, Chandigarh.
3. Additional Commissioner (CCU), Custom & Central Excise, Chandigarh Zone, Central Revenue Building, Plot No.19, Sector 17-C, Chandigarh.
4. The Commissioner, Custom (Preventive) Commissionerate, The Mall, Amritsar.

Respondents

Present: Mr. Sanjiv Pandit, counsel for the applicants
Mr. Sanjay Goyal, counsel for the respondents

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ORDER
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking quashing of the impugned order dated 11.08.2014 (Annexure A-1) vide which the applicants have been transferred from Custom (Preventive) Commissionerate, Amritsar to J&K Commissionerate.

2. In the grounds for relief it has, inter-alia, been stated as follows:-
 - i) All the applicants came to Custom Division, Amritsar in the year 2002-03 but they have been transferred to various places in short period of time as mentioned in para 4 of the OA. It is an admitted fact on the record of the case that all the applicants have been transferred to J&K Commissionerate who have worked in Custom Department as well as in Excise Department also. The applicants were transferred to Custom Preventive Commissionerate, Amritsar in the year 2002 & 2003 and are working as Havaldars. The employees with the longer stay of more than 24 years available with the respondents who have worked in Custom Department only are not being touched by the respondents. There is no complaint against the applicants till date and no adverse remarks have been communicated to them till date. Further, Sh. Satpal Singh, Rakesh Kumar John, Negi, Ravinder Singh Chauhan, Shanti Lal, Narendra Singh, Som Parkash and many other Havaldars are working with the Custom Division, Amritsar since more than 24 years whereas the applicants have been transferred to Custom Preventive Commissionerate in the year 2002-03. Employees who have much longer stay in the Custom Department than the applicants have not been touched by respondent no.2.

 - ii) The impugned order dated 11.08.2014 (Annexure A-1) is liable to be set aside on the ground that the transfer orders have been passed in violation of the transfer guidelines dated 02.02.2009 as amended from time to time.

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- iii) There is absolutely no exigency with the respondents while issuing the impugned transferred orders dated 11.08.2014 transferring the applicants from CPC, Amritsar to J&K Commissionerate.
- iv) All the applicants are residing with their family members in Amritsar and their children are also studying at Amritsar in the different colleges and schools. The applicants have been dislocated in the middle of the session which is not justified. The family members of the applicants will suffer harassment in shifting their families to J&K from Amritsar. Furthermore, the transfer guidelines on the basis of which the applicants have been transferred to J&K provides that annual general transfer shall be issued in the month of April whereas the applicants have been illegally transferred to J&K Commissionerate vide impugned order dated 11.08.2014 when the children of the applicants have already taken admission in the various classes. The applicants further stated that there were no compelling and unavoidable circumstances with the respondents to transfer the applicants to J&K Commissionerate at the stage.
- v) Respondent no.2 had made appointments of Sepoys for J&K in the years 2007-08. The interviews were held and after selection they were all appointed in J&K Region. The employees who were appointed as Sepoys for J&K Region are now being transferred from J&K to Amritsar & Chandigarh without any exigency. The impugned order is totally non speaking and cryptic.
- vi) The impugned transfer order dated 11.08.2014 is not justified and has been issued with intention to harass the applicants when they are about to retire. The applicants and their family members are already suffering from various diseases and they are under treatment from various hospitals in Amritsar. The treatment certificates appended by the applicants speak regarding the ailments of the applicants and their families.
- vii) The impugned order dated 11.08.2014 (Annexure A-1) is liable to be set aside on the ground that the respondents cannot transfer any officer bearers of office / staff association till they are holding the charge of office bearers unless they show their willingness or request for transfer. Applicants have not given their willingness for transfer to J&K

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Commissionerate. In the present case applicants no.1 & 2 are holding the posts of President & Joint Secretary of the Amritsar Custom Group C Association which is a registered Staff Association and thus according to the policy, the respondents cannot transfer them outside of Commissionerate, Amritsar accordingly to para 3 (b) (iii) of the transfer guidelines. Respondent no.2 has discretion to relax any guidelines in case of children education, parents / medical ground, couple case or any domestic problem. The applicants have narrated their difficulties in many words in preceding para 4 of the OA but still respondent no.2 adamantly transferred the applicants to J&K Commissionerate without any administrative exigency and need. The impugned transfer order does not disclose any exigency rather the impugned order says that the problems of applicants are over and therefore, they are liable to be transferred to J&K Commissionerate. The action of the respondent is totally de hors the existing transfer policy and thus the impugned transfer order dated 11.08.2014 is liable to be quashed in order to save the helpless applicants who are low paid Group 'C' employees of the Department. Furthermore, applicant no.4 is suffering from severe lower back pain besides low hemoglobin of his wife. The applicant no.4 and his wife is under constant treatment at local hospitals in Amritsar.

viii) The applicants have come to Custom Division, Amritsar in 2002-03. The applicants are attaching a list of Havaldars who are working in the division as Havaldars since 20-24 years and having a longer stay in Custom (P) Commissionerate, Amritsar. They have not been transferred to J&K Commissionerate despite of their longer stay. Even the Havaldars have not been transferred to any other Department since from the date of their joining the Department. The transfer policy provides that the transfer will be made to J&K Commissionerate on the basis of their stay in the Commissionerate. The Havaldars mentioned in the list were never transferred outside of Custom (P) Commissionerate, Amritsar. The respondent no.2 instead of transferring the said Havaldars have illegally transferred the applicants from Custom (P) Commissionerate, Amritsar to J&K Commissionerate by adopting a pick and choose policy which is against the law and transfer policy. The list of the Havaldars is annexed as Annexure A-14.

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3. In the written statement filed on behalf of the respondents, it has been stated that the order dated 11.08.2014 has been issued in terms of the directions passed by this Tribunal in OA No.060/00087/2014, dated 31.01.2014, justifying transfer of the applicants. Each and every aspect in detail has been considered by the answering respondents. Moreover, there is no specific violation of the transfer policy being put forth the applicants against the transfer order dated 28.01.2014. Besides, in view of the office order no.07/2014, dated 28.01.2014 (Annexure A-10), the applicants have joined duty in Central Excise Commissionerate, J&K. It is, thus, submitted that once the applicants have duly joined at the present place of posting, the present OA filed by the applicants does not survive as they have been duly transferred in view of the policy in vogue. Thus, the present OA is liable to be dismissed on this ground alone. Moreover, in terms of the orders passed by this Tribunal, vide order dated 31.01.2014 (Annexure A-12), the representations have been duly considered and appropriate order has been passed.

4. Arguments advanced by the learned counsel for the parties were heard. Learned counsel for the applicants stated that this was the second round of litigation. While passing the order dated 11.08.2014, the respondents had not addressed the issue regarding some of the applicants being office bearers of the departmental Associations and hence being not

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subject to transfer except at their own request. He referred to the transfer policy Annexure A-9, wherein para 3(b) read as follows:-

“3(b). The Ministerial Officers Staff / Head Havaldars and Drivers who have never been posted to the J&K Commissionerate in the Ludhiana Commissionerate shall be considered for posting to this Commissionerate in the order of their seniority. In case, sufficient officers / staff in this manner are not available for transfer to the J&K and the Ludhiana Commissionerate, the officers / staff with longest stay outside the J&K Commissionerate on the Ludhiana Commissionerate, as the case may be, in combination with their inter se seniority shall be considered. To compute the longest stay outside J&K of Ludhiana Commissionerate deputations of all kinds will be included. However, this will be subject to the following:-

- (i)
- (ii)
- (iii) In the absence of willingness / request from the office bearers of the Officers / Staff Association, they shall not be considered for a change of station till they hold the position.”

He also stated that the persons with much longer stay were continuing at Amritsar while the applicants had been transferred to Jammu. Keeping in view the circumstances of the applicants as they were suffering from various medical conditions and there was no administrative exigency regarding their transfer, the transfers of the applicants to Jammu should be quashed.

5. Learned counsel for the respondents stated that the applicants had already been relieved from Amritsar on 18.08.2014 and had joined at Jammu. The speaking order had been issued vide C.No.Zone-14-11-

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3(3)ET-1/Misc/2011/pt-I/5520-25, dated 11.08.2014 (Annexure A-1) regarding the representation filed by the applicants against their transfers and the issues raised therein had been addressed. The applicants had not raised the issue regarding their being office bearers of the Association. Learned counsel also stated that the protection from transfer was afforded to office bearers of Associations at the Chief Commissionerate level and not at the Commissionerate level. Learned counsel also stated that the transfers had been effected as per seniority and persons with the longest stay outside J&K had been transferred. He further stated that the tenure in J&K was only one year and since the applicants had joined in Jammu in August, they had completed around 07 months over there and after they completed a period of one year, they would be transferred to their choice locations. Hence, there was no merit in this OA.

6. We have given our careful consideration to the matter. It is recognized that there are always difficulties in providing adequate staff to the J&K Commissionerate and hence the tenure in the Commissionerate has been kept at only one year. The distance between Amritsar and Jammu is not very long and good medical care facilities are available at Jammu. Besides as per the order dated 11.08.2014 issued by the Chief Commissionerate, Central Excise, Chandigarh Zone guidance has been given to the Commissioner, Central Excise Commissionerate, Jammu and Kashmir that the applicants be posted at or near Jammu and not at any

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hard postings. As per this order they have also been provided the facility of retaining their Department Accommodation at Amritsar as per the relevant rules.

7. The applicants are all below 55 years of age. They do not appear to have served in J&K Commissionerate earlier and the hardships if any on account of posting in J&K have to be borne by employees of the Department for the short tenure of one year of which the applicants have already served 07 months. Transfer is an incident of service and hence impugned order dated 11.08.2014 does not require interference. The OA is rejected. No costs.

Rs —
(RAJWANT SANDHU)
ADMINISTRATIVE MEMBER.

B. A. Agarwal
(DR. BRAHM A. AGRAWAL)
JUDICIAL MEMBER

Place: Chandigarh
Dated: 26/3/2015

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