

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH, ERNAKULAM**

**Original Application No.333/2016
with MA 473/2016 & MA 623/2016**

Tuesday, This the 12th day of July, 2016

CORAM :

HON'BLE SHRI U SARATHCHANDRAN, MEMBER (J)

HON'BLE SHRI E K BHARAT BHUSHAN, MEMBER(a)

- 1 Arvind Gulia, S/o.Rajinder Singh,
Aged 29 years, Inspector of Central Excise,
Office of the Commissioner of Central Excise,
Central Revenue Buildings,
I.S.Press Road, Cochin – 682018.
- 2 Patel Utsav Kiritkumar,
S/o.Kiritkumar Joitaram Patel,
Aged 26 years, Inspector of Central Excise,
Central Excise Bhavan, Kathrikadavu,
Cochin -682 017.
- 3 S K Naushad Rahaman,
S/o. Shaik Muhammed,
Aged 28 years, Inspector of Central Excise,
Service Tax Division, ICE Bhavan,
Press Club Road,
Thiruvananthapuram 695 001.
- 4 Ravindra Maruti Palkar,
S/o Maruti Kandalik Palkar,
Aged 33 years, Inspector of Central Excise,

Service Tax Range Group A,
Service Tax Division, ICE Bhavan,
Press Club Road,
Thiruvananthapuram-695 001.

- 5 Mahadev S/o Satyavir Singh,
Aged 27 years, Inspector of Central Excise,
Central Excise Range, Kalpetta,
Wayanad District.
- 6 Sandeep Kumar, S/o Jagdish Prasad,
Aged 32 years, Inspector of Central Excise,
Office of the Commissioner of Central Excise,
Central Revenue Buildings, Mananchira,
Kozhikode-673 001. ... Applicants

By Advocate Shri C S G Nair

V/s

- 1 Union of India
Represented by the Secretary,
Department of Revenue,
North Block, New Delhi- 110 001.
- 2 Chairman,
Central Board of Excise & Customs,
North Block, New Delhi- 110 001.
- 3 Chief Commissioner of Central Excise,
Customs & Service Tax,
Central Revenue Buildings,
I.S. Press Road, Cochin – 682 018.
- 4 Commissioner of Central Excise,
Customs & Service Tax,
Central Revenue Buildings,
I.S. Press Road, Cochin – 682 018.
- 5 Commissioner of Central Excise,

Customs & Service Tax,
ICE Bhavan, Press Club Road,
Thiruvananthapuram – 695 001.

- 6 Commissioner of Central Excise,
Customs and Service Tax,
Central Revenue Buildings, Mananchira,
Kozhikode – 673 001.
- 7 Chief Commissioner of Central Excise
& Service Tax (Meerut Zone), Meerut – 250001.
- 8 Chief Commissioner of Central Excise &
Service Tax (Delhi Zone)
C.R.Buildings, I.P.Estate, New Delhi – 110 002.
- 9 Chief Commissioner of Central Excise
& Service Tax (Kolkatta Zone),
180, Shantipally, Rajdanga,
Rajdanga Main Road,
R.B.Connector, Kolkata – 700 107.
- 10 Chief Commissioner of Central Excise &
Service Tax (Mumbai Zone),
New Central Revenue Building,
115, M.K.Road, Churchgate,
Mumbai – 400 020.
- 11 Chief Commissioner of Central Excise &
Service Tax (Pune Zone),
41-A, ICE House, Sassoon Road,
Opp. Wadia College, Pune-411 001.
- 12 Chief Commissioner of Central Excise &
Service Tax (Vadodara Zone),
2nd Floor, Central Excise Building,
Race Course Circle, Vadodara-Gujarat-390 007.
- 13 Chief Commissioner of Central Excise &
Service Tax (Ahmedabad Zone),

7th Floor, Central Excise Bhavan,
Near Polytechnic, Ambavadi,
Ahmedabad, Gujarat-380 015.

- 14 Chief Commissioner of Central Excise &
Service Tax (Jaipur Zone),
New Central Revenue Building,
Statue Circle, C-Scheme,
Jaipur-302 005. ... Respondents

By Advocate Shri Anil Kumar Sr PCGC (R)

ORDER

Per Hon'ble Shri E K Bharat Bhushan, Member(A)

1 The OA is filed by six applicants who are working as Inspectors of Central Excise under Chief Commissioner of Central Excise, Customs and Service Tax, Cochin (3rd respondent) in Kerala Central Excise Zone. Commissioner, Central Excise, Customs and Service Tax (4th respondent) handles staff matters on behalf of the 3rd respondent. The six applicants are directly working under respondent no.4, 5 and 6. All the applicants are domiciled natives of other states constituting other Central Excise Zones. They had filed requests for Inter Zonal Transfer (IZT) on the main ground that their spouses are either working in non transferable jobs in those states or are settled there.

2 The second respondent used to permit Inter Commissionerate Transfer to Group 'C' and 'B' Officers on bottom seniority basis as per its order dated 20.5.1980. However, by an order dated 19.2.2004, a ban was

imposed on such ICT, which itself came to be relaxed, in the case of applications filed on the basis of spouse ground, compassionate appointment ground and for physically handicapped employees. Finally, as per communication No.F No.22015/23/2011-Ad.IIIA dated 27.10.2011 (Annexure A/17) issued by the second respondents, guidelines were set out mentioning that transfer will be effected on the basis that the transferees will be placed below all officers appointed regularly to that post/grade on the date of his/her appointment on transfer basis in terms of para 3.5 of DOPT OM dated 3.7.1986.

3 Further, DOPT had issued OM dated 3.4.1986 regarding posting of husband and wife at the same station going on to state that *“it is the policy of the Government that as far as possible and within the constraints of administrative feasibility, the husband and wife should be posted at the same station to enable them to lead a normal life and to ensure the education and welfare of their children.”* The above point was further reiterated in OMs issued by DOPT dated 12.6.1997 and 30.6.2009, latter containing consolidated guidelines (Annexure A/18).

4 The applicants have all submitted their applications for ICT on spouse ground and they are eligible for ICT as per the DOPT guidelines. It is the rejection/non action on the part of the 3rd respondent to accede to the request of the applicants that is the subject matter of the OA.

5 The reliefs sought is as follows:-

“i To direct 3rd and 4th respondents to forward the applications of the applicants for Inter Zonal Transfers to the respective Chief Commissioners immediately.

ii To direct the respondents 7 to 14 to issue transfer and posting orders to the applicants as and when their applications are received from Kerala Zone without delay.

iii To Grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case.

iv Grant cost of this OA.”

6 Three MAs – out of which MA No.473/16 and 643/16 have been filed by the respondents for vacating the stay order granted and for taking the additional reply on record respectively. MA -623/16 has been filed by the applicants seeking early disposal of the case.

7 It has been contended in the OA that despite the eligibility of the applicants, their applications are not being forwarded by issuing NOC to the officers in charge of the zone to which the transfer has been sought. It has been alleged further that while their application has been pending, the 3rd respondent through the letter No.II/13/32/2012 CC(KZ) I dated 11.3.2016 had accorded permission for IZT for fourteen inspectors. A true copy of the letter dated 11.3.2016 has been produced and is at Annexure A/20. It is alleged that this list has been drawn up entirely overlooking the seniority in the sense that most in the list are juniors of the applicants. Apart from justice being denied on this ground, these inspectors admittedly junior as per the date of joining would eventually be senior to other people including the applicants when the latter are transferred to those zones subsequently. This is a grave injustice, it has been alleged.

8 The reason that the respondents have often presented for not issuing NOC for aspirants seeking transfer to other zone is the shortage of officers in the Kerala Zone. It has been pointed out in the application that shortage of inspectors in the department is a well known phenomena and does not relate to Kerala alone. Further, most of the vacancies are in the promotion quota where there is a shortage of qualified hands for promotion. In any case it would not be fair to deny transfer on spouse ground allowed in the DOPT guidelines under the pretext that there are vacancies in Kerala Zone.

9 The learned counsel for the applicant Shri C S G Nair has relied upon the judgment in the case of ***Union of India v/s S L Abbas (1993) 4 SCC 357***, laying down that the right of the employee to be considered for transfer, on the basis of a regulation having statutory force, is unalienable. The Hon'ble High Court of Kerala in its judgment dated 9.9.2013 in OP(CAT) 3124/13, deprecated denial of transfer on the ground of shortage of personnel as follows :

“ the right to deny the benefit of transfer to the applicant on the ground of their inability to make timely recruitment is no answer to deprive the benefit of transfer to incumbents who are eligible to such transfers in accordance with the settled norms. In effect, it only demonstrates coveted exclusion of opportunity of open market candidates in this land of the needy.”

10 In the reply statement and in the pleadings advanced by Shri Anilkumar, (Sr. PCGC), the learned counsel for respondents has pointed out that the right to seek transfer does not over ride the authority's

prerogative to accede or reject the request. It has been pointed out that there are a large number of vacancies in the Kerala Zone and the inadequacy of inspectors posted in field formations is directly leading to unsatisfactory revenue mobilisation. Evils such as, smuggling and large scale evasion of duties is resulting from this shortage. From this perspective obliging everyone who applies for transfer to other zones without evaluating the minimum man power requirements in the zone, will only aggravate the difficulties being experienced currently.

11 The respondents have stated that the instructions contained in Annexure A/17 are comprehensive and Annexure A/18 issued by the DOPT on the same subject lays down broad guidelines for posting of husband and wife at same station. The Central Board for Excise and Customs (CBEC) have from time to time issued instructions to ameliorate the difficulties of couples living at separate places and the Kerala Zone has also been obliging these transfer requests to the extent possible. However, the fact remains that as a large number of inspectors who joined the zone during the last three years belong to various parts of the country, the respondents are unable to oblige everyone at any given point of time. The fourteen inspectors who have been favourably considered for IZT, as per communication dated 11.3.2016, have been selected in accordance with guidelines in Annexure A/17 and no discrimination can be alleged. It has also been vehemently argued by the learned counsel for respondents that Annexure A/20, produced by the applicants, (the

communication detailing the fourteen inspectors who have been favoured with NOC) is a "fabricated document", and it is claimed that no such document has been issued by the third respondent to the fourth respondent.

12 Various judgments have been produced by the learned counsel for the respondents:-

<i>Sr.No.</i>	<i>Citation & name of party</i>	<i>Remark</i>
1	2014(4) KHC 621 Sreekumar S v/s Union of India & Ors	Right to distribute (i) Manpower is the vested right of authority. (ii) Transfer Guidelines do not confer any enforceable right
2	1997 KHC 31 Moosakoya v/s State of Kerala	Deviation from guidelines is not violation of service conditions.
3	2004 KHC 1296 Supreme Court State of U.P v/s Siya Ram	Unless malafides is established, court do not interfere in transfer.
4	Civil Appeal 1741/09 Supreme Court State of Bihar v/s. Upendra Narayan Singh & Ors.	Even if an irregularity is committed court cannot direct perpetuate the same by giving direction to others.
5	2009 (15) Suppl SCC 178 Rajendra Singh & Ors v/s State of Uttar Pradesh & Ors.	Government servant cannot remain in a particular place of his choice.
6	1993(4) SCC 357 Union of India & Ors v/s S L Abbas	Tribunal is not an appellate authority to substitute its own judgment in matters of transfer

13 These judgements *inter-alia* emphasise the right of the authority to distribute man power in the manner as thought fit and lays down that transfer guidelines do not confer any enforceable right on employees. They go on to discuss that deviation from the guidelines do not amount to violation of service conditions and courts can interfere with transfers only if malafide/irregularities are established. Further no government servant

can claim that he should remain in a particular place and the Tribunal is not an Appellate Authority empowered to substitute its own judgments in matters of transfer.

14 These orders while discussing the subject of transfer of government employees at some length, effectively emphasise the point that the powers of transfer vest exclusively in the authorities mandated. But the grievance of the applicant is somewhat different. At no point has it been argued on their behalf that the authorities do not possess the power to transfer their employees. The grievance of the applicants on the other hand, is about lack of equity and fair play in dealing with request transfer on grounds mandated by DOPT.

15 The learned counsel for the applicant Shri C S G Nair and the learned counsel for respondents, Shri M Anilkumar -Sr PCGC were heard and all pleadings examined.

16 At the outset itself there was a challenge against the document marked as Annexure A/20 which has been assailed by the respondents as fabricated. However, they do not deny that fourteen inspectors have been favoured through the communication dated 11.3.2016 agreeing to the IZT. Hence, we are not ready to dismiss that document as it is at the centre of the grievance brought forth by the applicants.

17 The issue lies in a narrow compass. Some individuals, the applicants in this case, are aggrieved by the policy adopted by the

respondents to pick and choose persons from the request list on the basis of norms that are distinctly opaque. The protestations of the respondents that they followed the norms set out in the communication at F.No.A-22015/23/2011-Ad.III A of the Department of Revenue, Ministry of Finance (Annexure A/17) are not borne out by the facts on hand. The applicants directly contend that out of the fourteen inspectors whose names have been sent, all but two are juniors to the applicants. If juniors overtake seniors in this process it will have permanent impact on the career of the latter for they will become junior in the zone where they get transferred subsequently.

18 The respondents on the other hand have taken refuge in the argument that the right to transfer an employee is a right bestowed upon the office. While none has refuted this, this right has to be exercised in a transparent/objective manner without any discrimination assigned. This cardinal principle does not appear to have been adhered to in this case. Argument of large number of vacancies standing in the way of recommending personnel does not hold out in view of fourteen relatively junior people having been favoured with NOC. Viewed from this perspective, we have no hesitation in stating that respondent no.3 has not acted in a fair and equitable manner in this case. An opaque system of selection in such cases is a sure recipe for disaffection in any organisation. We would direct that a system urgently be put in place to deal with ICT requests. It has been pointed out that a large number of

such requests are pending. Respondent nos. 3 and 4 should immediately put together a set of guidelines clearly delineating eligibility norms, giving due weightage to various components such as seniority. Henceforth, this should act as a guide in deciding whose cases may be recommended and whose cannot be. Future orders on NOC requests will be strictly on the basis of such norms. This Tribunal on its first hearing dated – 8.4.16, had stayed further action on the list of fourteen persons whose transfer has been recommended by Respondent no.3 to Respondent no.4. It is ordered that their case will also be considered only in line with the proposed system to be put into operation. Although this is not one of the prayers made in the OA, it is necessary to order the above in the interest of equitable treatment.

19 These set of guidelines should be finalised and published as expeditiously as possible and in any case within three months of date of receipt of a copy of this order. The case of the applicants will also be considered along with others and their claims evaluated according to the prescribed transfer norms to be adopted. Hence, we desist from issuing any further orders on the claim relating to the applicants.

20 OA is disposed of. No costs.

(E K BHARAT BHUSHAN)

MEMBER(A)

(U SARATHCHANDRAN)

MEMBER(J)

abp/“SA”