

(Reserved on 13.05.19)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

Original Application No. 330/00763/2018

This the **15th** day of **May, 2019**.

HON'BLE MS. AJANTA DAYALAN, MEMBER (A)
HON'BLE MR. ASHISH KALIA, MEMBER (J)

N.N. Lal, s/o Shri Vishwanath Lal, Assistant Director, National Academy of Customs, Indirect Taxes & Narcotics Zonal Campur Kanpur 208024, r/o 10, Surendranagar, Ismailganj, Lucknow - 206010.

.....Applicant

By Advocate: In person

Versus

1. Union of India through Secretary (Revenue), Ministry of Finance, Department of Revenue, North Block, New Delhi -I.
2. The Chairman, Central board of Indirect Taxes & Customs, Ministry (CBIC) of Finance, Deptt. of Revenue, North Block, New Delhi.
3. The director General Human Resource Development, Customs & Central Excise C-4, West Wing, Ground Floor IRCON Building, District Centre Saket, New Delhi - 110017.

.....Respondents

By Advocate : Shri L.P. Tiwari

O R D E R

DELIVERED BY:

HON'BLE MS. AJANTA DAYALAN, (MEMBER-A)

The present original application has been filed by the applicant N.N. Lal seeking direction to the respondents to issue orders to post him to Lucknow with immediate effect or to pass such other orders / direction as this Tribunal may deem just and proper in the facts and circumstances of the case.

2. The applicant, who appeared in person, stated that he was promoted from Group 'B' to Group 'A' as Assistant Commissioner vide order dated 23.02.2017 on in-situ basis. On 15.05.2017 (Annexure A-2), the applicant was transferred and posted at Kanpur. In compliance of this order, the applicant joined on 02.06.2017 as in the order it was specifically stated that no representation shall be entertained before joining new place of posting. After joining, the applicant moved representation dated 14.06.2017 (Annexure A-3) requesting for his posting at Lucknow in view of the fact that he is due to retire in July 2019 and that as per the policy guidelines dated 05.04.2011 (Annexure A-4), he is entitled to stay at Lucknow.

3. However, no action was taken by the respondents department. In the meanwhile, new transfer / placement guidelines for Group 'A' officers of Indian Revenue Service (Custom and Central Excise) were published on 12.04.2018 (Annexure A-5). Even these guidelines contain similar protection as in the earlier guidelines. Para 4.8 of these guidelines clearly states that 'Officers, on promotion from Group 'B' to Group 'A', shall be transferred out of the station where they were working at the time of promotion, unless the balance service is less than three years'.

4. Further, para 11.3 of these guidelines states that 'Officers who have three years or less service left shall be posted to the station / Region of their choice to the extent possible'. Accordingly, the applicant pleaded that his case was clearly covered under this transfer policy.

5. The applicant moved another representation dated 30.04.2018 requesting for his posting at Lucknow. However, in the annual general transfer orders issued vide impugned order dated 03.07.2018 (Annexure

A-7), his name did not appear, as such the applicant continued at Kanpur. He also stated that the impugned order also states that all representations received till date regarding transfer and posting in the grade of Assistant Commissioner stand disposed of. The applicant, therefore, concluded that the action of the respondents in his case is violative of guidelines as he had only about a year to retire at the time of issue of annual transfer order in 2018. Even his representation dated 30.04.2018 has not been considered by passing a reasoned and speaking order and only a cryptic order has been passed as a part of impugned order in his case. The applicant pleaded that he has only less than three months to retire and requested for his posting at his home town where he was posted prior to his posting at Kanpur.

6. On the other hand, learned counsel for the respondents stated that prayer of the applicant is rather limited and seeks his posting at Lucknow. He also stated that the applicant cannot ask for a specific posting and thus it will not be correct on the part of this Tribunal to order his specific posting. He also stated that the applicant has not challenged the transfer order dated 03.07.2018. Learned counsel for the respondents further stated that the policy does state that officer with less than three years service shall be posted to station / region of his choice but this is limited 'to the extent possible' only. As such, the OA is devoid of merits and needs to be dismissed.

7. We observe that the applicant has faithfully joined the new place of posting on 02.06.2017 immediately after issue of the transfer order. This was despite the fact that even that transfer order was in violation of the policy prevalent at that time. This is true because similar provisions, as quoted

in the new transfer/placement guidelines 2018, existed in the earlier guidelines dated 05.04.2011 (Annexure A-4) as well. We also note that the applicant has been serving in the station of his posting for last almost two years. Even this OA has been filed only after his name did not figure in the annual transfers of 2018. We do not see much merit in the logic that the impugned order has not been challenged in the OA. This is firstly because the applicant is pleading the case himself and has not engaged any counsel. Hence, he may not be well versed about the legal requirements or technicalities involved. Further, he had no reason to challenge this order because his plea is a negative plea – that is his name does not figure in the said order. Hence, he does not seek quashing of the order dated 03.07.2018 but only seeks his own transfer.

8. We also find that the transfer guidelines of the respondents department themselves clearly state that the officers with less than three years service 'shall be posted to the station / Region of their choice to the extent possible'. Prior to his relief, the applicant was posted at Lucknow. During the argument we also learnt that prior to his posting in Lucknow, the applicant was posted at Sitapur. This fact was not contested by the respondents during the arguments.

9. Further, we note that para 4.8 of the policy dated 12.04.2018 clearly states that 'Officers, on promotion from Group 'B' to Group 'A', shall be transferred out of the station where they were working at the time of promotion, unless the balance service is less than three years'. Thus, the department's own policy is clear and provides for accommodation for retiring employees in their choice station or where they were working at the time of promotion. The applicant was working

at the time of his promotion at Lucknow. Hence, as per the policy, he was to be retained at Lucknow. During the arguments, when we asked the respondents to clearly explain as to why it was not possible to accommodate the applicant at Lucknow, he had no answer at all to this question.

10. Considering the above facts especially that the applicant has already served for almost two years at the place of his transfer and now has less than three months of service to go and also the fact that the applicant joined immediately after the transfer orders and made representations which are yet to be decided by passing a reasoned and speaking order, we find merit in the OA.

11. In view of above, we direct the respondents to adjust the applicant at Lucknow within 15 days from the date of receipt of certified copy of this order.

12. The OA is disposed of in above terms. No order as to costs.

(ASHISH KALIA)
MEMBER-J

(AJANTA DAYALAN)
MEMBER-A

Anand...