

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00101/2018

DATED THIS THE 15TH DAY OF NOVEMBER, 2018

HON'BLE SHRI DR. K.B. SURESH, MEMBER (J)

HON'BLE SHRI CV. SANKAR, MEMBER (A)

Ajay Pratap Singh,
S/o Sri Yamuna Prasad Singh,
Aged 28 years, Working as
Inspector of Central Taxes,
GST Audit-II Commissionerate,
Bengaluru
Residing at
No.341, 4th C Cross,
2nd Main Road,5th Block,
Above Apollo Convent School,
2nd Floor, Banashankari 3rd stage
Bengaluru – 560 085.

....Applicant

(By Shri AR.Holla..... Advocate)

vs.

1.Union of India,
By Secretary,
Department of Revenue,
North Block,
New Delhi – 110 001.

2.The Chairman,
Central Board of Indirect Tax and Customs,
North Block,New Delhi. 110 001.

3.The Principal Chief Commissioner of Central Tax,
Bengaluru Zone, C.R. Building,
Queens Road,
Bengaluru – 560 001.

4.The Chief Commissioner of Central Tax,
Bhopal Zone, 48, Administrative Area,
Arera Hills, Hoshangabad Road,
Bhopal – 462 011.

...Respondents.

(By Shri S.Sugumaran , ACGSC)

ORDER (ORAL)

DR. K.B. SURESH, MEMBER (J):

1. Heard. The Govt. authorities state that the 2002 rule has been amended in 2016 and therefore inter-commissionerate transfers cannot be done on absorption basis and it can only be done on loan basis as has been explained in the circular dtd.20.9.2018. They rely on the 2016 rules, clause-5 which states that each of the cadres will remain separate. Rules are to be made equally applicable to all persons universally and with certainty. It is also seen that even after the notification of these amended rules in 2016, that rule has also been completely flouted by the respondents. It seems to be only another case of 'show me the face and I will show you the rule'. This cannot be. The circular issued in compliance with the rule is hereby quashed as no rule can be explained on the basis of an executive order which has the effect of nullifying the effect of the rule. A rule can be amended only by another rule which is placed in the Parliament and made into law by a delegated Legislature. Therefore, the ground raised by the respondents will not lie.

2. Having settled the question of law it is up to the respondents to find out whether applicant is suitable enough to be relieved from this place now and vacancies are suitably to be found at Bhopal to accommodate him under the present set of law. OA is allowed to this limited extent. This may be granted within 2 months time. No order as to costs.

3. At this point of time Shri S.Sugumaran submits that Bangalore Commissionerate has only 65% strength. If that be so, then they may not be in a position to release the applicant, that is for them to consider intra. We are not going to enter into the nitty-gritty of the thing. The principle of the thing is that once a position has been made by governance system, it has to be applied universally, certainly across the board and everybody must have equal access to it. OA is allowed to this limited extent.

4. At this point of time Shri S.Sugumaran makes another submission that the applicant's wife is only a casual employee at Bhopal. Nothing stopped them from considering this point and passing an order. Therefore, let the respondents examine this matter further, without any assistance from the circular which is absolutely illegal and hereby quashed. OA is allowed to this limited extent. No order as to costs.

5. At this point of time Shri S.Sugumaran places reliance on clause 6 of the circular. Governance cannot be carried out in vague terms. If a governance system retains a power on vague grounds it will be tantamounting to misuse of the power that means that because of the case by case basis or on a face by face basis it can be interpreted. Certainty and universality must be the hallmark of governance system. They cannot quite obviously retain any such overriding powers. It must be remembered that governance of the country should be carried out on the basis of the constitution of India and not on the personal whims and fancies of any concerned official. This is also declined. The ground taken by the respondents is quite absurd . Circular is quashed once again.

6. OA is allowed to this limited extent. No order as to costs.

(CV. SANKAR)
MEMBER (A)

(DR. K.B. SURESH)
MEMBER (J)

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Annexures referred to by the applicant in OA No. 101/2018

Annexure-A1: Copy of letter dated 30.12.2013

Annexure-A2: Copy of Circular dated 27.3.2009

Annexure-A3: Copy of OM dated 30.9.2009

Annexure-A4: Copy of Circular dated 27.10.2011

Annexure-A5: Copy of applicant's representation dated 8.3.2017

Annexure-A6: Copy of applicant's representation dated 10.7.2017

Annexure-A7: Copy of Circular dated 2.1.2017

Annexures with reply statement:

Annexure R-1: Copy of verification report

Annexure R-2: Copy of Recruitment Rules (RR)

Annexures with rejoinder

Annexure-A8: Copy of employment notification

Annexure-A9: Copy of order dated 6.10.2015

Annexure-A10: Copy of salary certificate dated 13.12.2016

Annexure-A11: Copy of letter dated 22.5.2017

Annexures with addl. reply statement:

Annexure R-5: Copy of Circular dated 20.9.2018

Annexure R-6: Copy of Recruitment Rules 2002

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