

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

This the 10th day of May, 2019

OA No. 060/00430/2019

**CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS. P. GOPINATH, MEMBER(A)**

Mohinder Singh Sandhu son of Sh. Jit Singh, age 53 years, working on the post of Superintendent, Central Goods and Service Tax, in the office of Additional Commissioner, in Sub-Commissionerate, Mohali, Pin Code – 160017 (which falls under the jurisdiction of Central Goods and Services Tax Commissionerate, F-Block, Rishi Nagar, Ludhiana) (resident of H. No. 303, Phase-2, Sector 54 Mohali-160055 (Punjab).

.....Applicant

BY ADVOCATE: **Sh. Pankaj Mohan Kansal**

Versus

1. Union of India through the Secretary to Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, North Block, Central Secretariat, New Delhi-110 001.
2. The Principal Chief Commissioner, Central Good and Service Tax, Chandigarh Zone, Central Revenue Building, Plot No. 19, Sector 17-C, Chandigarh-160 017.

.....Respondents

BY ADVOCATE: **Sh. Sanjay Goyal**

ORDER

MRS. P. GOPINATH, MEMBER(A):-

1. Applicant is a person who was transferred from CGST Sub-Commissionerate (Local), Mohali to CGST Sub-Commissionerate Mohali (Non-Local). The former has jurisdiction over Chandigarh, Mohali and Derabassi and the latter has jurisdiction in Rajpura, Patiala and Ropar.

Applicant is a caregiver of a daughter who is 24 year old and is afflicted with Down Syndrome (DS).

2. Applicant draws attention to annexure A-4 which is Department of Personnel OM dated 06.06.2014 issued with regard to posting of Government employees who have differently abled dependents. Para 3 of the same reads as follows:-

“3. Considering that the Government employee who has disabled child serve as the main caregiver of such child, any displacement of such Government employee will have a bearing on the systematic rehabilitation of the disabled child since the new environment/set up could prove to be a hindrance for the rehabilitation process of the child. Therefore, a Government servant who is also a caregiver of disabled child may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints. The word ‘disabled’ includes (i) blindness or low vision (ii) hearing impairment (iii) locomotor disability or Cerebral Palsy (iv) leprosy cured (v) mental retardation (vi) mental illness and (vii) multiple disabilities.”

Citing this OM, the applicant seeks the relief of being allowed to continue at the present place of posting, i.e. CGST Sub-Commissionerate (Local), Mohali and exempt him from routine transfers.

3. The respondents in the reply statement submit history of the postings of the applicant from 2010 onwards. The applicant remained posted in different parts of Punjab, i.e. Amritsar, Ludhiana, Jalandhar, Pathankot and Kapurthala etc. The applicant belongs to the Customs and Excise Services and has been working under the jurisdiction of Customs and GST in Chandigarh zone. The respondents reveal that as per transfer policy, the maximum tenure of Chandigarh inclusive of Mohali, Derabassi Kharar and Zirakpur is 8 years. The applicant has been posted in Chandigarh since 2010 and spent nine years in the station.

4. We have heard the learned counsel for the parties and carefully perused the pleadings on record.

5. Whereas the Bench would sympathize with the fact that the applicant is the caregiver of a disabled child, he has been accommodated since 2010, in or nearby Chandigarh. Whereas the DoP&T guidelines are general in nature, every Department of the Government of India depending upon the nature of work of the said Department issues its own transfer policies and guidelines. There are some administrative constraints in allowing officials to continue uninterrupted in the same station. From the history of postings, we note that the applicant had been posted in various parts of Punjab so that he does not have to remain far away from home.

6. It is necessary, while addressing the applicant's prayer, to understand the grounds on which the transfer placement guidelines for Inspectors/Superintendents have been issued by the respondents and also to understand the nature of the disability of the applicant's child. We would deal with the latter first. The nucleus of each cell in the human body contains 23 pairs of chromosomes. Down Syndrome (DS) occurs when an individual has full or partial copy of chromosome 21. A few of the common physical traits of the DS are low muscle tone, small stature, an upward slant to the eyes and a single deep crease across the centre of the palm. DS is a genetic disorder, typically associated with the physical growth delays, mild to moderate intellectual disability and characteristic facial features. From the nature of the disability and the characteristics detailed above, DS appears to be associated primarily with the physical

growth delay. The applicant's daughter who is affected by DS is 24 years old. Therefore, it can be presumed that the physical growth delay at 24 years would be such that a full time caretaker may not be necessary or the mother of the daughter would be able to handle the child, as DS is associated with mild to moderate intellectual disability.

7. The applicant has placed on record Annexure A-6, transfer guidelines. The following main objective of the transfer guidelines are as follows:-

- (i) To make the guidelines in sync with post GST (Goods & Service Tax) scenario.
- (ii) To prevent/avoid undesirable effects of prolonged stay at a particular station/post.
- (iii)
- (iv) To promote integrity, efficiency, improved performance and incentivise hard work and competency based on objective/verifiable analysis of the performance.
- (v)
- (vi) To accommodate requests for transfer on grounds of genuine and serious medical problems of self/dependants and on the ground of children education (specifically for the children studying in Class 10th and 12th).

8. From the above guidelines, we can draw the conclusion that there are certain undesirable effects of prolonged stay at a particular station/post in the respondent department and hence such prolonged stay is not encouraged.

9. Another aspect of the transfer guidelines reveals that transfer may be necessary in order to ensure and promote integrity. The transfer guidelines also fix the normal tenure of posting at a stretch in Chandigarh, Jallandhar, Ludhiana, Mohali Commissionerates as 4 years. Such a tenure at stretch has been fixed in each of the Commissionerates which would mean that this tenure can be covered in CGST/C Audit

Commissionerate Chandigarh i.e. separately in CGST/C Audit Commissionerate, Chandigarh.

10. Applicant has been posted to Sub-Commissionerate, Mohali. The applicant has completed maximum tenure of Chandigarh Station which is eight years. As a matter of fact, it is pointed out that he has stayed one year in excess as he completed nine years and the extra year was given to the applicant on the compassionate grounds considering the medical problem of his daughter. Hence, an adjustment has already been made for the applicant.

11. The applicant has placed before us an order of the Principal Bench in OA No. 2233/2017 which is distinguishable from the matter before us as the child in that OA was 13 year old and the mother was a patient of schizophrenia and Obsessive Compulsive Disorder which conditions do not match with the facts in the present OA.

12. It is not clear from the pleadings of the respondents whether the applicant has completed four years in the CGST Commissionerate Chandigarh and four years in the Audit Commissionerate Chandigarh. If the applicant has not completed four years in either of these two Commissionerates indicated above, then he may be granted option to be adjusted in any of the two Commissionerates where the applicant has not worked previously to the extent of balance tenure as prescribed in the rules. If the applicant has finished four year tenure in both the Commissionerates, then in view of the nature of service provided by the respondent department, the principle of undesirable effects of prolonged

stay at a particular station/post formulated by the respondents would become applicable.

13. Hence, we direct the respondents to operate the first option above, adjust applicant in the Commissionerate where he has not worked earlier as this would obviate the objection of undesirable effects of prolonged stay. If this is not found feasible, in view of the fact that the applicant has completed the prescribed tenure, the applicant is directed in the interest of service and the policy of the respondents indicated above, to move to the place of posting as issued vide Annexure A-1. The respondents will cover the first option of adjusting the applicant in GST Commissionerate and Audit Commissionerate first before exercising the second option. We are passing such an order as the OM dated 06.06.2014 covers the postings of persons with disabled children vide clause 3 by saying that caregiver of a disable child may be exempted from routine exercise of transfers subject to administrative constraints. We find that respondent has administrative constrains as stated above.

14. OA stand disposed of with the above directions. No costs.

**(P. GOPINATH)
MEMBER (A)**

**(SANJEEV KAUSHIK)
MEMBER (J)**

Dated:
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