

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00630/2017,
Original Application No.180/00633/2017
& Original Application No.180/00634/2017

Thursday, this the 28th day of February, 2019

C O R A M :

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER

Original Application No.180/00630/2017

Chandan Kumar, S/o.Sudama Prasad,
Presently working as Inspector of Central Excise,
Office of the Superintendent of Central Excise,
Service Tax Division (D Range),
Central Excise Bhavan, Kathrikadavu,
Cochin – 682 017.
Residing at Central Excise Staff Quarters No.51,
Kakkanad – 682 037.

...Applicant

(By Advocate – Mr.C.S.Ajith Prakash)

v e r s u s

1. The Secretary to Government of India,
Ministry of Finance, Department of Revenue,
Central Board of Excise and Customs,
HUDCO Vishala (9th Floor),
Bhikaji Cama Place, R.K.Puram,
New Delhi – 110 066.
2. Central Board of Excise and Customs,
represented by its Chairman,
North Block, New Delhi – 110 001.
3. Chief Commissioner of Central Excise,
Customs & Service Tax,
Cochin Zone, Central Revenue Building,
I.S.Press Road, Cochin – 682 018.
4. The Commissioner of Central Excise
Customs and Service Tax,
Cochin Zone, Central Revenue Building,
I.S.Press Road, Cochin – 682 018.

5. Sandeep Kumar,
S/o.Jagadish Prasad,
Inspector, Air Customs,
Karipur Airport, Malapuram Dist.
6. Rakesh Sangwan, S/o.Jaiprakash Sangwan,
Inspector, Office of the Chief Commissioner,
I.S.Press Road, Cochin – 682 018.
7. Arpit Jain, S/o.Dinesh Jain,
Office of the Assistant Commissioner of Central Excise,
(Audit Cochin Circle-V), Central Excise Bhavan,
Kathrikadavu, Cochin – 682 017.
8. Robin Goyal, S/o.K.K.Goyal,
Office of the Assistant Commissioner of Central Excise,
(Audit Cochin Circle-IV), Central Excise Bhavan,
Kathrikadavu, Cochin – 682 017. ...Respondents

**(By Advocates – Mrs.P.K.Latha, ACGSC [R1-4]
& Mr.C.S.G.Nair [R5-8])**

Original Application No.180/00633/2017

Dilip Kaushal, S/o.Shri.Shyam Babu Kaushal,
Presently working as Inspector of Central Excise,
Office of the Superintendent of Central Excise,
Muvattupuzha Range, Vallmattom Building,
Arakuzha Road, P.O. Junction, Muvattupuzha,
Ernakulam – 686 661.
Residing at A10, Thekkankode,
Padinjarekudi House, Arakuzha Road,
P.O. Junction, Muvattupuzha, Ernakulam – 686 661. ...Applicant

(By Advocate – Mr.C.S.Ajith Prakash)

v e r s u s

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Ministry of Finance, Department of Revenue,
Central Board of Excise and Customs,
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North Block, New Delhi – 110 001.

3. The Chief Commissioner of Central Excise,
Customs & Service Tax,
Cochin Zone, Central Revenue Building,
I.S.Press Road, Cochin – 682 018.
4. The Commissioner of Central Excise
Customs and Service Tax,
Cochin Zone, Central Revenue Building,
I.S.Press Road, Cochin – 682 018.
5. Sandeep Kumar, S/o.Jagadish Prasad,
Inspector, Air Customs,
Karipur Airport, Malapuram Dist – 673 647.
6. Rakesh Sangwan, S/o.Jaiprakash Sangwan,
Inspector, Office of the Chief Commissioner,
I.S.Press Road, Cochin – 682 018.
7. Arpit Jain, S/o.Dinesh Jain,
Office of the Assistant Commissioner of Central Excise,
(Audit Cochin Circle-V), Central Excise Bhavan,
Kathrikadavu, Cochin – 682 017.
8. Robin Goyal, S/o.K.K.Goyal,
Office of the Assistant Commissioner of Central Excise,
(Audit Cochin Circle-IV), Central Excise Bhavan,
Kathrikadavu, Cochin – 682 017. ...Respondents

**(By Advocates – Mr.Brijesh.A.S, ACGSC [R1-4]
& Mr.C.S.G.Nair [R5-8])**

Original Application No.180/00634/2017

Neel Kamal, S/o.Sri.Mahendra Prasad,
Presently working as Inspector of Central Excise,
Office of the Commissioner of Audit Central Tax,
Central Revenue Building, I.S.Press Road, Kochi – 682 018.
Permanently residing at Quarter No.44, Type II,
Central Excise Staff Quarters, Near TV Tower,
Kakkanad – 682 037. ...Applicant

(By Advocate – Mr.C.S.Ajith Prakash)

v e r s u s

1. The Secretary to Government of India,
Ministry of Finance, Department of Revenue,
Central Board of Excise and Customs,
HUDCO Vishala (9th Floor),
Bhikaji Cama Place, R.K.Puram,
New Delhi – 110 066.

.4.

2. Central Board of Excise and Customs,
represented by its Chairman,
North Block, New Delhi – 110 001.
3. The Chief Commissioner of Central Excise,
Customs & Service Tax,
Cochin Zone, Central Revenue Building,
I.S.Press Road, Cochin – 682 018.
4. The Commissioner of Central Excise
Customs and Service Tax,
Cochin Zone, Central Revenue Building,
I.S.Press Road, Cochin – 682 018.
5. The Chief Commissioner of
Central Excise and Service Tax,
Ranchi Zone, Patna, Bihar.
6. Sandeep Kumar, S/o.Jagadish Prasad,
Inspector, Air Customs,
Karipur Airport,
Malapuram Dist – 673 647.
7. Rakesh Sangwan, S/o.Jaiprakash Sangwan,
Inspector, Office of the Chief Commissioner,
I.S.Press Road, Cochin – 682 018.
8. Arpit Jain, S/o.Dinesh Jain,
Office of the Assistant Commissioner of Central Excise,
(Audit Cochin Circle-V), Central Excise Bhavan,
Kathrikadavu, Cochin – 682 017.
9. Robin Goyal, S/o.K.K.Goyal,
Office of the Assistant Commissioner of Central Excise,
(Audit Cochin Circle-IV), Central Excise Bhavan,
Kathrikadavu, Cochin – 682 017. ...Respondents

**(By Advocates – Mr.P.G.Jayan, ACGSC [R1-5]
& Mr.C.S.G.Nair [R6-9])**

These Original Applications having been heard on 12th February 2019, the Tribunal on 28th February 2019 delivered the following :

ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

The issue involved in all these cases are similar and identical in nature. Hence they are being disposed of by this common order.

2. The applicants in the O.As have their home state in the northern part of India, namely, Bihar and Madhya Pradesh. They are seeking Inter Commissionerate Transfers through these O.As. They challenged the communication dated 2.1.2017 and the revised draft guidelines issued by the Central Board of Customs and Central Excise by which their requests for inter zonal transfers are kept pending without taking any decision. The applicant in O.A.No.180/634/2017 has also challenged order dated 10.2.2017 by which the Chief Commissioner of Central Excise and Service Tax, Cochin cancelled the No Objection Certificate issued for inter zonal transfer to him.

3. The brief facts of the cases are :

The applicants started their career in the Central Excise Department in the post of Tax Assistant around 2009-2010 after due process of selection. Thereafter they were promoted to the cadre of Senior Tax Assistant and later to the post of Inspector of Central Excise on various dates under the Kerala Zone. It is pertinent to note that the seniority upto the post of Inspector of Central Excise is maintained zonal wise. The promotion from the post of Senior Tax Assistant is to the post of Inspector of Central Excise and then to Superintendent of Central Excise, which is effected based on the zonal seniority. In the Central Excise Department there is a provision for inter Commissionerate Transfer to Group B, C & D officers from one zone to another on request provided such employee forgoes his seniority while joining in the choice zone and the employee will be junior to those regularly appointed officers prior to his/her transfer. The

predominant criterion in the Circular is the period of service in a particular zone for making ICT request. The other notable point in the Circular is that the concerned two Cadre Controlling Authorities should agree to the transfer which will be processed subject to the availability of the vacancy, a copy of the circular is available at Annexure A-3.

4. Highlighting their personal reasons which makes their presence in their home state necessary, they have submitted individual requests for ICT based on Annexure A-3 criteria to their respective home state mainly to look after their aged parents. Though in the case of applicant in O.A.No.180/630/2017 the NOC for transfer is cleared by the Patna zone, he was not relieved at that time by the Cochin zone. So on promotion to the post of Inspector he again made a request for ICT transfer to Ranchi zone. While so, on coming to know that there was shortage of vacancies in their respective choice stations, they made request for change of zones. It is submitted that though they have made request for ICT repeatedly, the authorities failed to consider the matter.

5. It is submitted that, in the meanwhile, direct recruit Inspectors filed O.A.No.333/2016 before this Tribunal on the ground that priority should be given on 'spouse working ground' while processing the application for ICT request which is mandated by OM of the DoPT dated 30.9.2009. The O.A was disposed of by this Tribunal directing to set guideline clearly delineating the eligibility norms to various components such as seniority, compassionate ground etc. within a period of three months of receipt of the

order. In pursuance to the directions of this Tribunal, a revised draft guideline has been issued, to be followed in the matter of ICT requests. The applicants are particularly aggrieved by Clause C of the revised draft guideline which states that the period of service in a particular cadre will be the predominant criteria apart from the period of service of the officers in a zone. The applicants are prejudicially affected by the amendment in Clause C as mentioned above, as they have to wait for a few more years for getting inter commissionerate transfers.

6. As grounds the applicants submitted that the aforesaid clause which is illogical and unreasonable, will infringe upon the right of the applicant to get an ICT transfer to his choice station. It is alleged that the revised guideline containing Clause C is not implemented in other zones all over India except in Cochin Zone.

7. Per contra the respondents in their reply statement submitted that inter zonal transfers are granted strictly on the basis of guidelines communicated by CBEC dated 2.1.2017 which was framed pursuant to the directions of this Tribunal. Reply statement also lay stress on the duration of service not only in the zone but also in a particular cadre for considering requests under ICT transfer. They cite an example wherein it is explained that by considering only zonal seniority, an officer may get transfer on ICT who got promoted as Inspector in the year 2015 whereas direct recruit Inspector of 2009 could not be considered since he would have lesser length of service in the zone. They submit that this will lead to an anomaly where

a junior officer becomes senior to the officer who joined the latter zone on the strength of zonal seniority. It is stated that the stipulation of minimum period of service in a particular cadre is essential to extend equitable justice to all the members/applicants in that particular cadre and also to ensure minimum working strength of staff in the respective cadres. Hence they state that the applicant is not entitled to the reliefs as prayed for in the O.A in view of the revised guideline approved and notified in consultation with CBEC and the applicants will be considered for ICT transfer as and when they becomes eligible for the same.

8. We have heard Shri.C.S.Ajith Prakash, learned counsel for the applicants, Smt.P.K.Latha, learned ACGSC for the respondents in O.A.No.180/630/2017, Shri.Brijesh.A.S., learned ACGSC for the respondents in O.A.No.180/633/2017, Shri.P.G.Jayan, learned ACGSC for the respondents in O.A.No.180/634/2017 and Shri.C.S.G.Nair, learned counsel for the private respondents. We have perused the pleadings and documents available on record. Earlier this Tribunal had an occasion to delve into the issue in detail vide O.A.No.333/2016, which has been cited by both applicants and respondents in these O.As. The relevant portion of the order reads as under :

“18.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 organization. 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 8.4.2016 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 cases 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 O.A, 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 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.”

(emphasis added)

9. The order of this Tribunal is dated 12.7.2016 wherein it has been specifically held that future orders on NOC requests will be strictly on the basis of such norms which essentially means it has only prospective effect only. The applicants have made their request for ICT way back in 2012, 2013 and 2015. Hence their request has to be processed by the guidelines which was prevalent at that time.

10. In view of the above, the O.As are allowed. We direct the respondents to process the request of the applicants for ICT transfers in the light of what is stated above within a period of two months from the date of receipt of a copy of this order. No order as to costs.

(Dated ts the 28th day of February 2019)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

List of Annexures in O.A.No.180/00630/2017

- 1. Annexure A-1** – True copy of the joining report No.C.No.II/3/18/2010 Estt.III dated 9.8.2010.
- 2. Annexure A-2** – True copy of the order No.45/2015 dated 31.3.2015, promoting the applicant to the cadre of Inspector of Central Excise.
- 3. Annexure A-3** – True copy of the order relating to the inter Commissionerate transfer dated 27.10.2011 issued by the Ministry of Finance, Government of India.
- 4. Annexure A-4** – True copy of the application for ICT request submitted by the applicant dated 26.9.2013.
- 5. Annexure A-5** – True copy of the representation for ICT request dated 13.10.2015 submitted by the applicant to the Chief Commissioner Central Excise.
- 6. Annexure A-6** – True copy of the application for inter commissionerate transfer in the prescribed format submitted by the applicant dated 15.10.2015.
- 7. Annexure A-7** – True copy of the ICT request submitted by the applicant for change of Zone, from Ranchi to Kolkatta dated 19.9.2016.
- 8. Annexure A-8** – True copy of the judgment in O.A.No.333/2016 with M.A.No.473/2016, M.A.No.623/2016 dated 12.7.2016.
- 9. Annexure A-9** – True copy of the letter issued by the Department of Revenue, New Delhi to all the Commissionerate dated 16.9.2016.
- 10. Annexure A-10** – True copy of the order dated 26.9.2016 in R.A.No.48/2016 in O.A.No.333/2016.
- 11. Annexure A-11** – True copy of the communication is issued by the Central Board of Customs and Central Excise to the Chief Commissioner of Customs and Central Excise, Service Tax, Cochin zone dated 2.1.2017.
- 12. Annexure A-12** – True copy of the draft policy accompanying Annexure A-11 letter proposed.
- 13. Annexure A-13** – True copy of the revised draft guidelines which is approved by the Board which accompanied Annexure A-11 letter.
- 14. Annexure A-14** – True copy of the list published by the Additional Commissioner, (CCO) Kochi and forwarded to the Principal Commissioner of Central Excise.
- 15. Annexure A-15** – True copy of the representation dated 8.9.2017 submitted by the applicant to the Chief Commissioner Kerala Zone.

16. Annexure A-16 – True copy of the letter number 12/2017 dated 8.9.2017 issued by the Superintendent Kakkanad Range.

17. Annexure A-17 – True copy of the order No.175/17 dated 30.8.2017.

18. Annexure R1 – True copy of the Ministry's letter F.No.A.22015/117/2016-Ad.III A dated 2.1.2017.

List of Annexures in O.A.No.180/00633/2017

1. Annexure A-1 – True copy of the joining report No.C.No.II/3/18/2010 Estt.III dated 21.9.2010.

2. Annexure A-2 – True copy of the order No.45/2015 dated 31.3.2015, promoting the applicant to the cadre of Inspector of Central Excise.

3. Annexure A-3 – True copy of the order relating to the inter Commissionerate transfer dated 27.10.2011 issued by the Ministry of Finance, Government of India.

4. Annexure A-4 – True copy of the application for ICT request submitted by the applicant dated 17.12.2012.

5. Annexure A-5 – True copy of the ICT request submitted by the applicant to the Chief Commissioner of Central Excise on 22.10.2013.

6. Annexure A-6 – True copy of the ICT request submitted by the applicant to the Chief Commissioner of Central Excise on 12.10.2015.

7. Annexure A-7 – True copy of the judgment in O.A No.333/2016 with M.A No.473/2016, M.A No.623/2016 dated 12.7.2016.

8. Annexure A-8 – True copy of the letter issued by the Department of Revenue, New Delhi dated 16.9.2016.

9. Annexure A-9 – True copy of the order dated 28.9.2016 in R.A No.48/2016 in O.A No.333/2016.

10. Annexure A-10 – True copy of the communication issued by the Central Board of Customs and Central Excise to the Chief Commissioner of Customs and Central Excise, Service Tax, Cochin zone dated 2.1.2017.

11. Annexure A-11 – True copy of the draft policy accompanying Annexure A-10 letter proposed.

12. Annexure A-12 – True copy of the revised draft guidelines approved by the Board which accompanied Annexure A10 letter.

13. Annexure A-13 – True copy of the list published by the Additional Commissioner, (CCO) Kochi and forwarded to the Principal Commissioner of Central Excise and Customs.

14. Annexure A-14 – True copy of the representation dated 23.8.2017 submitted by the applicant to the Chief Commissioner Kerala Zone.

15. Annexure A-15 – True copy of the letter number 214/2017 dated 24.8.2017.

16. Annexure A-16 – True copy of the order No.175/17 dated 30.8.2017.

17. Annexure R1 – True copy of the Ministry's letter F.No.A 22015/117/2016-Ad.III A dated 2.1.2017.

List of Annexures in O.A.No.180/00634/2017

1. Annexure A-1 – True copy of the joining report to the post of Tax Assistant No.C.No.II/3/8/2009 Estt.III dated 24.4.2009.

2. Annexure A-2 – True copy of the order No.45/2015 dated 31.3.2015, promoting the applicant to the cadre of Inspector of Central Excise.

3. Annexure A-3 – True copy of the order relating to the inter Commissionerate transfer dated 27.10.2011 issued by the Ministry of Finance, Government of India.

4. Annexure A-4 – True copy of the application submitted in the prescribed format for ICT request submitted by the applicant dated 13.10.2015.

5. Annexure A-5 – True copy of the representation accompanying Annexure A-4 application format dated 13.10.2015.

6. Annexure A-6 – True copy of the letter issued by the Commissioner of Customs (Preventive) dated 30.11.2015.

7. Annexure A-7 – True copy of the judgment in O.A No.333/2016 with M.A No.473/2016, M.A No.623/2016 dated 12.7.2016.

8. Annexure A-8 – True copy of the letter canceling the NOC of inter zonal transfer No.C.No.II/13/32/2012 CC(KZ) IPt.I dated 10.2.2017 containing the name of the applicant.

9. Annexure A-9 – True copy of the letter issued by the Department of Revenue, New Delhi dated 16.9.2016 to all Commissionerate.

10. Annexure A-10 – True copy of the order dated 28.9.2016 in RA No.48/2016 in O.A No.333/2016.

11. Annexure A-11 – True copy of the communication issued by the Central Board of Customs and Central Excise to the Chief Commissioner of Customs and Central Excise, Service Tax, Cochin zone dated 2.1.2017.

12. Annexure A-12 – True copy of the draft policy accompanying Annexure A11 letter proposed.

13. Annexure A-13 – True copy of the revised draft guidelines which is approved by the Board which accompanied Annexure A11 letter.

14. Annexure A-14 – True copy of the list published by the Additional Commissioner, (CCO) Kochi and forwarded to the Principal Commissioner of Central Excise.

15. Annexure A-15 – True copy of the representation dated 15.9.2017 submitted by the applicant to the Chief Commissioner Kerala Zone.

16. Annexure A-16 – True copy of the forwarding letter issued by the Assistant Commissioner to the Chief Commissioner Central Tax and Central Excise.

17. Annexure A-17 – True copy of the order No.175/17 dated 30.8.2017.

18. Annexure R1 – True copy of the Board's letter F.no.22015/117/2014-Ad.III.A dated 2.1.2017.

19. Annexure M.A 1 - True copy of the Order No.95/2017 dated 21.7.2017 issued by the Chief Commissioner, Central Goods and Services Tax, Jaipur Zone.

20. Annexure M.A1 - True copy of the Order No.95/2017 dated 21.7.2017 issued by the Chief Commissioner, Central Goods and Services Tax Jaipur Zone.

21. Annexure M.A 2 - True copy of the representation submitted by the Miscellaneous Applicant (1st applicant) to the 5th respondent.

22. Annexure M.A 3 - True copy of the representation submitted by the Miscellaneous Applicant (2nd applicant) to the 5th respondent.

23. Annexure M.A 4 - True copy of the repres\ submitted by the Miscellaneous Applicant (3rd applicant) to the 5th respondent.

24. Annexure M.A 5 - True copy of the representation submitted by the Miscellaneous Applicatn (4th applicant) to the 5th respondent.
