

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH: HYDERABAD**

**Original Application No. 20/430 of 2018**

**Reserved on: 14.03.2019**

**Pronounced on: 05.04.2019**

Between:

1. Ashutosh Kumar, S/o. S.R. Rawani,  
Age: 33 years, Occ: Inspector,  
O/o. The Commissioner, Customs Commissionerate (Preventive),  
2<sup>nd</sup> Road, Industrial Estate, Autonagar, Vijayawada – 520 007.
2. Gyan Prakash, S/o. Sri Naresh Prasad,  
Age: 37 years, Occ: Inspector,  
O/o. The Commissioner of Central Tax GST (Audit),  
Guntur Audit Commissionerate at Visakhapatnam, 5<sup>th</sup> Floor,  
GST Bhavan, Port Area, Visakhapatnam.
3. Goutam Kumar Vishwakarma, S/o. Jairam Vishwakarma,  
Age: 33 years, Occ: Inspector,  
O/o. The Principal Commissioner of CGST, CGST Commissionerate,  
Visakhapatnam, 2<sup>nd</sup> Floor, GST Bhavan,  
Port Area, Visakhapatnam.
4. Deepak Kumar, S/o. Prem Kumar Yadav,  
Aged 31 years, Occ: Inspector,  
O/o. The Nellore CGST Division, Guntur Commissionerate,  
Guntur, Andhra Pradesh.
5. Kanaklatha, W/o. Neeraj Kumar,  
Age: 32 years, Occ: Inspector,  
O/o. The Superintendent of Central Tax, Central GST Division,  
Qube Complex, Opp V-Max Theatre, Surya Baghdad,  
Visakhapatnam – 500 020.
6. Sushmitha Priya, D/o. late P.N. Sahu,  
Age: 35 years, Occ: Inspector,  
O/o. The Assistant Commissioner of Central Tax, Central GST Division,  
Qube Complex, Opp V-Max Theatre, Surya Baghdad,  
Visakhapatnam – 500 020.
7. Ranjan Kumar, S/o. Yugal Kishore Baranwal,  
Age: 31 years, Occ: Inspector,  
O/o. The Deputy Commissioner of Customs, Air Cargo Complex,  
Shamshabad, Hyderabad.

... Applicants

And

1. Union of India, Ministry of Finance,  
Department of Revenue, North Block,  
New Delhi, Represented by its Deputy Secretary/ Under Secretary.
2. The Central Board of Customs and Central Excise,  
The Central Board of Indirect Taxes and Customs,  
North Block, Rep. by its Chairman and Spl Secretary.
3. The Chief Commissioner, Customs, Central Excise & Service Tax,  
Hyderabad Zone, GST Bhavan, Hyderabad.
4. The Chief Commissioner, Customs, Central Excise & Service Tax,  
Visakhapatnam Zone, Customs House, Visakhapatnam.
5. The Principal Commissioner, Customs, Central Excise & Service Tax,  
Hyderabad GST Commissionerate (Cadre Controlling Authority),  
GST Bhavan, Hyderabad.
6. The Chief Commissioner, Customs, Central Excise & Service Tax,  
Central Revenue Building (Annexe), Veerchand Patel Nath,  
Patna – 800 001.

... Respondents

Counsel for the Applicants ... Mr. N. Vijay  
 Counsel for the Respondents ... Mrs. K. Rajitha, Sr. CGSC

***CORAM:***

***Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)***  
***Hon'ble Mr. B.V. Sudhakar, Member (Admn.)***

***ORDER***  
***{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }***

2. The OA is filed for non grant of transfer to Ranchi due to improper maintenance of roster register at Ranchi zone of the respondents organisation.
3. Brief facts are that the applicants are working as inspectors since 2011 at Vishakapatnam and Hyderabad zones of the respondents organisation. Employees can seek Inter Commissionarate Transfers (ICT) with bottom seniority in Group B and Group C category. Govt. of India lifted the ban for ICT on 27.10.2011 with certain conditions. However, the said policy does not mention about any roster to be followed while considering the transfer. Though the ICT policy does not mandate any roster to be followed while consenting for

ICT the 6<sup>th</sup> respondent is following roster by declaring the availability of vacancies separately for UR, OBC, SC & ST categories. Applicants belong to OBC category and have sought for ICT in 2013. As the 6<sup>th</sup> respondent was reporting few vacancies under OBC category, applicants sought information under RTI about the break up of vacancies and found that the 6<sup>th</sup> respondent has adjusted 29 inspectors belonging to OBC community selected against UR vacancies in OBC vacancies. Consequently transfer of the applicants could not be considered over the years due to incorrect maintenance of roster pertaining to OBC vacancies. As per Hon,ble Supreme Court Judgment in R.K.Saberwal v State of Punjab, persons belonging to reserved category who are appointed on the basis of merit should be adjusted against UR vacancies. Based on this judgment, DOPT has issued circulars to maintain roster registers vide OMs dt 11.7.2002, 31.1.2005 and 10.8.2010. Applicants represented continuously on 5.9.2017, 21.9.2017, 8.1.2018,12.2.2018 and 3.4.2018 pointing out the lapses in maintenance of the roster register and on correction consider their requests for ICT. The apprehension of the applicants is that on correction of the roster, 6<sup>th</sup> respondent may throw open the vacancies for direct recruitment by reporting them to DGHRD and therefore the OA.

4. The contentions of the applicants are that there is no mention of maintaining roster for ICT. Even under the system of consenting for ICT by the 6<sup>th</sup> respondent as per roster the applicants are eligible for transfer on correcting the roster by showing 29 inspectors properly against UR vacancies instead of OBC vacancies. By doing so, there would be sufficient OBC vacancies to accommodate the request for ICT by the applicants.

5. Respondents inform that the ban on ICT was lifted on 27.10.2011. ICT requests can be considered based on availability of vacancies and other

conditions. While lifting the ban vide letter dt 27.10.2011 the methodology to deal with a situation where the number of applications received is more than the vacancies available was not indicated. Therefore, keeping this in view, the 6<sup>th</sup> respondent has introduced the system of first in first out (FIFO) and also set up a committee to screen the requests for ICT to bring about transparency in deciding the requests. The recruitment rules 2002 empowered Chief Commissioner to consider ICT. However, the 2002 recruitment rules were amended in 2016 withdrawing the power of the Chief Commissioner to consider ICT. Hence Delhi Zone has vide lr dt 24.1.2018 requested not to forward any inter zone transfers till the recruitment rules are amended or fresh instructions are received from the Board. Further DOPT office memo dt 2.7.1997 clarified that appointments to a cadre from any source are to be made against available vacancies in respective categories. Hence roster register has to be followed even in regard to ICT. Nevertheless at Ranchi there was a mistake in maintaining the roster for direct recruit Inspectors since 2016-17 onwards. Therefore no ICT orders were issued for the years 2016-17 and 2017-18. Besides, prior to 2016-17 roster was properly maintained and the contentions of the applicants in this regard are incorrect. The anomalies in regard to the rosters for the years 2016-17 and 2017-18 have been rectified in the roster for 2018-19. The available vacancies based on the incorrect maintenance of roster in 2016-17 and 2017-18 have been reported to DGHRD and that there is no scope to amend the roster at this distant date. However, in 2018-19 the roster has been rectified and maintained correctly from then on. Besides, the power to consider ICT has been withdrawn in 2016 and therefore the request of the applicants for ICT cannot be considered as per the new rules.

6. Heard both the counsel and perused the documents along with the material papers submitted.

7. Applicants made the ICT request in 2013 and followed it up with subsequent requests in the later years. Recruitment rules of 2002 does empower a Chief Commissioner to consider ICT. When the applicants made the request for ICT there were no vacancies reported in OBC category by the Ranchi Zone of the respondents organisation. The maintenance of roster register is as per the DOPT memo dt 2.7.1997 and the same has to be followed to consider ICT. However, when queried through RTI by the applicants, it was discovered vide respondents letter dt 6.12.2017 that there was a mistake in maintaining the roster by wrongly showing OBC inspectors selected for UR vacancies against OBC vacancies. Respondents admit this fallacy and they inform that the mistakes which crept in 2016-17 & 2017-18 were corrected in 2018-19. In the process it was too late in the day to consider the request of the applicants as the new recruitment rules of 2016 came into vogue. As per the new recruitment rules, Chief Commissioners cannot consider ICT. Besides, the vacancies for the year 2016-17 and 2017-18 during which years the discrepancies arose have already been reported to DGHRD leaving no scope for considering them to examine the request of the applicants. Respondents have admitted the mistake of wrong maintenance of roster. It was a bonafide mistake. Hon'ble Supreme Court has observed that a bonafide mistake can be corrected in **VSNL v. Ajit Kumar Kar,(2008) 11 SCC 591,**

**46.** It is well settled that a bona fide mistake does not confer any right on any party and it can be corrected.

Respondents corrected the mistake by taking measures required. The mistake committed by the respondents therefore does not confer any right on the applicants to seek ICT. Further as per new recruitment rules of 2016 the Chief Commissioners are not empowered to consider ICT. Applicants claim that their request for ICT has been made in 2013 before the new recruitment rules of 2016 came into vogue and hence their requests for ICT have to be considered. At this point it needs to be mentioned that the discovery of mistakes in the roster were reported by respondents in the letter dated 6.12.2017 ie after the new recruitment rules of 2016 were grounded. Therefore this assertion of the applicants does not come to their rescue. Moreover, respondents state that CBEC is coming up with a new ICT policy by taking inputs from different zones of the respondents organisation.

Thus based on the aforesaid facts wherein the prevalent recruitment rule does not permit consideration of ICT by Chief Commissioners and the bonafide mistake committed by the respondents in regard to the roster which was later corrected, we do not find any merit to intervene on behalf of the applicants. Hence the OA is dismissed with no order to costs.

**(B.V. SUDHAKAR)**  
**MEMBER (ADMN.)**

**(JUSTICE R. KANTHA RAO)**  
**MEMBER (JUDL.)**

Dated, the 5<sup>th</sup> day of April, 2019  
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