CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application Nos.180/00914/2018, 180/00864/2018
&
180/00877/2018

Friday, this the 26th day of July, 2019

Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member

O.A No. 180/00914/2018

K.S.Abhilash
S/o.Sivan Menon, aged 42 years
Inspector (Examiner) of Customs
Customs House, Willington Island
Cochin – 682 009 ..... **Applicant**

(By Advocate Mr.C.S.G Nair)

V e r s u s

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

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

3. Chief Commissioner of Central Tax and Customs
   Central Revenue Buildings
   I.S.Press Road, Cochin – 682 018

4. Commissioner of Customs
   Customs House
   Willington Island
   Cochin – 682 009 ..... **Respondents**

(By Advocate – Mr.N.Anilkumar,SCGSC)

O.A No. 180/00864/2018

1. Jacob K.F., S/o.Shri.K.P.Francis, aged 44 years
Inspector of Central Excise
Office of the Commissioner of Customs and Central Excise (Appeals)
Central Revenue Buildings
I.S.Press Road, Cochin – 682 018

2. Aji.V.V., S/o.Shri.V.Vasudevan, aged 44 years
Inspector of Central Excise
Central Goods and Services Tax and Central Excise
North Division, Thiruvananthapuram – 695 001

3. Asha Raj, W/o.Shri.M.Ramesh, aged 44 years
Inspector of Central Excise
Ernakulam Division, Central Tax and Central Excise Bhavan
Kathrikadavu, Cochin – 682 017 ..... **Applicants**

(By Advocate Mr.C.S.G Nair)

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

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

3. Chief Commissioner of Central Tax and Customs
Central Revenue Buildings
I.S.Press Road, Cochin – 682 018

4. Commissioner of Central Tax and Central Excise
Central Revenue Buildings
I.S.press Road, Cochin – 682 018

5. Commissioner of Central Tax and Central Excise
GST Bhavan, Press Club Road
Thiruvananthapuram – 695 001

6. Deputy Commissioner of Central Tax and Central Excise
Ernakulam Division, Central Excise Bhavan
Kathrukadavu, Cochin – 682 017

7. Assistant Commissioner
Central Goods and Services Tax and Central Excise North Division
Thiruvananthapuram – 695 001 ..... **Respondents**

(By Advocate – Mr.Thomas Mathew Nellimoottil)

<u>O.A No. 180/00877/2018</u>

1. Haris N.K., S/o.Andru, aged 35 years
Inspector of Central Excise
Office of the Commissioner of Central Tax and Central Excise
Mananchira, Kozhikode – 673 001

2. Abdul Ahad.K, S/o.Abdussamad K, aged 34 years
Inspector of Central Excise
Office of the Superintendent of Central Tax and Central Excise
Macheri Range, Pulickal Towers
Macheri 676 121, Malappuram Dist ..... **Applicants**

(By Advocate Mr.C.S.G Nair)

V e r s u s

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

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

3. Chief Commissioner of Central Tax and Customs
Central Revenue Buildings
I.S.Press Road, Cochin – 682 018

4. Commissioner of Central Tax and Central Excise
Central Revenue Buildings
I.S Press Road, Cochin – 682 018

5. Commissioner of Central Tax and Central Excise
Central Revenue Buildings
Mananchira, Kozhikode – 673 001

6. Assistant Commissioner
Central Goods and Services Tax and Central Excise
Malapuram Division, Awal Tower, Middle Hill
Malappuram – 676 505 ..... **Respondents**

(By Advocate – Mr.N.Anilkumar,SCGSC)

These Original Applications having been heard on 16.7.2019, the Tribunal on 26.7.2019 delivered the following:

O R D E R

***Per:* Mr.E.K.Bharat Bhushan, Administrative Member**

Since a common issue has to be adjudicated in all the three Original Applications under consideration and since the factual situations in these cases are almost identical, we feel that it is convenient to dispose of these cases by a common order. For the sake of convenience, pleadings and the documents contained in Original Application No.181/00914/2018 are referred to in this common order.

2. Applicants are aggrieved by the circular dated 20.9.2018 wherein their status in Cochin Commissionerate is sought to be altered.

3. The brief facts of the cases are as follows:

In O.A 180/00914/2018, the applicant had joined the service on 30.8.2010 as Tax Assistant at Custom House, Mumbai and was later promoted as Inspector(Examiner) w.e.f 26.12.2016. He had applied for Inter Commissionerate Transfer to the Customs House at Cochin (Annexure A1&

Annexure A2). Applicant was transferred to the Customs House, Cochin on 6.3.2017 (Annexure A-5). The post of Inspector in Central Excise was a Group C post, but on implementation of 6th CPC recommendations, the post of Inspector became a Group B Non-Gazetted post. Earlier there was a ban on ICT and later the ban was relaxed on certain conditions.

4. In the meanwhile, new Recruitment Rule, 2016 was notified for the recruitment of Inspectors of Central Excise, Preventive Officer etc. (Annexure A-13). Based on the new Recruitment Rules, respondent no.2 has issued a Circular dated 20.9.2018 clarifying that an office order to Inter Commissionerate Transfer in the grade of Inspectors issued on or after the publication of Annexure A13 Recruitment Rules will be *non est* and accordingly, any officer who has joined another zone in pursuance of such orders shall be treated as on deemed loan basis w.e.f 26.12.2016 and shall continue till 31.3.2019, on which date they shall stand relieved and be reverted to their parent Zones (Annexure A-14). Accordingly, the 4th respondent has issued Annexure A-20 order directing to forward applicant's service record to the parent zone for administrative purpose as the applicant is treated as on loan basis till 31.3.2019. Hence applicant has approached this Tribunal praying for the following reliefs:

i. To call for the records leading upto the issue of Annexure A-14, Annexure A-20 and quash the same.

ii. To direct the respondents to retain the applicant in Customs House Cochin by treating his transfer from Customs House, Mumbai as a permanent transfer.

iii. To grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case.

iv. Grant cost of this O.A.

5. O.A 180/00864/2018 is filed by three applicants, who are working as Inspectors of Central Excise, Thiruvananthapuram Zone under the 3rd respondent. They were recruited as LDCs in Bangalore and Kolkata Commissionerates respectively and on Inter Commissionerate Transfer they joined Thiruvananthapuram. The applicants are aggrieved by the Circular dated 20.9.2018 issued by the 2nd respondent referred above.

6. O.A 877/2018 is filed by two applicants, who are working as Inspectors of Central Excise, Thiruvananthapuram Zone under the 3rd respondent. The first applicant joined as Inspector at Coimbatore and the 2nd applicant at Chennai. As per their request for Inter Zonal transfer, they were posted at Thiruvananthapuram Zone by Annexure A-1 order dated 31.3.2017 and are working there. Here also, the applicants are aggrieved by the Circular dated 20.9.2018 issued by the 2nd respondent.

7. In the reply statement filed by the respondents in O.A Nos.864/18 & 877/18, it is stated that Staff Selection Commission makes the recruitment for selection of Inspectors on All India basis, based on the Recruitment Rules for Inspectors notified from time to time. The selected candidates exercise their option and indicate Zone and preference for allocation. Based on the order of merit, the Inspectors are allotted to the Zones under the Cadre Controlling Authority strictly as per rules and procedure. Under the guise of Inter Commissionerate Transfer requested on different grounds, Inspectors try to get themselves transferred to Zones with better promotional prospects with the undertaking that they would not claim seniority of parent cadre. The transfers under ICT from one Cadre Controlling Authority to another is not merely a transfer from one station to another or from one charge to another or change in posting. It entails change in Cadre from one Cadre Controlling Authority to another Cadre Controlling Authority and same were allowed subject to availability of vacancy and certain conditions.

8. The Central Excise and Customs Commissionerate Inspector (Central Excise, Preventive Officer and Examiner Group B Posts) Recruitment rule, 2016 have been notified on 26.12.2016, in which the special provision under which ICT was being considered is not available with effect from 26.12.2016. Since the enactment of the new Recruitment Rules of 2016 which supersedes the former Recruitment Rules of 2002, the above referred

guidelines cannot be made applicable in terms of Recruitment Rules of 2016 as there is no provision for absorption by ICT in the RR of 2016. Hence the Circular under challenge was issued by the Board with directions to all Cadre Controlling Authorities to take necessary steps. It is reiterated that the applicants are not entitled to any of the reliefs as sought for in these Original Applications as there is no provision under the new Recruitment Rules, 2016 to do so. Unless the Central Board of Indirect Taxes and Customs formulates guidelines and policy for Inter Zonal Transfer/Inter Commissionerate transfer, no transfer of officers from one zone to another zone is possible on absorption basis. Hence, the respondents pray for dismissal of the Original Application.

9. Heard Mr.C.S.G Nair, learned counsel for the applicants, Mr.Thomas Mathew Nellimoottil, learned counsel for the respondents in O.A 864/2018 and Mr.N.Anilkumar,SCGSC, learned counsel for the respondents in O.A 914/2018 and 877/2018.

10. The logic adopted in the Circular F.No.A 22015/117/2016-Ad.III A dated 20.9.2018, which is under challenge in all these three cases, is that the Recruitment Rules 2016 do not have any provision for absorption of Inter Commissionerate transferees. The change was necessitated due to public interest as large number of ICTs were affecting the efficiency of the

respondents department.

11. When these matters came up for admission, it is stated that the said circular was challenged before the Principal Bench, Jabalpur , Jaipur and Chandigarh Benches of Central Administrative Tribunal. A direction for maintaining status quo was also ordered, on the admission hearing date, in all the three cases.

12. Admittedly, all the applicants got their Inter Commissionerate Transfers after the year 2016 by which time, the new Recruitment Rules of Inspectors 2016 had come into effect. According to the learned counsel for the applicants, once the undertaking was accepted, transfer was effected and on joining the present Commissionerate, the applicants get a right to continue on regular basis.

13. We cannot accept this argument because the cause of action for the applicants arose when their applications were rejected i.e, after the issuance of the 2016 Rules. At the time of final hearing on 16.7.2019, learned counsel for the respondents has produced the judgment of the Hon'ble High Court of Kerala at Ernakulam in OP(CAT) No.173 of 2018 dated 10.4.2019 in the matter of ***Union of India & Others*** v. ***Gulshan Kumar and Others*** and submitted that the subject matter of the instant case is squarely covered

by the said decision.

14. We have carefully perused the judgment and found that the submission of the learned counsel appearing for the respondents is valid and the case is squarely covered by the said decision. A copy of the order of the Principal Bench in similar matter in O.A Nos.93/18 and connected matters has also been produced by the respondents and it is seen that same was also dismissed in terms of the aforementioned judgment of the Hon'ble High Court.

15. In the circumstances and for the reasons mentioned above, we do not find any merit in the contentions raised by the applicants' counsel. Accordingly, these Original Applications are dismissed in terms of the judgment of the Hon'ble High Court of Kerala at Ernakulam in OP(CAT) No.173 of 2018 dated 10.4.2019. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures

O.A 914/2018

Annexure A1	-	True copy of the letter F.No.S/5-30/2017/Estt.Dt.15.2.2017 issued by the Principal Commisioner of Customs, Mumbai
Annexure A2	-	True copy of the letter F.No.545/20/2009 Estt.Cus. Part.I dated 21.2.2017 issued by the 4th respondent
Annexure A3	-	True copy of the Estt. Office Order No.23/2017 issued by the 4th respondent
Annexure A4	-	True copy of the Establishment Office Order No.54/2017 dated 2.3.2017
Annexure A5	-	True copy of the Office Order No.31/2017 dated 6.3.2017
Annexure A6	-	True copy of the Recruitment Rules published on 29.11.2002 in the Gazette of India
Annexure A7	-	True copy of the letter no.6/97/57-Adm.III dated 12.2.1958 issued by the 2nd respondent
Annexure A8	-	True copy of the letter F.No.A 22015/3/2004 Ad.IIIA dated 19.2.2004 issued by the 2nd respondent
Annexure A9	-	True copy of the letter F.No.22015/19/2006-Ad.III A dated 27.3.2009 issued by the 2nd respondent
Annexure A10	-	True copy of the OM No.22015/23/2011-Ad.III A dated 27.10.2011
Annexure A11	-	True copy of the letter F.No.22015/23/2011-Ad.III A. dated 28.5.2014 issued by the 2nd respondent
Annexure A12	-	True copy of the letter F.No.A 22015/23/2011-Ad.III A dated 2.1.2017 issued by the 2nd respondent along with the guidelines
Annexure A13	-	True copy of the Recruitment rules notified on

26.12.2016

Annexure A14 - True copy of the Circular F.no.A 22015/117/2016-Ad.III A dated 20.9.2018 issued by the 2nd respondent

Annexure A15 - True copy of the Recruitment rules called the Central Excise and Customs Department Stenographer Grade II (Group C Posts0 Recruitment rules 2011

Annexure A16 - True copy of the OM No.A 22015/117/2016-Ad.IIIA.dated 4.8.2017 issued by the 2nd respondent

Annexure A17 - True copy of the letter F.No.8/11/39/HRD(IIRM-II) 2018 dated 6.9.2018 issued by the 2nd respondent

Annexure A18 - True copy of the Establishment Order No.47/2018 dated 3.10.2018 issued by the Chief Commissioner Chandigarh Zone

Annexure A19 - True copy of the interim order dated 8.10.2018 in O.A No.943/2018

Annexure A20 - True copy of the Order No.223/2018 dated 30.10.2018 issued by the 4th respondent

O.A 864/2018

Annexure A1 - True copy of the Order No.112/2017 dated 15.5.2017 issued by 4th respondent

Annexure A2 - True copy of the Order No.175/2017 dated 30.8.2017

Annexure A3 - True copy of the Recruitment Rules published on 29.11.2002 in the Gazette of India

Annexure A4 - True copy of the letter No.6/97/57-Adm.III dated 12.2.1958 issued by the 2nd espondent

Annexure A5 - True copy of the letter F.No.A 22015/3/2004 Ad.IIIA dated 19.2.2004 issued by the 2nd respondent

Annexure A6	-	True copy of the letter F.No.22015/19/2006-Ad.III A dated 27.3.2009 issued by the 2nd respondent
Annexure A7	-	True copy of the OM No.22015/23/2011-Ad.III A dated 27.10.2011
Annexure A8	-	True copy of the letter F.No.22015/23/2011-Ad.III A. dated 28.5.2014 issued by the 2nd respondent
Annexure A9	-	True copy of the letter F.No.A 22015/23/2011-Ad.III A dated 2.1.2017 issued by the 2nd respondent along with the guidelines
Annexure A10	-	True copy of the Recruitment rules notified on 26.12.2016
Annexure A11	-	True copy of the Circular F.No.A 22015/117/2016-Ad.IIIA dated 20.9.2018 issued by the 2nd respondent
Annexure A12	-	True copy of the Recruitment rules called the Central Excise and Customs Department Stenographer Grade II (Group C Posts0 Recruitment rules 2011
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Annexure A15	-	True copy of the Establishment Order No.47/2018 dated 3.10.2018 issued by the Chief Commissioner Chandigarh Zone
Annexure A16	-	True copy of the interim order dated 8.10.2018 in O.A No.943/2018
Annexure A17	-	True copy of the representation submitted by the 3rd applicant dated 11.10.2018.
Annexure R1	-	True copy DOPT OM No.AB-14017/2/97-Estt(RR) dated 25.5.1998

Annexure R2 - True copy of the Central Excise and Land Customs Department Inspector (Group C Posts) Recruitment Rules, 2002

Annexure R3 - True copy of the Central Excise and Customs Commissionerates Inspector (Central Excise, Preventive Officer and Examiner) Group B Posts Recruitment Rules, 2016

O.A 877/2018

Annexure A1 - True copy of the Order No.79/2017 dated 31.3.2017 issued by the 3rd respondent

Annexure A2 - True copy of the Recruitment Rules published on 29.11.2002 in the Gazette of India

Annexure A3 - True copy of the letter No.6/97/57-Adm.III dated 12.2.1958 issued by the 2nd respondent

Annexure A4 - True copy of the letter F.No.A 22015/3/2004 Ad.IIIA dated 19.2.2004 issued by the 2nd respondent

Annexure A5 - True copy of the letter F.No.22015/19/2006-Ad.III A dated 27.3.2009 issued by the 2nd respondent

Annexure A6 - True copy of the OM No.22015/23/2011-Ad.III A dated 27.10.2011

Annexure A7 - True copy of the letter F.No.22015/23/2011-Ad.III A. dated 28.5.2014 issued by the 2nd respondent

Annexure A8 - True copy of the letter F.No.A 22015/23/2011-Ad.III A dated 2.1.2017 issued by the 2nd respondent along with the guidelines

Annexure A9 - True copy of the Recruitment Rules notified on 26.12.2016

Annexure A10 - True copy of the Circular F.No.A 22015/117/2016-Ad.IIIA dated 20.9.2018 issued by the 2nd respondent

Annexure A11	-	True copy of the Recruitment Rules called the Central Excise and Customs Department Stenographer Grade II (Group C Posts) Recruitment Rules 2011
Annexure A12	-	True copy of the OM No.A 22015/117/2016-Ad.IIIA.dated 4.8.2017 issued by the 2nd respondent
Annexure A13	-	True copy of the letter F.No.8/11/39/HRD(IIRM-II) 2018 dated 6.9.2018 issued by the 2nd respondent
Annexure A14	-	True copy of the Establishment Order No.47/2018 dated 3.10.2018 issued by the Chief Commissioner Chandigarh Zone
Annexure A15	-	True copy of the interim order dated 8.10.2018 in O.A No.943/2018
Annexure A16	-	True copy of the Order No.178/2018 dated 24.10.2018 issued by the 4th respondent
Annexure R1	-	True copy DOPT OM No.AB-14017/2/97-Estt(RR) dated 25.5.1998
Annexure R2	-	True copy of the Central Excise and Land Customs Department Inspector (Group C Posts) Recruitment Rules, 2002
Annexure R3	-	True copy of the Central Excise and Customs Commissionerates Inspector (Central Excise, Preventive Officer and Examiner) Group B Posts Recruitment Rules, 2016

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