

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00273/2019

Date of Order: This, the 22nd day of August 2019

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

Applicants Nos. 1 and 2 are deleted.

3. Sri Prabir Kumar Das
Superintendent
Son of Late Pramatha Kumar Das
Office of Chief Commissioner
GST Bhawan, Kedar Road, Guwahati,
PIN – 781001.
4. Sri Utpal Das
Superintendent
Son of Late Jitendra Das
Office of CGST, Guwahati Division – II
GST Bhawan, Kedar Road, Guwahati
PIN – 781001.

...Applicant

By Advocates: Dr. J.L. Sarkar, Sri S. Nath & Sri G.J. Sarma

-Versus-

1. The Union of India
Represented by the Secretary
To the Government of India
Department of Revenue
Ministry of Finance, New Delhi – 110001.
2. The Chairman
Central Board of Indirect Taxes and Customs
Ministry of Finance
Department of Revenue
North Block, New Delhi – 110001.

3. The Chief Commissioner
Customs, Central Excise and CGST, Guwahati Zone
GST Bhawan, Kedar Road, Guwahati – 781001.
4. Joint Commissioner
Office of the Chief Commissioner
Customs, Central Excise and CGST, Guwahati Zone
GST Bhawan, Kedar Road, Guwahati – 781001.

...Respondents

By Advocate: Sri R. Hazarika, Addl. CGSC

ORDER (ORAL)

MANJULA DAS, JUDICIAL MEMBER:

This O.A. has been filed under Section 19 of the Administrative Tribunal's Tribunal 1985 seeking the following reliefs:-

- 8.1 That the Hon'ble Tribunal be pleased to direct the respondent No. 3 to modify/cancel or withdraw the impugned Establishment Order No. 31/2019 dated 14.08.2019 and to issue transfer order in terms of transfer policy guidelines dated 16.04.2019.

OR/Alternatively;

- 8.2 That the Hon'ble Tribunal be pleased to direct the respondent No. 3 not to implement the impugned Establishment Order No. 31/2019 dated 14.08.2019 till 31st December, 2019 in terms of transfer policy guidelines dated 16.04.2019.
- 8.3 Any other relief or reliefs as the Hon'ble Tribunal may deem fit and proper, including the cost of the case."

2. It is noted that the present O.A. has been filed by All India Association of Central Excise Gazetted Executive Officers, Guwahati Unit represented by its President Sri Rajasish Dutta as well as Sri Prabir Kumar Das, applicant No. 3 and Sri Utpal Das, applicant No. 4. As the matter relates transfer and it is concerned with the individual grievance, the Association has no locus standi to file the same. Accordingly, the view of the court is pointed out to the learned counsel appearing on behalf of the applicant by this Tribunal that the present O.A. is not maintainable. In the case of **Kerala State Coirfed Employees vs. The Registrar of Co-Operative and Ors., the Hon'ble High Court of Kerala at Ernakulam in WP(C) No. 35626 of 2010 (C) vide order dated 30.11.2010** has held that:-

“Merely because a group of persons are transferred by a common order that will not change its nature and impact and therefore, unless and until it is successfully challenged by a transferee it will take its effect on that concerned transferee. A writ petition by an association of persons challenging such individual grievances is not maintainable. Merely because the transferees are members of the association will not give locus standi to the association to challenge the order in a representative capacity. Therefore, the first petitioner union cannot be permitted to challenge Ext. P3 order of transfer in a representative capacity. Therefore, the scope of consideration of this writ petition is confined to the question whether the order in Ext. P3 to the extent it orders transfer of the second petitioner is liable to be interfered with or not.

In the case of **Madhya Pradesh Diploma Engineers Association Vs. State of M.P. & Ors., the Hon'ble Madhya Pradesh High Court**

in W.P. No. 13631/2014 vide order dated 08.09.2014 has held that:-

“Having heard the learned for the petitioner, it is observed that the petition has been filed by an Association whereas the transfer orders are issued in respect of individual officers. It is not the case of the petitioner that each an every person has been transferred on the same ground and, therefore, all of them are filling a joint petition. Transfer of each individual effects him differently and the order is also issued on different grounds and reasons which are mostly administrative and, therefore, an order of transfer has to be challenged individually. In such circumstances, the persons effected are required to individually agitate their matter in case aggrieved and a petition on behalf of the associations, based on general grounds, challenging all others of transfer can notbe entertained.”

3. In view of above position, Dr. J.L. Sarkar, advocate assisted by Sri S. Nath, learned counsel for the applicant, prays that since the individuals more particularly Sri Prabir Kumar Das and Sri Utpal Das, applicant Nos. 3 & 4 respectively, have individual grievances, therefore, the O.A. be restricted to Sri Prabir Kumar Das and Sri Utpal Das, applicant Nos. 3 & 4 only.

Prayer is allowed and the O.A. is confined to Sri Prabir Kumar Das and Sri Utpal Das, applicant Nos. 3 & 4 only. Accordingly, registry is directed to delete the names of applicant Nos. 1 & 2 from the cause title in the present O.A. with red ink.

4. It was submitted by Dr. J.L. Sarkar, learned counsel for the applicant in regards to the grievance of the applicants

that the guidelines formulated by the respondents in their own department, has not been followed while transfer has been made vide order dated 14.08.2019, so far the applicants are concerned. According to Dr. Sarkar, there are some conditions stipulated i.e. (i) Option for posting is to be exercised by the 30th November every year and posting order shall be issued by 31st December; (ii) The posting in a station should be maximum 6 years and (iii) All representations shall be submitted through proper channel and same shall be considered only for choice of station or place not for specific posting.

5. It was submitted by Dr. Sarkar that Sri Prabir Kumar Das has not completed 6 years tenure in his present place of posting at Customs/Central Excise-GST formation which is station "A" and Sri Utpal Das, Superintendent has completed four years of service in the present place of posting. Pertinently no option as provided in the transfer guideline has not been offered to the applicants so as to exercising their option for posting by 30th November where posting order shall be made by 31st December every year. However, in the present case, both transfers have been made in August. Thus, the condition incorporated by the respondent authority themselves through transfer guideline has not been followed by the respondent

authority. Mother of Sri Utpal Das, applicant No. 4, is seriously bed ridden. No option was offered to the applicants. As such, impugned transfer order dated 14.08.2019 is bad in law inasmuch as no option has been sought from the applicants before issuing the said impugned transfer order dated 14.08.2019.

6. From the records, I find that the present O.A. has been filed in the capacity of Association and prayer of all the Members of the Association appeared in the impugned transfer order dated 14.08.2019 have been clubbed here. However, learned counsel for the applicant has pointed out and drawn my attention to page 11 to the O.A. where from it appears that applicant Nos. 3 & 4 have made representations before the respondent authorities and fairly submitted that applicants will be happy and satisfied if the same should be considered and disposed of by the respondent authorities and pass a reasoned and speaking order within a time frame and till then, both the applicants shall not be disturbed from their present place of posting.

7. On putting question to Sri R. Hazarika, learned Addl. CGSC representing the respondents regarding maintainability,

Sri Hazarika replied that whatever decisions highlighted by this Tribunal above in **Kerala State Coirfed Employees vs. The Registrar of Co-Operative and Ors.** as well as **Madhya Pradesh Diploma Engineers Association Vs. State of M.P. & Ors. (supra)**, he is agreed to that and fairly submitted that the instant petition is not maintainable. However, he has no objection if the case of applicant Nos. 3 & 4 be considered confining them only in the O.A.

8. By accepting the prayers made by Dr. J.L. Sarkar, learned counsel for the applicant and Sri R. Hazarika, learned Addl. CGSC for the respondents as well as without going into the merit of the case, I disposed of the O.A. with the direction upon the respondent authorities more particularly respondent No. 3 to consider the representations of Sri Prabir Kr. Das, applicant No. 3 and Sri Utpal Das, applicant No. 4 dated 16.08.2019 within a period of three months' from the date of receipt of a copy of this order.

9. It is made clear that whatever decision to be passed by the respondent authorities, before whom said representations were made, shall be reasoned and speaking and be communicated to the applicant Nos. 3 & 4 forthwith.

10. Till such time, applicants shall not be disturbed from their present place of posting.

11. No order as to costs.

(MANJULA DAS)
MEMBER (J)

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