IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

OP (CAT).No. 77 of 2015 (Z)

AGAINST THE COMMON ORDER IN OA 180/00959/2014 & CONNECTED CASES of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH DATED 18-03-2015.

PETITIONER(S)/RESPONDENTS:
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1. UNION OF INDIA,
   REPRESENTED BY THE SECRETARY, DEPARTMENT OF REVENUE,
   NORTH BLOCK, NEW DELHI 110 001.

2. CHAIRMAN,
   CENTRAL BOARD OF EXCISE & CUSTOMS, NORTH BLOCK ,
   NEW DELHI -110 001.

3. CHIEF COMMISSIONER OF CENTRAL EXCISE,
   CENTRAL REVENUE BUILDINGS, I.S.PRESS ROAD,
   COCHIN- 682 018.

4. CHIEF COMMISSIONER OF CENTRAL EXCISE &
   SERVICE TAX(LUCKNOW ZONE),
   7-A, ASHOK LUCKNOW- 226 001.

5. COMMISSIONER OFCENTRAL EXCISE & CUSTOMS,
   CENTRAL REVENUE BUILDINGS, I.S.PRESS ROAD,
   COCHIN -682 018.

6. CHIEF COMMISSIONER OF CENTRAL EXCISE &
   SERVICE TAX(MEERUT ZONE),
   MEERUT -250 001.

   BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL OF INDIA

P.T.O.

RESPONDENT(S)/APPLICANT:

OMSHANKAR GUPTA,
INSPECTOR OF CENTRAL EXCISE , SERVICE TAX DIVISION,
ERNAKULAM, CENTRAL EXCISE BHAVAN, KATHRIKADAVU,
COCHIN- 682 017.

R1 BY ADVS. SRI.C.S.GOPALAKRISHNAN NAIR
SMT.CHANDINI G.NAIR

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 08-09-2015, ALONG WITH OP (CAT). 82/2015, OP(CAT). 83/2015, OP(CAT). 84/2015, OP(CAT). 85/2015, OP(CAT). 86/2015, OP(CAT). 87/2015, THE COURT ON 14.09.2015 DELIVERED THE FOLLOWING:

P.T.O.

OP (CAT).No. 77 of 2015 (Z)

APPENDIX

PETITIONER(S)' EXHIBITS/ANNEXURES:

EXHIBIT P1	COPY OF THE OA NO. 180/00959/2014 DATED 17/11/2014 FILED BY THE RESPONDENT BEFORE THE HON'BLE CAT,ERNAKULAM BENCH.
ANNEXURE A1:	TRUE COPY OF THE LETTER F.NO.A22015/23/2011-AD-III.A. DATED 27.10.2011.
ANNEXURE A2:	TRUE COPY OF THE REPRESENTATION DATED 09.04.2013 ADDRESSED TO THE 3RD RESPONDENT IN O.A.
ANNEXURE A3:	TRUE COPY OF THE ESTT. ORDER NO.1/A/CCSC/85/2014 DATED 30.09.2014.
ANNEXURE A4:	TRUE COPY OF THE REPRESENTATION DATED 20.10.2014 TO THE 3RD RESPONDENT.
ANNEXURE A5:	TRUE COPY OF THE REPRESENTATION DATED 20.10.2014 TO THE 4TH RESPONDENT.
EXHIBIT P2	TRUE COPY OF THE REPLY STATEMENT DATED 28/1/2015 FILED BY THE PETITIONERS.
ANNEXURE R1:	ENCLOSURE-I (SUMMARY OF POST-WISE ALLOCATION OF APPROVED CADRE STRENGTH TO FORMATIONS UNDER CBEC) OF BOARD'S LETTER F.NO.11019/08/2013-AD.IV DATED 01.08.2014.
ANNEXURE R2:	COPY OF ESTABLISHMENT ORDER NO.I/A/CCSSC/101/2014 DATED 04.12.2014 ISSUED BY THE RESPONDENT NO.4 IN O.A.
ANNEXURE R3:	COPY OF ORDER OF THE PRINCIPAL BENCH IN O.A.NO.4107/2014.
EXHIBIT P3	TRUE COPY OF THE REJOINDER DATED 29/1/2015 FILED BY THE RESPONDENT.
EXHIBIT P4	TRUE COPY OF THE COMMON ORDER IN OA NO. 180/00959/2014 AND CONNECTED CASES DATED 18/3/2015 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

K. SURENDRA MOHAN
&
SHAJI P. CHALY, JJ.

O.P.(CAT) Nos.77, 82, 83, 84, 85, 86 & 87 of 2015

Dated this the 14th day of September, 2015

JUDGMENT

Shaji P. Chaly, J.

These original petitions are filed by the Respondents against the common order of the Central Administrative Tribunal, Ernakulam Bench dated 18.03.2015 in O.A.Nos.180/00959, 180/00974, 180/00960, 180/00975, 180/00976, 180/01002 & 180/01015 of 2014. By the said common order, the learned Tribunal directed the Respondent to relieve the applicants from the Kerala Zone within 40 days from the date of receipt or presentation of a copy of the order. Since the facts in the original petitions are common in nature, reference to the exhibits are made with that of O.P.(CAT) No.77 of 2015.

2. Brief facts required for the disposal of the original petitions are as follows:

Applicants are working as Inspectors of Central Excise under the 5th petitioner herein (5th Respondent in the O.A.) in the Kerala Central Excise Zone. They joined the Central Excise Department on various dates. Earlier, there was a ban on inter-Commissionerate transfer of group-C and group-D officers. The said ban was lifted by the 2nd Respondent on 27.10.2011 by Annexure-A1 order.

3. On lifting of ban, the applicants on account of various reasons, submitted representation for transfer to various other Zones of the country. Thereupon, Respondents have constituted a Committee for processing the Inter-commissionerate transfer and thereupon the Committee considered the representations of the applicants, drawn a list and thereby the 4th Respondent (in the O.A.) has issued order of transfer of the applicants as per Annexure-A3. There was a direction in Annexure-A3 that the transferred officers should report before the Chief Commissioner of Central Excise and Service Tax of the concerned Commissionerate on or before 20.10.2014. It was also mentioned in the said order that if the officers fail to report before the concerned Commissionerate on or before 20.10.2014, the transfer would be treated as

cancelled.

4. Even though Annexure-A3 order was passed, the Respondents herein were not relieved and thereupon again they have submitted representations seeking to relieve them and also represented before the concerned Commissionerates seeking extension of time for joining since a cut off date was prescribed in Annexure-A3. In spite of all these efforts, petitioners were not relieved by the Commissionerate and thereupon the petitioners have filed the above stated applications before the Central Administrative Tribunal seeking to implement Annexure-A3 order passed.

5. The learned Tribunal, after evaluating the facts and circumstances and taking into consideration the contentions advanced by the Respondents held that even though there is no vested right for Inter-divisional/Inter-zonal/Inter-commissionerate transfers, the problem had to be approached by observing the principles of equity and good conscious. It was further held that it is a part of good governance that once the authorities give assurance to the employees, they should keep up the promise and in such instances, some of the features of the legal principle of promissory estoppel also

comes into play. It was further held that having been given order of Inter-commissionerate transfer as per Annexure-A3, it was not fair on the part of the authorities not to relieve the beneficiaries on the ground of shortage of man power. It was also held that replenishing the shortage of man power is the look out of the administration but after having decided to grant inter-commissionerate transfer to the applicants, the administration was not justified in retaining them on account of subsequent rise in the vacancies. Thereupon, the Tribunal repelled the contention of the Respondents that there was shortage of staff consequent to the failure on the part of the Staff Selection Commission to recruit sufficient number of personnel to the vacant posts. Therefore, in that view of the matter, the Tribunal has directed to relieve the applicants from the Kerala zone at the earliest and within an outer limit of 40 days from the date of receipt of a copy of the order.

6. We have heard the learned Assistant Solicitor General, Sri. N. Nagaresh for the petitioners in the above original petitions and Sri. C.S.G. Nair, learned counsel appearing for the Respondents.

7. Learned Assistant Solicitor General contended that the Respondents cannot insist that they are entitled for inter-commissionerate transfer as of right. Learned A.S.G further contended that the transfer is an incidence of service and going by the settled position of law, Respondents did not have vested right to seek transfer. Learned A.S.G further contended that in view of the dearth of necessary staff to man the Departments in Kerala, even though Annexure-A3 order was passed, the Respondents could not be provided with the transfers ordered thereunder. He has brought to our notice the factum of vacancies and posts in the Kerala zone and contended that the situation is quite alarming and since the vacancies are not filled by the Staff Selection Commission, large number of vacancies are remaining unfilled which are creating innumerable difficulties in carrying out the duties of the Central Excise Department. Learned counsel also contended that the situation will be still worse when many of the Inspectors are promoted to the next cadre and the number of vacancies of Excise Inspectors again going up.

8. In order to canvass the proposition that the Respondents are not at liberty to insist for a transfer, learned A.S.G has invited our attention to the judgments in '***Major General J.K. Bansal v. Union of India and others***' [2005 (7) SCC 227], '***Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey and Others***' [2004 (12) SCC 299] and '***Rajendra Singh and Others v. State of U.P. and Others***' [2009 (15) SCC 178] and contended that unless there are mala fides or illegalities in the matter of transfer, the Courts cannot interfere since the same being an incidence of service. Learned Assistant Solicitor General further contended that once a candidate joined in service, he will have to abide by the orders of transfer issued by the appropriate statutory authority. Further, learned counsel contended that in view of the settled proposition of law, the Respondents could not have pressed the implementation of Annexure-A3 order passed by the Committee constituted for considering the transfer of the Respondents and others. Therefore, learned counsel contended that the view taken by the Tribunal is unable to be sustained under law.

9. On the other hand, learned counsel for the Respondents contended that ever since their appointment, the Respondents were working in Kerala zone and since they are belonging to the States of Northern India, they were put to many difficulties due to the long continuance in the Kerala zone. It was in that background that the Respondents have submitted representations seeking transfers. Learned counsel for the Respondents also contended that it was after realizing and understanding the difficulties faced by the Respondents only, a Committee was constituted by the petitioners to consider the representations of these Respondents and Annexure-A3 order was passed after evaluating the entire pros and cons and taking into account the poor plight of the Respondents for being long in Kerala. So also, it was contended by the learned counsel for the Respondents that the Respondents have already suffered since consequent to Annexure-A3 postings, they will be treated as juniormost and if any further delay is caused in relieving them, they will further go down in the seniority list. Therefore, learned counsel contended that no interference is required in the impugned order passed by the Tribunal. Learned counsel also pointed

out that since there are no illegalities, unfairness or other legal infirmities in the order passed by the Tribunal, this Court may not exercise its jurisdiction under Article 227 of the Constitution of India.

10. We have appreciated the contentions put forth by the rival parties and the evidence on record. What we find is that Annexure-A3 order passed by the Committee constituted for transfer of these employees to other Northern States was after evaluating the representations put forth by the Respondents. Since even a date of joining was fixed, it was clear that by the said order passed pursuant to the report of the Committee, the authority was under the definite opinion that the Respondents were entitled to be transferred as requested by them or to any nearby stations to their home land. So also, the principles laid down in the aforesaid decisions *supra* relates to challenge of transfer orders under which the Hon'ble Apex Court held that transfer was an incidence of service and therefore as a matter of right, a candidate could not insist for a transfer to the authorities. But, at the same time, in all those judgments, the Apex Court had held that the requests for transfer can be considered by the

authorities taking into account the facts and circumstances involved in each case. Therefore, according to us, in view of Annexure-A3 order passed by the concerned authority providing assurance to the Respondents, the principles laid down in the judgments cited *supra* cannot have any binding legal force. Learned Assistant Solicitor General also contended that if this Court was not inclined to interfere with the impugned order, requisite time may be granted to the Respondents to comply with the impugned order passed by the Central Administrative Tribunal. Taking into account the facts and circumstances and the difficulties faced by the Kerala zone due to the dearth of sufficient Inspectors, we are of the view that further time can be granted to the petitioners to implement the impugned orders of the Tribunal. The impugned orders were passed by the Tribunal as early as on 18.03.2015 with a stipulation to implement the same within an outer limit of 40 days, and therefore, we thought that it was only proper that a further 45 days time be given from the date of receipt of a copy of this judgment by the petitioners.

11. Therefore, we do not find any illegality, unfairness or other legal infirmities warranting our interference invoking

the power conferred under Article 227 of the Constitution to the orders passed by the Central Administrative Tribunal, Ernakulam Bench in the aforesaid cases. But, at the same time, we grant 45 days time to the petitioners to implement the impugned orders of the C.A.T from the date of receipt of a copy of this judgment.

Accordingly, these original petitions are dismissed subject to the 45 days time granted for implementing the impugned orders of the Tribunal in the aforesaid cases, as above.

Sd/-
K. SURENDRA MOHAN
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-