

F. No. A-22015/117/2016-Ad.IIIA
Government of India,
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs

North Block, New Delhi

Dated, the 20th of September, 2018

CIRCULAR

Subject: Instructions in respect of Inter Commissionerate Transfer (ICT) in the light of new Recruitment Rules, 2016-regarding.

These instructions are being issued in terms of "Central Excise and Customs Commissionerate Inspector (Central Excise, Preventive Officer and Examiner) Group B Posts Recruitment Rules, 2016"

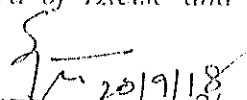
2. Any executive instruction in contravention of the Recruitment Rules will be void in accordance with the ratio of the judgment of the Hon'ble Supreme Court of India in the case of UOI & others Vs. Somasundram Viswanath & Ors. dated 22.09.1988 [1990 SC 166 (10) which held as follows: -

(1) "It is well settled that the norms regarding recruitment and promotion of officers belonging to the Civil Services can be laid down either by a law made by appropriate Legislature or by rules made under the proviso to Article 309 of the Constitution of India or by means of executive instructions issued under article 73 of the Constitution of India in the case of Civil Services under the Union of India and under Article 162 of the constitution of India in the case of Civil Services under the State Governments. If there is a conflict between the executive instructions and the rules made under the proviso to Article 309 of the Constitution of India, the rules made under proviso to Article 309 of the Constitution of India prevail." Thus, the Recruitment Rules formulated under Article 309 will prevail over any executive instruction that may be contradictory to it"

3. It has come to the notice of this office that various CCAs (Cadre Control Authorities) are taking divergent stands on the issue of Inter Commissionerate Transfers (ICT) of officers in the cadre of Inspector on the basis of guidelines issued vide F.No. A 22015/23/2011-AD IIIA dated 27.10.2011. The issue of Inter Commissionerate Transfer under "Central Excise and Customs Commissionerate Inspector (Central Excise, Preventive Officer and Examiner) Group B Posts Recruitment Rules, 2016" has been examined by the Board and following has been observed.

4. The ICT applications were being considered under Rule 4 of erstwhile Central Excise and Land Customs Department Inspector (Group 'C' Posts) Recruitment Rules, 2002 which stated that:

"Rule 4: Special Provision. - (i) Each Cadre Controlling Authority (CCA) shall have its own separate cadre unless otherwise directed by the Central Board of Excise and Customs.


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Re-handled
Important
Original will go to
Pohraj file
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(ii) Notwithstanding anything contained in sub-rule (i), the jurisdictional Chief Commissioner of Central Excise may, if he considers to be necessary or expedient in the public interest so to do and subject to such conditions as he may determine having regard to the circumstance of the case and for reasons to be recorded in writing, order any post in the Commissionerate of Central Excise to be filled by absorption of persons holding the same or comparable posts but belonging to the cadre of another Commissionerate or Directorate under the Central Board of Excise and Customs.

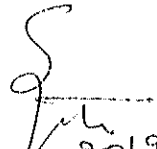
However, under Recruitment Rules, 2016 the corresponding provision containing the special provision under Rule 5 provides that "Each Cadre Controlling Authority (CCA) shall have its own separate cadre unless otherwise directed by the Central Board of Excise and Customs."

5. From the above, it is clear that Recruitment Rules, 2016 do not have any provision for recruitment by absorption and accordingly, no ICT application can be considered after coming into force of the Recruitment Rules, 2016.

6. In exceptional circumstances depending upon the merit of each case such as extreme compassionate grounds, such transfers may be allowed on case to case on loan basis alone keeping in view the administrative requirements of transferee and transferred Cadre Controlling Authority. However, maximum tenure of such transfer will be three years and can be extended with the specific approval of the Board for a further period of two years depending upon the administrative requirement. It is further reiterated that the officials transferred on the loan basis shall not be considered for promotion unless they re-join their parent cadre.

7. Now, therefore, it is hereby clarified that an office order for Inter Commissionerate Transfer in the Grade of Inspectors issued on or after 26.12.2016 (i.e. from the date of enactment of RR, 2016) will be non-est and accordingly any officer who has joined another zone in pursuance of such order shall be treated as a deemed case on loan basis w.e.f. 26.12.2016. These officers shall be on deemed loan till 31.03.2019, on which date the officers shall stand relieved and be reverted to their parent Zones.

All CCA are directed to take necessary steps in this regard immediately.


20/9/18
(S.K. Gupta)

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To

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners of Central Tax & Central Excise (All)

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