भारत सरकार
GOVT. OF INDIA
मुख्यआयुक्त का कार्यालय
Office of the Chief Commissioner
केन्द्रीय माल, सेवा कर एवं केन्द्रीय उत्पाद शुल्क (सी.सी.ओ.)
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C.No. II(3)34 – Conf/RCT/CCO/RZP/2024/10101 Dated : 09.10.2024

ESTABLISHMENT ORDER NO- 87/2024
DATED: 09.10.2024

PASSED BY THE CHIEF COMMISSIONER, CCA, CGST & CX RANCHI ZONE, PATNA

This order is being issued in compliance of the order dated 01/03/2024 of the Hon'ble Central Administrative Tribunal, Patna Bench in O.A. No. 050/00096/2024. While deciding the aforesaid O.A. No. 050/00096/2024, the Hon'ble CAT, Patna Bench has directed that the applicants should submit a detailed representation to the competent authority within two weeks and if such representation is submitted, the competent authority will pass an order expeditiously considering the entirety of facts and observations of Hon'ble Supreme Court in Paras 48, 52 and 53 in the case of SK Naushad Rahaman & Ors [Civil Appeal No 1243 of 2022]. Till the competent authority takes a decision on the representations so submitted, applicant would be allowed to continue on their present place of posting. This order is being issued in respect of Smt. Kalpana Kumari, who as Stenographer Grade-I, had joined Ranchi Zone, Patna on Inter Commissionerate Transfer (in short ICT) from Bhopal Zone.

2.0 BACKGROUND OF THE CASE

2.1 Before 27/10/2011, Inter Commissionerate Transfer under absorption (in short ICT) was banned by the (then) Central Board of Excise and Customs, now Central Board of Indirect Taxes and Customs (Hereinafter referred to as Board). Vide Board's letter F.No. A22015/23/2011-Ad.IIA dated 27.10.2011 the Board uplifted ban on ICT. In light of the Board's letter dated 27.10.2011, many representations were received in this Zone. Considering vacancy position and case to case basis, many representations were considered and some officers were transferred to this Zone from other zones on ICT.

2.2 In pursuance of the above letter issued by the Board, five stenographers Grade-1 had joined this Zone on ICT basis. The details of them are as under:

Sl.No.	Name of officer (Sh/Smt)	Designation under ICT	Date of joining in Ranchi Zone after transferred on ICT basis	Parent Zone
i.	Kalpana Kumari	Stenographer Grade-I.	26-09-2016	Bhopal Zone
ii.	Pratibha Sinha	Stenographer Grade-I	18-05-2016	Vadodara Zone
iii.	Swapn Pallavi	Stenographer Grade-I	05-07-2016	Vadodara Zone
iv.	Suresh Kumar Vaidya	Stenographer Grade-I	04-07-2016	Then Mumbai Zone-II now Mumbai Zone
v.	Bibhakar Kumar Thakur	Stenographer Grade-I	13-12-2016	Mumbai Zone

2.3 As per guidelines of ICT, they have been placed at the bottom of the Seniority list of regular appointee Stenographers Grade-1 of CGST & CX, Ranchi Zone Patna.

2.4 Vide letter F.No.A-22015/117/2016-Ad.IIIA dated 20/09/2018, the Board has clarified that in the absence of special provision in the Recruitment Rules ICT can't be granted.

2.5 Also vide letter F.No.A32018/09/2020-Ad.IIIA dated 11.08.2020, the Board further clarified that as there is no provision of transfer of Stenographer in their Recruitment Rules through Absorption/ICT, so transfer of Stenographers through ICT can't be considered. Further the promotion will be done as per Recruitment Rules. The matter here is related to decentralised Cadre and the Chief Commissioner of the concerned Zone is competent to decide the matter.

2.6 The new Recruitment Rules for the Stenographer Grade-1 have been introduced as Recruitment Rules, 2015 notified on 21/09/2015(**Hereinafter referred as RR**), mentioning that there is no provision of transfer of Stenographer-I through absorption/ICT.

2.7 Vide letter C.No. II(03)05-Promo./PS/CONF./CCA/RZP/2022/6008 dated 26/05/2023, the Additional Commissioner, CCA had requested CBIC to consider the

matter sympathetically and may grant one time relaxation in this case by taking into account the fact that the Stenographer Grade-I joined this Zone long ago and they may be considered for promotion only after the matter of their absorption in this zone is favourably decided, therefore, necessary direction in this regard may be issued so that the matter can be resolved at the zonal level. Subsequently a reminder letter C.No.II(03)05-Promo./PS/CONF./CCA/RZP/2022/8393 dated 11/07/2023 was issued to the Board with a request to issue necessary direction/guidelines in this regard.

2.8 Vide letter F.No. A-22015/13/2023-Ad.III-A-Part (1) dated 07/08/2023 inter alia, the Board stated that the Hon'ble Supreme Court, vide its judgement dated 10/03/2022 in the matter of Shri S.K.Nausad Rahaman & Ors. Vs UOI & Ors. (CA No. 1243 of 2022) has upheld the Board's view that in the absence of special provision in the Recruitment Rules, ICT can't be granted. It was also stated in the same letter that in the absence of special provision i.e., absorption as a method of recruitment in the Recruitment Rules of the concerned posts, ICT can't be done/allowed for the same. The same will be applicable from the date of issuance of the Recruitment Rules for the concerned posts where absorption is not one of the methods of recruitment and the Board directed all CCA to take necessary action in line with these instructions.

2.9 In response of the above-mentioned letter of this office dated 26/05/2023 and 11/07/2023, the Board has replied vide letter F.No.A.12018/13/2012-AD.III.B dated 10.08.2023 and stated that as there is no provision of transfer of Stenographer in the RR through Absorption/ICT. So, transfer of Stenographer through ICT can't be considered. Further promotions will be done as per RR. The RRs to the post of Stenographers are available on the official website of CBIC and are available in public domain. The matter here is related to decentralized cadre and CC of the concerned zone is competent to decide the matter and take appropriate action accordingly.

2.10 Vide this office Establishment Order No. 20/2024 dated 26/02/2024 , issued under C.No.II(3)34-Conf/ICT/CCO/RZP/14/2743-57 dated 26/02/2024 and corrigendum no.2814-28 letter dated 28/02/2024, four Stenographer Grade-1 namely Smt. Pratibha Sinha, Smt. Swapn Pallavi, Shri Suresh Kumar Vaidya and Sh. Bibhakar Kumar Thakur were relieved from this Zone with direction to join their

parent zone w.e.f 01/03/2024(A/N). In pursuance of Establishment Order No.20/2024 dated 26/02/2024, Sh. Suresh Kumar Vaidya and Sh. Bibhakar Kumar Thakur have joined their parent zone.

2.11 In the meantime, Smt Pratibha Sinha and Smt Swapn Pallavi along with Smt Kalpana Kumari, Personal Secretary, Customs(P) Zone Patna filed OA No.050/00096/2024 before Hon'ble CAT Patna Bench for their stayal at CGST & CX Ranchi Zone Patna.

2.12 The Hon'ble CAT vide its Order dated 01/03/2024 disposed the aforesaid OA with following observation and direction: -

> *Considering the above observations (i.e. Observation made by Hon'ble Supreme Court at Para 48, 52 and 53 in the matter of S.K. Naushad Rahman & Ors Vs UOI & Ors) of Hon'ble Supreme Court and the facts of this case , we are of considered view that applicants should submit a detailed representation to the competent authority within two weeks and if such representation is submitted , the competent authority will pass an order expeditiously considering the entirety of facts an observations of Hon'ble Supreme Court as mentioned at Para 48, 52 and 53 in the matter of S.K. Naushad Rahman & Ors Vs UOI & Ors. Till the competent authority take a decision on the representations so submitted, applicants would be allowed to continue on their present place of posting.*

3.0 SUBMISSION OF THE APPLICANT I.E. SMT. KALPANA KUMARI

In pursuance of the Hon'ble CAT, Patna Bench order dated 01/03/2024, Smt. Kalpana Kumari submitted the representation dated 13.03.2024 addressed to the Chief Commissioner, CGST & CX, Ranchi Zone Patna mentioning the Board's Instruction, Recruitment Rules of Stenographer Grade-I, DoPT's instructions and observation made by the Hon'ble Supreme Court judgment in Civil Appeal No.1243 of 2022(SK Naushad Rahaman & Ors) and requested to consider her representation sympathetically taking into consideration the following points:-

i. She has applied for Inter Commissionerate Transfer (hereinafter referred as ICT) on the basis of upliftment of ban on ICT vide notification F.No. A22015/23/2011-Ad.III.A dated 27/10/2011
ii. She has applied for ICT on spouse ground and her spouse is still in government job. Her husband is working at Patna RMS, Patna.
iii. The ground on which the administration has allowed her representation is still valid and requires sympathetic consideration at this stage also. She has quoted the Para 48, 52 and 53 of Hon'ble Supreme Court judgement dated

10/03/2022 in the case of S.K. Naushad Rahman & Ors (Civil Appeal No. 1243/2022).

iv. She has also stated that a long period of nearly 7 and half years has gone since her ICT to CGST & CX Ranchi Zone Patna. There is an order of the Board dated 15.01.1998 which also speaks that after expiry of 02 years of transfer, lien of a permanent employee in his/her old charge will stand terminated automatically and such employees have no right of repatriation. Besides, para 3.4.3 of The DoPT O.M. dated 24/11/2022 reads as:

"3.4.3 No lien shall be retained:

a. Where a government servant has proceeded on immediate absorption basis to a post or service outside his service /cadre /post in the Government from the date of absorption

b. ----------"

v. She has also been promoted to the post of Private Secretary vide Estt. Order No. 32/2019 dated 18.10.2019 issued under F.No. II(3)06-Prom./PS/Conf/CCO/RZP/2019/12698-708 dated 18.10.2019. She has also stated that as per recruitment rule of Private Secretary the post of Private Secretary may be filled only from promotion. Hence, the recruitment rule of Stenogrpher-I is not applicable to her.

vi. She has mentioned that her husband is working at Patna RMS, Patna as an employee of Department of Post, Govt. of India. Circular dated 30/09/2009 issued by DOPT provides transfer on spouse ground.

vii. If she is transferred, it disrupts her life and plans causing unnecessary turmoil and hardships.

viii. She has also submitted that a new recruitment rules of Inspector Cadre has come in force in 2016 in which there is also no provision for recruitment by absorbtion/ICT. When Board has realized that some problems were arising after issuance of the said Recruitment rule of Inspector in 2016, they have issued a separate circular issued vide F.No. A-22015/117/2016-Ad IIIA dated 20.09.2018 and banned the ICT in the grade of Inspector and also made some provisions as remedies of the problems arisen due to ICT going on. But no such

circular/clarification has been issued till date for ban in the grade of Stenographer.

ix. She has submitted that ICT was banned in 2004 through a separate notification/circular and further in 2011, the said ban had been uplifted through a separate notification/circular. It had never been a part of Recruitment Rule. Hence, the ICT was being done even after the issuance of new Recruitment Rule.

x. At last she has requested to consider her representation and her ICT at CGST & CX, Ranchi Zone Patna may kindly be continued.

4.0 DISCUSSION AND FINDINGS;

4.1 I observe that Hon'ble CAT, Patna bench vide their Order dated 01/03/2024 has directed to decide the representation made by the appellant i.e Smt Kalpana Kumari in the instant case keeping in mind the observation of Hon'ble Supreme Court in Paras 48, 52 and 53 in the matter of S.K. Naushad Rahman & Ors Vs UOI & Ors). Therefore, I quote below the contents of Paras 48,52 and 53 in the case of S.K. Naushad Rahman & Ors Vs UOI & Ors

"*18 This Court has spoken about the systemic discrimination on account of gender at the workplace which encapsulates the patriarchal construction that permeates all aspects of a woman's being from the outset, including reproduction, sexuality and private choices, within an unjust structure. The OMs which have been issued by DoPT from time to time recognized that in providing equality and equal opportunity to women in the workplace of the State, it becomes necessary for the Government to adopt policies through which it produces substantive equality of opportunity as distinct from a formal equality for women in the workplace. Women are subject to a patriarchal mindset that regards them as primary caregivers and homemakers and thus, they are burdened with an unequal share of family responsibilities. Measures to ensure substantive equality for women factor in not only those disadvantages which operate to restrict access to the workplace but equally those which continue to operate once a woman has gained access to the workplace. The impact of gender in producing unequal outcomes continues to operate beyond the point of access. The true aim of achieving substantive equality must be fulfilled by the State in recognizing the persistent patterns of discrimination against women once they are in the work place. The DoPT OMs dated 3 April 1986, 23 August*

2004, 8 July 2009 and 30 September 2009 recognized the impact of underlying social structures which bear upon the lives of women in the work place and produce disparate outcomes coupled with or even without an intent to discriminate. The provision which has been made for spousal posting is in that sense fundamentally grounded on the need to adopt special provisions for women which are recognized by Article 15(3) of the Constitution. The manner in which a special provision should be adopted by the State is a policy choice which has to be exercised after balancing out constitutional values and the needs of the administration. But there can be no manner of doubt that the State, both in its role as a model employer as well as an institution which is subject to constitutional norms, must bear in mind the fundamental right to substantive equality when it crafts the policy even for its own employees. "

"52 The circular dated 20 September 2018 has taken into account, what it describes "exceptional circumstances" such as "extreme compassionate grounds". Leaving these categories undefined, the circular allows for individual cases to be determined on their merits on a case by case basis, while prescribing that transfers on a "loan basis" may be allowed subject to administrative requirements with a tenure of three years, extendable by a further period of two years. While proscribing ICTs which envisage absorption into a cadre of a person from a distinct cadre, the circular permits a transfer for a stipulated period on a loan basis. Whether such a provision should be suitably enhanced to specifically include cases involving

(i) postings of spouses;

(ii) disabled persons; or (iii) compassionate transfers, is a matter which should be considered at a policy level by the Board."

"53 In considering whether any modification of the policy is necessary, they must bear in mind the need for a proportional relationship between the objects of the policy and the means which are adopted to implement it. The policy above all has to fulfil the test of legitimacy, suitability, necessity and of balancing the values which underlie a decision making process informed by constitutional values. Hence while we uphold the judgment of the Division Bench of the Kerala High Court, we leave it open to the respondents to revisit the policy to accommodate posting of spouses, the needs of the disabled and compassionate grounds. Such an exercise has to be left within the domain of the executive, ensuring in the process that constitutional values which underlie Article 14,

15 and 16 and Article 21 of the Constitution are duly protected. The appeals shall be disposed of in the above terms."

4.2 I further observe that the appeal referred before the Hon'ble Supreme Court was to decide whether the Circular dated 20 September 2018, which imposes a blanket prohibition on ICTs, is violative of the fundamental rights conferred by Articles 14 and 21 of the Constitution.

In this context, I also quote below the relevant para of the Circular dated 20/9/2018 issued under F.No 22015/117/2016- Ad. IIIA by the Board:

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 Rules 4 of erstwhile Central Excise and Land Customs Department Inspector (Group 'C' Posts) Recruitment Rules, 2002 which states 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.

(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 cadres unless otherwise directed by the Central Board of Excise and Customs."

5. From the above, it is clear that the 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.

I would also like to quote the observation made by Hon'ble Supreme Court in its judgement dated 10/03/2022 in the matter of S.K. Naushad & Ors at Para 42 of the above case wherein Hon'ble Apex Court made it clear that **Recruitment Rule that do not have any provision for recruitment by absorption and no ICT application could be considered after the coming into force of the said Recruitment Rule**

"42 For the above reasons, we have arrived at the conclusion that the High Court was justified in coming to the conclusion that:

(i) RR 2002 contained a specific provision for ICTs;

(ii) There is an absence of a provision comparable to Rule 4(ii) of RR 2002 in RR 2016;

(iii) On the contrary, Rule 5 of RR 2016 specifically stipulates that each CCA shall have its own separate cadre unless directed by the CBEC;

(iv) Any ICT would violate the unique identity of each cadre envisaged in Rule 5;

(v) Any ICT order would transgress a field which is occupied by the rules which have been framed in terms of the proviso to Article 309 of the Constitution;

(vi) The circular dated 20 September 2018 makes it absolutely clear that RR 2016 do not have any provision for recruitment by absorption and no ICT application could be considered after the coming into force of RR 2016;

(vii) Transfer is a condition of service and it is within the powers of the employer to take a policy decision either to grant or not to grant ICTs to employees; and

(viii) The power of judicial review cannot be exercised to interfere with a policy decision of that nature."

4.3 Representation received from Smt. Kalpana Kumari in compliance of Hon'ble CAT, Patna Bench order dated 01/03/2024, has since been looked into in the light of necessary guidelines of the Board in the matter

4.4 Vide letter F.No.A-22015/21/2024-Ad.IIIA dated 06/09/2024, the Board intimated that the matter of ICT was examined in Board and it was decided to maintain status quo which has already been conveyed vide Board's letter dated 07/08/2023 & 14/08/2023. As the matter is related to decentralized cadre, being the Competent Authority, CCA may take necessary action as per extant rules on the representations of the applicants. Further with regard to ICT and promotion of Smt. Kalpana Kumari to the post of Private Secretary, it is stated that her transfer in Steno Grade-I from Bhopal Zone to Ranchi Zone does not comply with ICT Policy. Hence, her promotion may be reassessed and repatriate her to her parent zone i.e. Bhopal Zone. In this regard, it appears that the officer may get the promotion as Private Secretary in her parent zone, if otherwise eligible, as she will resume her original seniority in her parent zone.

4.5 In above context, I have also carefully considered the submissions made by Smt. Kalpana Kumari taking into account the Judgement dated 10.03.2022 of the Hon'ble Supreme Court in CA No. 1243 of 2022 in the case of SK Naushad Rahaman & Ors Vs. Union of India & Ors. and Board's instruction in the matter. Smt. Kalpana Kumari has mentioned Para 48,52 and 53 of judgement dated 10/03/2022 of the Hon'ble Supreme Court and other points such as Recruitment Rules, lien, spouse posting, family problems etc. Also the Hon'ble CAT Patna Bench in its Order dated 01/03/2024 directed to dispose of the representation of Smt. Kalpana Kumari considering the entirety of facts and the observations made by the Hon'ble Supreme Court as mentioned in the order [i.e. the observation made by the Hon'ble Supreme Court in the case of S.K.Naushad Rahman & Ors(Civil Appeal No. 1243/2022) at Para 48,52 and 53] Therefore, I am of the view that representation is to be decided in light of the judgement dated 10/03/2022 in the said case of SK Naushad Rahaman & Ors. The discussion and findings on the points submitted in the representation as mentioned in above Para 3 are also as under:

4.6 It is a fact that vide letter F.No. A.22015/23/2011-Ad III.A dated 27.10.2011, the Board had decided to lift ban on Inter Commissionerate Transfer (ICT) and stated that any willing Group 'B' and 'C' employee may apply for transfer from the jurisdiction of one Cadre Controlling Authority (CCA) to another CCA subject to availability of vacancy,

with consent of the concerned two Cadre Controlling Authorities and other terms & conditions. Vide letter F.No. 22015/117/2016-Ad.IIIA-Part(1) dated 07.08.2023 the Board has clarified that in absence of special provisions i.e. absorption as a method of recruitment in Recruitment Rules of the concerned posts, ICT cannot be allowed for the same. The same will be applicable from the date of issuance of the Recruitment Rules,2015 for the concerned posts where absorption is not one of the methods of recruitment.

4.7 It is a settled norm that Recruitment Rules issued under the Proviso of Article 309 of Constitution will prevail over executive orders. The Recruitment Rule of Stenographer-I has no provision for absorption. Hence in view of the Recruitment Rules, the administrative decision would not prevail. Therefore, in the absence of Special Provisions i.e. absorption as a method of recruitment ICT of Smt. Kalpana Kumari is against ICT Policy.

4.8 Smt. Kalpana Kumari has cited that the OM dated 30.09.2009 issued vide F.No. 28034/9/2009-Estt(A) by DoPT that is related to posting of Husband and Wife at the same station. But the guidelines say that as far as possible Husband and Wife may be posted at the same place. The said guidelines, however don't confer upon the government employee a legally enforceable right where such posting is not possible under the prevailing ICT Policy.

4.9 The Hon'ble Supreme Court has upheld the validity of Board's Circular dated 20.09.2018 after detailed discussion on the issue of Gender Equality need for equal treatment of disabled persons, equality, discrimination, spouse posting, protecting family life etc. in paras 45 to 51 of its order dated 10.03.2022 in the case of SK Naushad Rahman & Ors VS Union of India & Ors.

4.10 With regard to issue of compassionate grounds raised by Smt. Kalpana Kumari in her representation, I observe that the Hon'ble Supreme Court in its Judgment dated 10.03.2022 in the case of SK Nausad Rahaman & Ors. Versus Union of India & Ors. (Supra) has observed in Para 52 that the Circular allows for individual cases to be determined on their merits on a case by case basis, while prescribing that transfers on a "loan basis" may be allowed subject to administrative requirements with a tenure of three years, extendable by a further period of two years. While proscribing ICTs which envisage absorption into a cadre of a person from a distinct cadre, the Circular permits

a transfer for a stipulated period on a loan basis. Whether such a provision should be suitably enhanced to specifically include cases involving

(i) postings of spouses;

(ii) disabled persons; or

(iii) compassionate transfers, is a matter which should be considered at a policy level by the Board."

4.11 Further, I observe that the Board in its Circular dated 20.09.2018 has specifically discussed the issue of compassionate grounds and has stated as under:

"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."

4.12 From the above, it is abundantly clear that the facility of loan basis for limited period has been specifically allowed on compassionate ground. It is also noted that Smt. Kalpana Kumari has completed more than 7 and half years in Ranchi Zone, Patna since her transfer to Ranchi Zone, Patna. This issue has already been considered by Hon'ble Supreme Court as well as by the Board.

4.13 The Board's Circular/letter dated 20.09.2018 has been upheld by the Hon'ble Kerala High Court and Hon'ble Supreme Court in the case of SK Nausad Rahaman & Ors. Versus Union of India & Ors. The Hon'ble Supreme Court in the said case has left it open to the respondents to revisit the policy to accommodate posting of spouses, disabled persons and on compassionate grounds. The Hon'ble Supreme Court has not ordered/directed that the Board's Circular dated 20.09.2018 should be implemented only after revisiting the policy to accommodate posting of spouses, disabled persons and on compassionate grounds. The said observations (i.e. left it open to the respondents to revisit the policy) are rather suggestive in nature. Vide letter F.No. 22015/117/2016-Ad.IIIA-Part(1) dated 07.08.2023 the Board clarified that in absence of special provisions i.e. absorption as a method of recruitment in Recruitment Rules of the concerned posts, ICT cannot be allowed for the same. The same will be applicable from

the date of issuance of the Recruitment Rules for the concerned posts where absorption is not one of the methods of recruitment.

4.14 In the aforesaid case of SK Nausad Rahaman & Ors. the Honble' Supreme Court has upheld the Circular F.No. A-22015/117/2016-Ad.IIIA dated 20.09.2018 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs (now Central Board of Indirect Taxes & Customs), New Delhi after detailed consideration/examination of the Board's/DoPT's instructions in the matter, Recruitment Rules of Stenographer, Judgments delivered in other cases and law, etc. The relevant paragraphs of the said Judgment dated 10.03.2022, are reproduced as under:

"28. Fourth, norms applicable to the recruitment and conditions of service of officers belonging to the civil services can be stipulated in:

(i) A law enacted by the competent legislature;

(ii) Rules made under the proviso to Article 309 of the Constitution; and

(iii) Executive instructions issued under Article 73 of the Constitution, in the case of civil services under the Union and Article 162, in the case of civil services under the States.

Fifth, where there is a conflict between executive instructions and rules framed under Article 309, the rules must prevail. In the event of a conflict between the rules framed under Article 309 and a law made by the appropriate legislature, the law prevails. Where the rules are skeletal or in a situation when there is a gap in the rules, executive instructions can supplement what is stated in the rules.

Sixth, a policy decision taken in terms of the power conferred under Article 73of the Constitution on the Union and Article 162 on the States is subservient to the recruitment rules that have been framed under a legislative enactment or the rules under the proviso to Article 309 of the Constitution.
There is a fundamental fallacy in the submission which has been urged on behalf of the appellants. Administrative instructions, it is well-settled, can supplement rules which are framed under the proviso to Article 309 of the Constitution in a manner which does not lead to any inconsistencies. Executive instructions may fill up the gaps in the rules. But supplementing the exercise of the rule making power with the aid of administrative or executive instructions is distinct from taking the aid of administrative instructions contrary to the express provision or the necessary intendment of the rules which have been framed under Article 309.RR 2016 have been framed under the proviso to Article 309. Rule 5 of RR 2016 contains a specific prescription that each CCA shall have its own separate cadre. The absence of a provision for filling up a post in the Commissionerate by absorption of persons belonging to the cadre of another Commissionerate clearly indicates that the cadre is treated as a posting unit and there is no occasion to absorb a person from outside the cadre who holds a similar or comparable post."

4.15 In the case of UOI & Ors Vs. Somasundaram Viswanath & Ors [1988 AIR 2255], Hon'ble Supreme Court observed that *"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 the 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, and if there is conflict between the rules made under the proviso to Article 309 of the Constitution of India and the law made by the appropriate Legislature the law made by the appropriate Legislature prevails."*

4.16. As per the Recruitment Rules,2015 notified on 21/09/2015, there is no provision for recruitment of Stenographer Grade-I through absorption. So, the transfer of Smt. Kalpana Kumari to this zone in the grade of Steno Grade-I does not comply with the ICT Policy. So, the letters issued by the Board to this zone in this regard, are not against the Principle of Promissory Estoppel. The provision of Promissory Estoppel can't be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority.

4.17 Smt. Kalpana Kumari joined CGST & CX, Ranchi Zone on 26.09.2016 on transfer from CGST & CEX, Bhopal Zone as a Stenographer Grade-I. She was promoted to the grade of Private Secretary on 18.10.2019. Her transfer from Bhopal Zone to Ranchi Zone was against ICT policy. Hence her promotion was reassessed.

4.18. In view of CBIC letter F.No.22015/117/2016-Ad.IIIA-Part(1) dated 07/08/2023 letter F.No. 12018/13/2012-AD.III.B dated 10.08.2023 and letter F.No. A.22015/212024-Ad.IIIA dated 06.09.2024, a DPC meeting was held on 08.10.2024 to review the original DPC held on 11.10.2019 for promotion to the grade of Private Secretary. Consequent to the recommendation of the said review DPC meeting Smt. Kalpana Kumari was reverted to Stenographer Grade-I w.e.f. 18.10.2019 vide Establishment Order No. 85/2024 dated 08.10.2024 issued with the approval of the Chief Commissioner, Ranchi Zone, Patna.

4.19 In view of the foregoing discussion and findings, complying with the provisions of Recruitment Rules, 2015 of Stenographer Grade-1 and the Board's Letter F.No A-22015/117/2016-Ad.IIIA dated 20.09.2018 and taking into account the direction of Hon'ble CAT, Patna Bench with reference to Hon'ble Supreme Court Judgement referred above I observe that the representation submitted by Smt. Kalpana Kumari deserve to be rejected being devoid of merit and contrary to RR 2015 and accordingly I, being competent authority, pass the following order:

ORDER

The representation dated 13/3/2024 of Smt. Kalpana Kumari, Stenographer Grade-I (the then Private Secretary), Customs (P), Patna Zone addressed to the Chief Commissioner, CGST and Central Excise, Ranchi Zone, Patna is hereby rejected and stands disposed off and she is hereby repatriated to her parent zone i.e. Bhopal Zone. It is also ordered that the period of posting of Smt. Kalpana Kumari at Ranchi Zone, Patna be considered as loan posting till her relieving from Customs (P), Patna Zone, where she is presently posted, for joining her parent zone i.e. Bhopal Zone.

(Dr. Balbir Singh)
Chief Commissioner
CGST & CX, Ranchi Zone Patna

To,

Smt. Kalpana Kumari, Stenographer Grade-I (the then Private Secretary), Customs (P), Patna Zone