

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

&

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 01ST DAY OF JULY 2019 / 10TH ASHADHA, 1941

RP.No.435 of 2019

JUDGMENT IN OP (CAT) 176/2018 of HIGH COURT OF KERALA  
DATED 10.4.2019

REVIEW PETITIONERS/RESPONDENTS 1 O 13:

- 1 PRAMOD KUMAR SAVITA, AGED 38 YEARS  
S/O. THE LATE RAM ASRE SAVITA, INSPECTOR OF  
CENTRAL GOODS AND SERVICES TAX AND CENTRAL  
EXCISE AIR CUSTOMS, AIRPORT, THIRUVANANTHAPURAM  
RESIDING AT IIND FLOOR, KERA-8, T.C. 36/1104  
(7) BUILDING, AMBADY VALLAKKADAVU,  
THIRUVANANTHAPURAM 695 008.
- 2 KAPIL DEV SURIRA, AGED 35 YEARS  
S/O. SRI. RAJNIKANT SURIRA, INSPECTOR OF  
CENTRAL GOODS AND SERVICES TAX AND CENTRAL  
EXCISE, MALAPPURAM DIVISION, RESIDING AT C2  
RUNWAY DALE APARTMENT, EMEA COLLEGE ROAD, NEAR  
CALICUT INTERNATIONAL AIRPORT, MALAPPURAM,  
KERALA 673 647.
- 3 MANOJ KUMAR YADAV, AGED 36 YEARS, S/O. SRI.  
RAJNARAYAN YADAV, INSPECTOR OF CENTRAL GOODS  
AND SERVICES TAX AND CENTRAL EXCISE  
ADJUDICATION CELL, CALICUT HEADQUARTERS,  
RESIDING AT GOVERNMENT QUARTERS,  
NEAR KOZHIKODE BEACH, 673 032.
- 4 ASHOK KUMAR, AGED 38 YEARS  
S/O. SRI.BHAGWATI PRASAD. INSPECTOR OF CENTRAL  
GOODS AND SERVICES TAX AND CENTRAL EXCISE  
OFFICE OF THE PRINCIPAL COMMISSIONER OF CENTRAL  
TAX AND CENTRAL EXCISE TECHNICAL SECTION,  
HEADQUARTERS, C.R. BUILDING, I.S. PRESS ROAD,  
COCHIN 682 018, RESIDING AT QUARTER NO. 62 TYPE

II, CENTRAL EXCISE STAFF QUARTERS KAKKANAD  
KOCHI 682 037.

- 5 SHYAM KUMAR SHARMA, AGED 34 YEARS  
S/O. THE LATE SATYENDRA NATH SHARMA ,  
INSPECTOR OF CENTRAL GOODS AND SERVICES TAX AND  
CENTRAL EXCISE OFFICE OF THE ASSISTANT  
COMMISSIONER, CALICUT INTERNATIONAL AIRPORT,  
KARIPUR MALAPPURAM 673 647 RESIDING AT GROUND  
FLOOR, POMONA APARTMENT, NEAR HAJJ HOUSE,  
AIRPORT ROAD, KARIPUR, MALAPPURAM 673 647.
- 6 SUNIL NAGAR, AGED 37 YEARS, S/O. SRI.JAGAN  
SINGH, INSPECTOR OF CENTRAL GOODS AND SERVICES  
TAX AND CENTRAL EXCISE AIR CUSTOMS, AIRPORT,  
THIRUVANANTHAPURAM RESIDING AT A-3 APPOSE  
SERENE, TUTORS LANE, NEAR BJP OFFICE, STATUE,  
THIRUVANANTHAPURAM 695 001.
- 7 ANANT VIKRAM SINGH, AGED 32 YEARS  
S/O. NAND KUMAR SINGH INSPECTOR OF CGST AND CX,  
EDP, KOCHI COMMISSIONERATE, RESIDING AT FIRST  
FLOOR, H.NO. 136, TKCRRRA KANAT LANE, VADUTHALA,  
KOCHI 682 023.
- 8 PRAFULL BHANDARI, AGED 28 YEARS  
S/O. SRI. S.S BHANDARI,  
INSPECTOR OF CENTRAL GOODS AND SERVICES TAX AND  
CENTRAL EXCISE AIR CUSTOMS, INTERNATIONAL  
AIRPORT, THIRUVANANTHAPURAM RESIDING AT TC  
79/1909-9 KADHAMPALLY KARIKKAKOM GOVERNMENT  
HIGH SCHOOL ROAD, THIRUVANANTHAPURAM 695 008.
- 9 AJEET KUMAR, AGED 35 YEARS, S/O. SRI. NARESH  
KUMAR, INSPECTOR OF CENTRAL GOODS AND SERVICES  
TAX AND CENTRAL EXCISE OFFICE OF THE ASSISTANT  
COMMISSIONER, AIR CARGO COMPLEX, SHANGHUMUGHAM,  
THIRUVANANTHAPURAM 695 0008, RESIDING AT  
QUARTER NO.6 CENTRAL EXCISE AND CUSTOMS  
QUARTERS, VALIATHURA JUNCTION,  
THIRUVANANTHAPURAM 695 008.

- 10 BAL MUKUND, AGED 32 YEARS, S/O. SRI. CHUNNI LAL, INSPECTOR OF CENTRAL GOODS AND SERVICES TAX AND CENTRAL EXCISE KAKKANAD RANGE-3, RESIDING AT QUARTER NO. 93, TYPE III, CENTRAL EXCISE STAFF QUARTERS KAKKANAD, COCHIN, KERALA 682 037.
- 11 RAJNESSH, AGED 35 YEARS, S/O. SRI SANTOSH KUMAR DIXIT, INSPECTOR OF CENTRAL GOODS AND SERVICES TAX AND CENTRAL EXCISE AIR CUSTOMS, THIRUVANANTHAPURAM AIRPORT, RESIDING AT SGRA 50A, ELANTRIS, SHANTHI GARDENS-II STREET II KAMALESHWARAM P.O., MANACAUD, THIRUVANANTHAPURAM 695 009.
- 12 SHASHI KANT SINGH, AGED 36 YEARS S/O. SRI. RAMA KANT SINGH, INSPECTOR OF CENTRAL GOODS AND SERVICES TAX AND CENTRAL EXCISE AUDIT SECTION, KOCHI COMMISSIONERATE, RESIDING AT QUARTER NO. 105, TYPE III, CENTRAL EXCISE STAFF QUARTERS, KAKKANAD, COCHIN KERALA 682 037.
- 13 AKSHAY SINGH BHADAURIA, AGED 28 YEARS S/O. SRI KRISHNA PAL SINGH BHADAURIA, INSPECTOR OF CENTRAL GOODS AND SERVICES TAX AND CENTRAL EXCISE AIR CUSTOMS, INTERNATIONAL AIR PORT, THIRUVANANTHAPURAM RESIDING ATA-3, APPOSSE SERENE, TUTORS LANE, NEAR BJP OFFICE, STATUE, THIRUVANANTHAPURAM 695 001.

BY ADVS.

SRI.O.V.RADHAKRISHNAN (SR.)

SMT.K.RADHAMANI AMMA

SRI.ANTONY MUKKATH

SRI.P.KRISHNANKUTTY NAIR

RESPONDENTS/PETITIONERS 1 TO 9:

- 1 UNION OF INDIA  
REPRESENTED BY SECRETARY DEPARTMENT OF REVENUE,  
NORTH BLOCK, NEW DELHI 110 001.

R.P.Nos.435 & 439 of 2019

4

- 2 CHAIRMAN,  
CENTRAL BOARD OF EXCISE AND CUSTOMS, NORTH  
BLOCK, NEW DELHI 110 001.
- 3 CHIEF COMMISSIONER OF CUSTOMS,  
CENTRAL GOODS AND SERVICES TAX COST AND CENTRAL  
EXCISE CX, CENTRAL REVENUE BUILDINGS, I.S.  
PRESS ROAD, COCHIN 682 018.
- 4 PRINCIPAL CHIEF COMMISSIONER  
OF CUSTOMS, CENTRAL GOODS AND SERVICES TAX COST  
AND CENTRAL EXCISE CX LUCKNOW ZONE, 7-A, ASHOK  
MARG, LUCKNOW, UTTAR PRADESH 226 001.
- 5 CHIEF COMMISSIONER OF CUSTOMS,  
CENTRAL GOODS AND SERVICES TAX COST AND CENTRAL  
EXCISE CX MEERUT ZONE, MEERUT, UTTAR PRADESH  
250 001.

BY ADV. SHRI.P.VIJAYAKUMAR, ASG OF INDIA

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON  
1.7.2019, ALONG WITH RP.439/2019, THE COURT ON THE SAME  
DAY PASSED THE FOLLOWING:

R.P.Nos.435 & 439 of 2019

5

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

&

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 01ST DAY OF JULY 2019 / 10TH ASHADHA, 1941

RP.No.439 of 2019

JUDGMENT IN OP (CAT) 190/2018 of HIGH COURT OF KERALA DATED  
10.4.2019

REVIEW PETITIONERS/RESPONDENTS 1 AND 2:

- 1 SATYAMENDRA SINGH, AGED 33 YEARS  
S/O INDAL SINGH, INSPECTOR OF CGST AND CX,  
OFFICE OF THE ASSISTANT COMMISSIONER OF  
CUSTOMS, INTERNATIONAL AIRPORT, KARIPUR,  
RESIDING AT CUSTOMS QUARTERS (NEW BLOCK)  
OPPOSITE LIGHT HOUSE BEACH ROAD, CALICUT,  
KERALA, PIN 673 032.
  
- 2 ABHINAV SINGH BISHT, AGED 33 YEARS  
S/O. GOVIND SINGH BISHT, INSPECTOR OF CGST AND  
CX, OFFICE OF THE ASSISTANT COMMISSIONER OF  
CUSTOMS, INTERNATIONAL AIRPORT, KARIPUR,  
RESIDING AT CUSTOMS QUARTERS (NEW BLOCK)  
OPPOSITE LIGHT HOUSE, BEACH ROAD, CALICUT,  
KERALA, PIN 673 032.  
BY ADVS.  
SRI.O.V.RADHAKRISHNAN (SR.)  
SMT.K.RADHAMANI AMMA  
SRI.ANTONY MUKKATH

RESPONDENTS/PETITIONERS 1 TO 9:

- 1 UNION OF INDIA, REPRESENTED BY THE SECRETARY,  
DEPARTMENT OF REVENUE, NORTH BLOCK, NEW DELHI-  
110 001.

- 2 CHAIRMAN, CENTRAL BOARD OF EXCISE AND CUSTOMS,  
NORTH BLOCK, NEW DELHI-110001
- 3 CHIEF COMMISSIONER OF CUSTOMS,  
CENTRAL GOODS AND SERVICES TAX (CGST) AND  
CENTRAL EXCISE (CX), CENTRAL REVENUE BUILDINGS,  
I.S PRESS ROAD, COCHIN- 682 018
- 4 PRINCIPAL CHIEF COMMISSIONER OF CUSTOMS,  
CENTRAL GOODS AND SERVICES TAX (CGST) AND  
CENTRAL EXCISE (CX), LUCKNOW ZONE, 7-A , ASHOK  
MARG, LUCKNOW, UTTER PRADESH- 226 001.
- 5 CHIEF COMMISSIONER OF CUSTOMS,  
CENTRAL GOODS AND SERVICES TAX (CGST) AND  
CENTRAL EXCISE 9CX) MEERUT ZONE, MEERUT, UTTAR  
PRADESH- 250 001.
- 6 COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX  
(CGST) AND CENTRAL EXCISE (CX), CENTRAL REVENUE  
BUILDING, I.S PRESS ROAD, KOCHI-682 018
- 7 COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX  
(CGST) AND CENTRAL EXCISE (CX) ,ICE BHAVAN,  
PRESS CLUB ROAD, THIRUVANANTHAPRUAM-695 001.
- 8 COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX  
(CGST) AND CENTRAL EXCISE (CX) , CENTRAL  
REVENUE BUILDINGS, MANANCHIRA, KOZHIKODE-673  
001.
- 9 COMMISSIONER OF CUSTOMS (PREVENTIVE)  
CUSTOMS PREVENTIVE COMMISSIONERATE, 4TH FLOOR,  
CATHOLIC CENTRE, BROADWAY, ERNAKULAM-682 031.

BY ADV. SHRI.P.VIJAYAKUMAR, ASG OF INDIA

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON  
01.07.2019, ALONG WITH RP.435/2019, THE COURT ON THE SAME  
DAY PASSED THE FOLLOWING:

**ORDER**

V.G.ARUN, J.

The review petitioners, who are the respondents in O.P. (CAT) Nos.176 and 190 of 2018 seek review of the judgment on the following grounds:-

“A. The judgment dated 10-04-2019 in OP(CAT) No. 176 of 2018 of this Hon'ble Court is vitiated by manifest errors of law and facts on the face of the record and if not corrected in review, would result in great injustice and inequitable consequences and hence is liable to be reviewed and recalled to prevent irremediable injustice.

B. In the judgement under review, this Hon'ble Court proceeded on an erroneous assumption of fact and law and arrived at a conclusion which is rendered on wrong appreciation of law laid down by the Apex Court which amounts to an error apparent on the face of the record and it is a valid ground for review.

C. In the judgement under review this Hon'ble Court found that 'transfer' falls within the expression 'conditions of service'. The decision in *Varadha Rao Vs. State of Karnataka* reported in AIR 1986 SC 1955 was cited only in support of the proposition that the ratio of the above

decision is that 'transfer' is an implied condition of service and falls outside the Recruitment Rules which ends with the completion of selection. Annexure R-3 Recruitment Rules, 2002 and in Annexure R-4 Recruitment Rules, 2016 there is an express recital that "The President hereby makes the following Rules for regulating the method of recruitment to the post of Inspector (Central Excise), Inspector (Preventive Officer) and Inspector (Examiner) in the Commissionerates under the control of the Central Board of Excise and Customs, Department of Revenue, Ministry of Finance". Therefore, Annexure R-3 Recruitment Rules, 2002 and Annexure R-4 Recruitment Rules, 2016 were issued for regulating the method of recruitment to the posts mentioned therein and they do not govern the terms and conditions of service after appointments to those posts. Necessarily, the power of transfer is not traceable to the Recruitment Rules. The power of transfer falls within the expression 'conditions of service' which are post appointment terms and conditions. Necessarily, Rule 4(ii) of Annexure R-3 Recruitment Rules, 2002 do not relate to Inter-Commissionerate transfer which is a condition of service after appointment. Rule 4(ii) provides for 'absorption' of person holding the same or comparable posts in another Commissionerate who came on deputation to be made on regular basis. The holding of this Hon'ble Tribunal in the



judgement under review that "It is not in dispute that Annexure R-3 Recruitment Rules, 2002 contained a provision enabling ICT" is an erroneous assumption of the specific averment and pleading made in the Counter Affidavit in OP(CAT) No. 176 of 1018 and the arguments made at the time of final hearing. The specific stand taken in the counter affidavit in OP(CAT) No. 176 of 1018 (which was heard along with OP(CAT) No. 190 of 1018) and the averment and pleading made therein is that Annexure R-3 Recruitment Rules, 2002 only enabled 'absorption' of persons who came on deputation to another Commissionerate which falls within the gamut of 'recruitment' and rule 4(ii) of Annexure A-3 does not at all relate to or govern Inter-Commissionerate Transfer. Therefore, the holding that "It is not in dispute that Annexure R3 Recruitment Rules, 2002 contained a provision enabling ICT" runs counter to the specific pleading and arguments addressed and is an error apparent on the face of the record which needs to be reviewed and re-called. The further holding that "It is an admitted fact that no such provision is included in the Recruitment Rules, 2016 and on the other hand, Rule 5 of Annexure R-4 specifically stipulate that each cadre controlling authority (CCA) shall have its own separate cadre, unless otherwise directed by the Central Board of Excise and Customs. Any Inter-Commissionerate Transfer will violate unique identity of each cadre envisaged under Rule 5 of Annexure R-4 Recruitment Rules, 2016" is totally

misconceived and is erroneous assumption of facts and law. Inter-commissionerate Transfer would not violate the unique identity of each cadre envisaged under Rule 5 of Annexure R-4 as wrongly assumed and proceeded in the judgment under review and no such pleading was made by the respondents either. It is an error apparent on the face of the record for the obvious reason that no provision enabling Inter-commissionerate Transfer can be provided in the Recruitment Rules and absence of a provision in the Recruitment Rules regarding Inter-Commissionerate transfer cannot be construed to mean that it would operate prohibiting inter Commissionerate transfer. Besides, only issues pleaded or in question are to be considered and decided. The absence of provision regarding transfer in the Recruitment Rule is on account of the reason that 'transfer' falls outside and is not comprehended by the expression 'Recruitment'. The holding in the judgment under Review that Annexure R-3 Board's Letter dated 27-10-2011 lifting the ban on ICT would definitely be a transgression into the field occupied by Annexure R-4 Rules, 2016 which come into force long after the date of issuance of Annexure A3 Notification dated 27.11.2011 is one decided on unpleaded facts and is illogical and unsound falling within the expression 'error apparent on the face of the record'. The fact that the ban on Inter-Commissionerate Transfer was imposed as per Ext.R1(h) letter dated 19.2.2004 issued by the Under

Secretary to Government of India, Ministry of Finance, Department of Revenue which was later lifted by Annexure A-3 Letter dated 27-10-2011 issued by the Deputy Secretary to Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs was unnoticed in the judgment under Review while holding that Annexure A-3 letter dated 27-10-2011 lifting the ban on ICT would definitely be a transgression into the field occupied by Annexure R-4 Recruitment Rules. Whether Annexure A-3 letter dated 27-10-2011 lifting the ban would constitute transgression into the field occupied by Annexure R-4 Recruitment Rules, 2016 was not an issue in question before the Tribunal and the Tribunal as the court of first instance did not have occasion to consider that question and to enter a decision thereon. Therefore, in the judgment under review this Hon'ble Court exceeded jurisdiction in exercising the power of judicial review in entering a primary decision in respect of a non-issue in the O.A and thus the above finding in the judgment under review is outside the scope of judicial review and is a glaring error on the face of the record which needs to be rectified in exercise of the power of review.

D. In the judgment under review this Hon'ble Court wrongly proceeded that Annexure A-1 having been issued without authority and in violation of Recruitment Rules, 2016 was invalid. Annexure A-1 was issued pursuant to Annexure A-

3 in Ext.P-1 O.A issued by the Ministry of Finance, Department of Revenue, Central Board of Excise and Customs which was not cancelled or recalled by the Government at the time of issuance of Annexure A-1 Order of transfer made pursuant thereto. Annexure A-3 Board's letter dated 27-10-2011 was not attacked by the official respondents in the O.A or in the OP(CAT) and it is a settled legal position that respondents cannot attack their own order as respondents. Furthermore, Annexure A-3 Government letter dated 27-10-2011 is not superseded by Annexure R-4 Recruitment Rules, 2016. Therefore Annexure A-1 issued pursuant to Annexure A-3 in Ext P-1 OA cannot be said to be one issued without authority, and the holding to the contrary goes far beyond the scope of judicial review. Besides, in Annexure R-4 Recruitment Rules, 2016 there is no restraint clause against Inter-Commissionerate Transfer. Therefore, Annexure A-1 cannot be taken to be invalid on the ground that it is violative of the Recruitment Rules, 2016. It is an erroneous assumption of fact leading to erroneous decision and is an error of inadvertence. It is an error apparent on the face of the record which is liable to be rectified in exercise of the power of review vested with this Hon'ble Court.

E. In the judgment under review, the ratio of the decisions in Prem Praveen Vs. Union of India and others [1973 SCC online Delhi 194] and Bhagawathi Prasad Gordhandas

Bhatt Vs. The State of Gujarat and others [1976 SCC online Gujarat 51] have been wrongly relied on as lending credence to the contention that Annexure A1 having been issued without authority and in violation of Recruitment Rules, 2016 is invalid. In the reply statement filed in paragraph 4 it has been clearly stated "It is submitted that the Annexure A-1 the Inter-Commissionerate Transfer Order was issued on 19-01-2018 by the Cadre Controlling Authority (CCA), Lucknow zone in terms of Annexure A-3 Board's Letter F.No.A22015/23/2011-Ad.III dated 27-10-2011". Annexure A-3 has not been cancelled or recalled and is not superseded by Annexure R-4 Recruitment Rules, 2016. Any decision rendered erroneously due to inadvertence is a ground for review of judgment and the judgment under review is liable to be reviewed and recalled to rectify the mistakes inadvertently crept in the judgment.

F. In the judgement under Review this Hon'ble Court proceeded on a wrong appreciation of the issue involved, the clear and definite pleadings made and arguments addressed at the time of hearing to hold that "The question as to whether Annexure A3 or Annexure R4 would govern the ICT of the respondents is no longer doubtful in view of Ext.R-1(0) Circular dated 20-09-2018." Ext. R1(o) Circular dated 20-09-2018 in OP(CAT) No. 176 of 2018 was set aside by the Bangalore Bench of the Central Administrative

Tribunal as per its Order dated 15-11-2018 in O.A No.170/00101 of 2018. Respondent Nos. 1 and 2 herein namely, the Union of India and the Chairman, Central Board of Indirect Tax and Customs were parties to the above O.A. and they are bound by the Order in OA No. 170/00101 of 2018. The above Order of the Bangalore Bench has been followed by the Jaipur Bench of the Central Administrative Tribunal in its Order dated 07-01-2019 in O.A No.291/542/2018 and as on date, the same has not been overruled by any superior court. Order of the Bangalore Bench in O.A No.170/00101 of 2018 was brought to the notice of this Hon'ble Court at the time of hearing and it escaped the notice of this Hon'ble Court at the time of drawing the judgment. It is submitted that Ext. R-1(0) Circular dated 20-09-2018 in OP(CAT) No.176 of 2018 on being quashed by the Bangalore Bench of the Central Administrative Tribunal is *non est* in the eye of law and Ext.R1(0) in OP(CAT)No. 176 of 2018 having been set aside, it ought not have been taken into account and thereby placing reliance on Ext. R-1(0), the judgment under review is flawed by misconstruction of the law relevant to the issue. The holding of this Hon'ble Court in the judgment under review that in the light of Ext. R-1(0) in OP(CAT) No. 176 of 2018, no reliance can be placed on Exts.R-1(p) and R-1(q) in OP(CAT) No. 176 of 2018 is a palpable 'error apparent on the face of the record.

G. In the judgment under Review this Hon'ble Court wrongly proceeded that there cannot be a judicial review and interference on policy decisions which was not an issue in question in the OP(CAT). No policy decision relating to Inter-Commissionerate Transfer (ICT) was under challenge in the O.A and interference with the Policy decision was not prayed for in the O.A. As a matter of fact 'transfer' is a condition of service and is governed by the Executive Orders issued by the Government of India in exercise of its powers under Article 73 read with Article 77(1) of the Constitution of India and the Orders issued by the Central Board of Excise and Customs. The decision reached in the judgment under review is based on unpleaded facts and on issues not in question and is outside the scope of judicial review and is not an error on the merit of the case. Hence, it is a reviewable error of law.

H. In the judgment under review this Hon'ble Court proceeds on the wrong premise 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 is a non-sequiter which amounts to error apparent on the face of the record. Absence of any provision for Recruitment by absorption do not logically follow that no ICT application can be considered after coming into force of Recruitment Rules, 2016.

Recruitment by absorption and Inter Commissionerate Transfer are different and distinct service conditions, the former falls within the gamut of 'recruitment' and the latter relates to 'conditions of service' which is totally outside the sweep of Recruitment Rules.

I. In the judgment under review, the holding of this Hon'ble Court that in the light of Ext.R1(o) in O.P.(CAT) No.176 of 2018 no reliance can be placed on Exts. R-1(p) and R1(q) in OP(CAT) No. 176 of 2018 which are only Office Notes and related correspondences is a manifest error of law and facts. While holding so, this Hon'ble Court lost sight of the aspect that Ext. R-1(0) in OP(CAT) No. 176 of 2018 is non-existent factor having been quashed/ set aside by the Bangalore Bench of the Central Administrative Tribunal which has not been set aside by any superior court. Furthermore, this Hon'ble Court brushed aside R-1(p) and R-1(q) in OP(CAT) No.176 of 2018 as mere Office Notes and related correspondences which are relevant and material documents to understand the true purport of rule 4(ii) of Annexure R-3 Recruitment Rules, 2002. Ext. R-1(p) Note of the Department of Personnel and Training, Establishment (RR), the deletion of the provision in Rule 4(ii) prescribing for Inter-Commissionerate Deputation without deputation allowance was suggested for deletion as such provision is generally not made in the Recruitment Rules which clearly indicates that Rule 4 of the Recruitment Rules, 2002 was



a provision enabling Inter-Commissionerate deputation and not Inter-Commissionerate Transfer. When Inter-Commissionerate deputation was suggested to be deleted, there is no need to retain the provision contained in Rule 4(ii) of the Recruitment Rules, 2002. Ext. R-1 (q ) File Notes states that recent decision of the Board banned the deputation after withdrawal of the ban on Inter-commissionerate transfer as per Annexure A-3 and Notification dated 29-11-2011, so the criteria for deputation in the cadre of Inspector under the CBEC has been withdrawn. For that reason, clause 4(ii) i.e, Special Provision is not now required to be retained and was recommended to delete that provision from the draft Recruitment Rules. Ext. R-1(p) and (q) in OP(CAT) No. 176 of 2018 make it abundantly clear that Rule 4(ii) of Recruitment Rules, 2002 related to 'Inter-Commissionerate deputation' and when the ban on Inter-Commissionerate transfer was lifted as per Annexure A-3 there is no necessity for providing Inter-Commissionerate deputation. It is indisputable that the Inter-Commissionerate deputation and Inter-Commissionerate transfer are distinct and different conditions of service. Inter-Commissionerate deputation leading to 'absorption' into the borrower Commissionerate is covered by Recruitment Rules and Inter-Commissionerate transfer is regulated by executive orders issued by the Government of India in exercise of the powers under Articles 73 and 77(1) of the Constitution in the

absence of Statutory Rules made under the proviso to Article 309 of the Constitution governing the 'terms and conditions of service including transfer. The decision in *A.B.Krishna Vs.State of Karnataka* reported in (1998) 3 SCC 495 was relied on at the time of final arguments on behalf of the Review Petitioners wherein it has been held that "It is primarily the legislature, namely, Parliament or the State Legislative Assembly in whom power to make law regulating recruitment and conditions of service of persons appointed to public services and posts, in connection with the affairs of the Union or the State is vested." It has been further held that "As a matter of fact, under the Scheme of Article 309 of the Constitution, once a legislature intervenes to enact a law regulating the conditions of service, the power of the Executive including the power of the Governor, as the case may be, is totally displaced on the principle of doctrine of 'occupied field'. **If, however, any matter is not touched by that enactment, it will be competent for the Executive to either issue executive instructions or to make a rule under Article 309 in respect of that matter.**" (emphasis supplied). Annexure R-3 Recruitment Rules, 2002 or for that matter, Annexure R-4 Recruitment Rules, 2016 do not contain any provision regulating the terms and conditions of service including transfer and is confined to recruitment alone. Therefore, it is within the power and province of the Executive to lay down

executive instructions and orders in exercise of the power under Article 73 read with Article 77(1) of the Constitution of India. Inter-Commissionerate Transfers were all along been governed by Executive Orders covered by Exhibit R1(f) Order dated 12-02-1958 to Ext. R-1(m) letter dated 28-05-2014 in OP(CAT) 176 of 2018 and the Inter-Commissionerate transfer was banned as per Ext.R1(h) order dated 19.2.2004 in OP(CAT) No.176 of 2018 and was lifted as per Annexure A-3 Order dated 27-10-2011 and at no point of time, Inter-Commissionerate Transfer was ordered or power to grant Inter-Commissionerate was exercised in terms of Recruitment Rules which do not contain provisions governing conditions of service including transfer. Therefore, the holding that no ICT application can be considered after coming into force of Recruitment Rules, 2016 is not correct and not a possible view having regard to what the records state, and is an error in the application of the law. It is a clear instance of error apparent on the face of the record. It is a valid ground for reviewing and recalling the judgment under review.”

2. Though the grounds are elaborate, crux of the contentions is that the judgment was rendered based on erroneous appreciation of the pleadings and wrong assumption with respect to the contentions. The Honourable

Supreme Court in **M/s. Thungabhadra Industries Limited v. The Government of Andhra Pradesh [AIR 1964 SC 1372]** has succinctly stated the distinction between a mere erroneous decision and a decision which could be characterised as vitiated by “error apparent”. The relevant portion of the judgment reads as follows:-

“There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by “error apparent”. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.”

The dictum in *Thungabhadra Industries* is reiterated in **Parsion Devi v. Sumitri Devi [(1997) 8 SCC 715]**, wherein the Apex Court held that an error which is not self-evident and

has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record, justifying the court to exercise its power of review under Order XLVII Rule 1 of the Code. It is also held that it is not permissible for an erroneous decision to be reheard and corrected in exercise of the jurisdiction under Order XLVII Rule 1 and that, a review petition cannot be allowed to be an appeal in disguise. Later, in **Lily Thomas v. Union of India [(2000) 6 SCC 224]**, the Apex Court held that the power of review can be exercised for correction of the mistake, but not to substitute a view. Recently in **Perry Kansagra v Smriti Madan Kansagra [2019 (3) SCALE 573]**, the Apex Court made the following exposition on exercise of review jurisdiction:

“ We have gone through both the judgments of the High Court in the instant case and considered rival submissions on the point. It is well settled that an error which is required to be detected by a process of reasoning can hardly be said to be an

error apparent on the face of the record. To justify exercise of review jurisdiction, the error must be self - evident. Tested on this parameter, the exercise of jurisdiction in the present case was not correct. The exercise undertaken in the present case, in our considered view, was as if the High Court was sitting in appeal over the earlier decision dated 17/02/2017. Even assuming that there was no correct appreciation of facts and law in the earlier judgment, the parties could be left to challenge the decision in an appeal. But the review was not a proper remedy at all. In our view, the High Court erred in entertaining the review petition and setting aside the earlier view dated 17/02/2017.”

A conspectus of the decisions rendered by the Apex Court, on the limited scope for exercise of review jurisdiction, makes it abundantly clear that an alleged erroneous appreciation of the pleadings or wrong assumption of the contentions cannot be a ground for review. The grounds raised in the review petitions are grounds that ought to be raised in an appeal. The review petitions are nothing, but an appeal in disguise. We also take note of the fact that though

the common judgment sought to be reviewed was rendered in O.P.(CAT) Nos.173, 176 and 190 of 2018, review petitions have been filed only in O.P.(CAT) Nos.176 & 190 of 2018. We find no merit in the review petitions and accordingly, the review petitions are dismissed.

**Sd/-  
C.T.RAVIKUMAR  
JUDGE**

**Sd/-  
V.G.ARUN  
JUDGE**

Scl/