

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM EBNCH**

O.A. No. 458 OF 2007

Tuesday, this the 21st day of August, 2007.

CORAM :

HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER

G.P.Nair
Senior Auditor (ACP)
Office of the Joint Controller of Defence Accounts
Area Accounts Office
DAD Complex, Perumannor P.O
Kochi - 1 : **Applicant**

(By Advocate Mr.V.Ajith Narayanan)

Versus

1. Union of India represented by its Secretary
Ministry of Defence
New Delhi
2. The Controller General of Defence Accounts
RK Puram, New Delhi
3. The Controller of Defence Accounts
Annassalai, Thynampet,
Chennai
4. The Controller of Defence Accounts (Navy)
27, Cooperage Road,
Mumbai
5. The Joint Controller of Defence Accounts
Area Accounts Office, Perumanoor PO,
Cochin
6. The Defence Pension Disbursing Officer
Kottayam
7. The Senior Accounts Officer (AN)
O/o the Joint Controller of Defence Accounts,
Area Accounts Office,
Kochi : **Respondents**

(By Advocate Mr.TPM Ibrahim Khan, SCGSC)

The application having been heard on 17.08.2007, the
Tribunal on 21.08.2007 delivered the following :

ORDER**HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER**

The applicant has challenged his transfer order dated 05.04.2007 (Annexure A-15), relieving order dated 10.04.2007 (Annexure A-16) and rejection of his representation dated 04.07.2007 (Annexure A-19).

2. Briefly stated, the applicant being a cancer patient was exempted from routine transfer as directed by the CGDA vide order dated 21.04.1994. The applicant was working in the Office of the DPDO, Kottayam with seven years of station seniority. The applicant's date of birth being 01.03.1948, his date of superannuation is 29.02.2008.

3. The need for transferring the applicant according to the respondents, necessary as there have been complaints from retired pensioners relating to harassment given to them by some of the staff members. Apart from the applicant, through the very same order impugned herein, three more persons stood transferred. Initially the respondents reflected in their statement filed by the Advocate that the applicant's transfer was mainly on administrative and disciplinary grounds. However, when they filed full fledged counter they have stated that in the wake of complaint from retired Defence pensioners the matter was inquired into and it was found that no instances of discriminatory attitude of DPDO staff could be established. It was however, recommended that those serving in the office for longer period may be posted out of that office in public interest, and the name of the applicant was one of them.



4. In order to adjudicate the matter, the relevant records were called for and perused. The complaint dated 10.01.2007 was general in nature including lack of accommodation and other facilities. The enquiry conducted by DPDO II and DPDO I did not point out any serious complaints against the applicant. No doubt some remarks by the applicant as also others were branded to be "offensive incidents, especially from staff who are pretty senior in stay in that office. Seven individuals were pointed out who have had longer stay. It includes the applicant also. (Communication dated 03.11.2006 refers). It is also observed from communication dated 27.02.2007 that alert notice was issued to various individuals excluding the applicant on the ground that he was due for superannuation in March, 2008. In the said communication it has been stated, " it is proposed to consider transfer of staff members keeping in view public interest." An endorsement in the said communication was made, " in the interest of discipline, the individuals identified for transfer out are Mr.G.P.Nair (Superannuation March, 2008) Mr.P.C.Jacob , Mr.K.G.B.Nair and Mr.Vijayan." It is with reference to this communication dated 27.02.2007 that the applicant had been transferred as could be seen from order dated 02.04.2007 from CGDA to CDA, Chennai.

5. Counsel for applicant submits that as early as in 1994 when CGDA exempted the applicant from being transferred (vide Annexure A-10) and when persons nearing superannuation are not to be disturbed the transfer order is illegal in view of the provisions contained in the guidelines No;. 370, 373 and 375 which are as under:-



" 370. Transfers of individuals serving at popular stations will be effected generally on the basis of seniority of stay at those stations, barring compassionate cases, cases where the CDA considers the retention of an individual to be essential in the interests of work etc to the extent necessary to accommodate members who have a legitimate claim to serve at such stations and those who are being repatriated, after a spell of service, at difficult stations.

373. Persons above 54 years of age will not normally be subjected to transfer. Such persons, if not serving at their home stations or stations of choice, will be repatriated to those stations (if so desired by them) to the extent administratively feasible.

375. In cases where an employee, or a member of his family, is suffering from serious ailments such as cancer, polio, blindness, mental disease, paralysis etc. Controllers may, At their discretion grant exemption from transfers, provided the disease/disability is certified by the authorised specialist."

6. Counsel for respondents referred to certain decisions of the Apex Court to hammer the point that transfer being incident of service no vested right is available for any person to stick on to a particular place

7. Arguments were heard and document perused. As rightly submitted by the applicant, the CGDA has exempted the applicant as early as in 1994 from transfer. Guidelines No; 370, 373 and 375 also are in favour of the applicant. Further the applicant was not put to any alert notice for movement. And above all the applicant has just seven months to superannuate. Thus while perhaps there may be justification for transfer in public interest of others, in so far as applicant is concerned, his serious health problem coupled with proximate date of superannuation distinguishes his case from

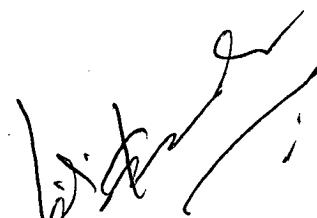
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others. Evidently, when CGDA had advised CDA, Chennai for transfer of four persons including the applicant, the above factors have not been taken into consideration. If the applicant had at all misbehaved, which may amount to serious misconduct perhaps there are other remedial measures. But taking into account the fact that the applicant is a cancer patient he should not be compelled to travel longer distance. Though the counsel for respondent submitted that accommodation is available at Cochin, by the time the case is processed for allotment of accommodation etc. the applicant may be nearing his date of superannuation. Thus, in so far as the applicant is concerned the transfer order cannot stand judicial scrutiny.

8. In view of the above, **the O.A. Is allowed** and the impugned orders so far as relating to the applicant are hereby quashed and set aside. The applicant shall not be disturbed from Kottayam.

9. Under the above circumstances, there shall be no order as to costs.

Dated, the 21st August, 2007.



K.B.S.RAJAN
JUDICIAL MEMBER

vs