

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHO.A No. 468 / 2008Tuesday, this the 24th day of February, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

M.Unnikrishnan Nair, IDAS,
Assistant Controller of Defence Accounts,
Area Accounts Office (Navy),
Cochin-682 015.Applicant

(By Advocate Mr PK Madhusoodhanan)

v.

1. Union of India rep.
By its Secretary,
Ministry of Defence, New Delhi.
2. The Controller General of Defence Accounts,
R.K.Puram, New Delhi.
3. The Principal Controller of Defence Accounts,
(Navy), Cooperage road, Mumbai-39.
4. The Deputy controller of Defence Accounts,
Area Accounts Office (Navy),
Perumanoor P.O.
Thevara, Cochin-15.Respondents

(By Advocate Mr TPM Ibrahim Khan, SCGSC)

This application having been finally heard on 24.2.2009, the Tribunal on the same day delivered the following:

ORDER**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

The challenge in this O.A is against (i) the Annexure A-4 letter dated 3.6.2008 of the 2nd respondent by which the applicant has been transferred from the office of AAO(Navy), Kochi to the office of CFA(Fys) HVF, Avadi which is under PCA(Fys), Kolkata. By the said order, he was also directed to be relieved

of his present duties and to report to the new office of posting, (ii) the Annexure A-7 order dated 24.7.2008 passed by the 2nd respondent pursuant to the direction of this Tribunal's order dated 25.6.2008 in O.A.No.333/2008 rejecting his request for retention in the present place of posting made vide his representation dated 24.6.2008 and (iii) the Annexure A-8 letter dated 6.8.2008 relieving him of his duties in the present office with effect from the afternoon of 6.8.2008 with the direction to report for duty in his new place of posting.

2. In his Annexure A-6 representation dated 24.6.2008, the applicant has requested the 1st respondent to consider the fact that he had undergone for Hernia 9 months ago and he could not even lift his suitcase. He is still continuing his treatment. He is also a patient of Asthma, Hyper tension, Kidney diseases, piles and dental. Further, he is aged 57 ½ years and his transfer to Avadi at this stage is against Para 373 of the Defence Accounts Department Office Manual Part-I which reads as follows:

"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."

He has also stated that his transfer is against para 370 of the said Manual as his seniors viz, Shri K.A.K.Nair, ACDA, Deputy IFA SNC has completed 5 years in the station and Shri R.T.Pillai, DCDA, AO(R&D), Kakkanad has completed 3 1/2 years and at Trivandrum Shri P Sukumaran, DCDA Zonal PD has completed 3 ½ have still being retained at the respective place of posting. He has also stated that proposal of his daughter's marriage is going on and his present transfer would adversely affect the same. The other reason given by him is that his wife's parents are above 75 years and are entirely dependent upon them and to move them out of station at this stage will affect their treatment.

3. In the Annexure A-7 order dated 24.7.2008 issued pursuant to the order

of this Tribunal dated 25.6.2008 in O.A.No.333/2008 filed earlier by the applicant, the respondents have submitted that the applicant had requested them to retain him only upto 30.6.2008 vide his application dated 9.6.2008 or at least upto 1.7.2008. His request was duly considered and he was allowed to continue at the present place of posting till 30.6.2008 and the said decision was communicated to him vide letter dated 26.6.2008. As regards the retention of Shri K Appukuttan at Kochi on his promotion to SAO to JTS, they have submitted that he was allowed to continue because of extreme compassionate ground that he has a mentally retarded and physically handicapped son. As regards the provision of Para 373 of the Manual is concerned, they have stated that it was applicable only to staff and not IDAS officers who are governed under Para 369 (ibid). Moreover, such retentions are allowed only when it is administratively feasible. They have also denied the contention of the applicant that his transfer was against Para 373 and 370 of Part I of Manual which stipulates that transfers of individuals serving at popular stations will be effected generally on the basis of seniority of stay at these stations. On the other hand, they have also submitted that those provisions are the broad principles to be followed when dealing with transfers of staff and not IDAS Staff officers who are governed by Para 369 of the said O.M. However, his request has been considered sympathetically and he has been adjusted in the southern part of the country itself as the same was possible administratively.

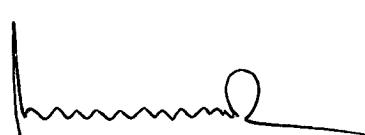
4. I have heard Shri P.K.Madhusoodhanan, counsel for applicant and Shri M.L.George, representing Shri TPM Ibrahim Khan, SCGSC for respondents. No doubt that the transfer is an incident of service and the applicant has got an All India transfer liability. The administrative exigencies would always take into consideration in the matter of transfer and posting of the Government employee and the personal problems of the employee cannot override it. I, therefore, do



not find any fault with the impugned orders of the respondents and therefore, this O.A is dismissed.

5. However, certain facts cannot be ignored. The applicant is 57 ½ years old and his date of retirement is approaching very soon. He has got the responsibility of arranging the marriage of his daughter and it would be easy for him to do so, if he is posted at his own home town/city. The other reasons submitted by him are also quite relevant. The aged parents of his wife who are entirely dependent upon him and his wife are staying with him and it is the duty of any daughter to look after them in the absence of other children. I also notice that the applicant himself is suffering from various diseases and undergoing treatment in the nearby hospital. Therefore, staying alone at the new place of posting keeping the family away from him is quite difficult for him at this age. I, therefore, give liberty to the applicant to make a suitable representation to the 2nd respondent who may consider it and, if possible, adjust him in the office of the 4th respondent, against a future vacancy.

5. There shall be no order as to costs.



GEORGE PARACKEN
JUDICIAL MEMBER

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