

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 471 of 2006

Wednesday, this the 27th day of September, 2006

C O R A M :

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

K.P. Madhusoodanan,
Superintendent of Central Excise,
Customs Preventive Unit (Narcotics),
Trivandrum ... Applicant.

(By Advocate Mr. CSG Nair)

v e r s u s

1. The Commissioner of Customs (Preventive),
Central Revenue Buildings,
I.S. Press Road, Cochin – 18.
2. The Commissioner of Central Excise & Customs,
Central Revenue Buildings,
I.S. Press Road, Cochin – 18.
3. The Chief Commissioner of Central Excise & Customs,
Central Revenue Buildings,
I.S. Press Road, Cochin – 18.
4. The Deputy Commissioner,
Customs Preventive Division,
Central Excise Bhavan, Cochin – 17.
5. Union of India, represented by the
Secretary, Department of Revenue,
Ministry of Finance, North Block,
New Delhi – 110 001. ... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

The Original Application having been heard on 27.09.06, this Tribunal
on the same day delivered the following :

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

Transfer of the applicant from Trivandrum to Cochin is the subject matter in this case and the applicant filed a representation to the higher authorities, which had been considered at the highest level of Secretary, Department of Revenue who had held that the transfer of the applicant is in order. Under such circumstances, there should be no further judicial interference. However, vide order dated 30-06-06 of this Tribunal, counsel for the respondents has submitted that a practical difficulty has arisen inasmuch as vacancy at Cochin too does not exist. It was for this reason that the interim order retaining the applicant at Trivandrum was ^{3. Pressed} allowed to continue till the disposal of this O.A with the rider that the decision by the Secretary, however, would be binding upon the case of the applicant also.

2. The Commissioner of Customs (Preventive), Cochin has filed his reply, additional reply and second additional reply. He is the authority for effecting intra commissionerate transfer. However, for inter-commissionerate transfer, it is the Chief Commissioner (Respondent No. 3) who is empowered and there has been no reply from the said respondent. It is the submission of the counsel for the applicant that when orders relating to retention of both husband and wife at the same place as far as possible, vide order dated 03.04.1986 read with order dated 12th June, 1997. The said orders inter alia read as under:-

".... as far as possible and within the constraints of administrative feasibility, the husband and wife should be posted at the same station to enable them to lead a normal family life

and to ensure education and welfare of their children."

"Where one spouse is employed under the Central Govt. and the other spouse employed under the State Government, the spouse employed under the Central Govt. may apply to the competent authority and the competent authority may post the said officer to the station or if there is no post in that station to the State where the other spouse is posted."

"Ministry of Finance etc., are requested to bring the above instructions to the notice of all administrative authorities for their control and ensure compliance."

"The undersigned is directed to say that on the subject mentioned above, Government had issued detailed guidelines vide O.M. No. 28034/7/86-Estt (A) dated 3-4-86. The Fifth Central Pay Commission has now recommended that not only the existing instructions regarding the need to post husband and wife at the same station need to be reiterated, it has also been recommended that the scope of these instructions should be widened to include the provision that where posts at the appropriate level exist in the organization at the same station, the husband and wife may invariably be posted together in order to enable them to lead a normal family life and look after the welfare of the children, especially till the children are 10 years of age.

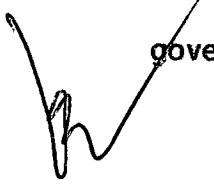
The Government, after considering the matter, has decided to accept this recommendation of the Fifth Central Pay Commission. Accordingly, it is reiterated that all Ministries/Departments should strictly adhere to the guidelines laid down in O.M. No. 28034/7/86-Estt(A) dated 3.4.86 while deciding on the requests for posting of husband and wife at the same station and ensure that such posting is invariably done, especially till their children are 10 years of age, if posts at the appropriate level exist in the organization at the same station and if no administrative problems are expected to result as a consequence."

3. The counsel for the applicant submitted that when the applicant submitted that there were vacancies at Quilon, and the Tribunal directed to ascertain the same, the respondents, thereafter filled in the vacancies at Quilon and made things *fait accompli*. Though vacancies within the administrative

control of the Commissioner of Customs (Preventive) may not be available in the nearby places, possibilities are there that in those places under the Control of the Chief Commissioner of Customs, there may be vacancies in and around Trivandrum or Quilon and thus, keeping in view the mandates of the Ministry of Personnel, as extracted above, the Chief Commissioner of Customs may be advised to consider feasibility of the applicant being posted in or around Quilon. According to the counsel for the applicant one such vacancy is available at Kundara near Kollam. If so, it would be appropriate for the Chief Commissioner of Customs to consider the request of the applicant in the light of the Ministry of Personnel OM cited above (Annexure A-15 and 16 of the rejoinder) and arrive at a judicious decision. It has been stated that the applicant has a five year old son.

4. Counsel for the respondents has invited the attention of the Tribunal to the judgments of the Apex Court as reflected in the Additional Reply and of the decision by the Secretary as contained in Annexure R-2 letter and submitted that in view of the same, there is no case in favour of the applicant.

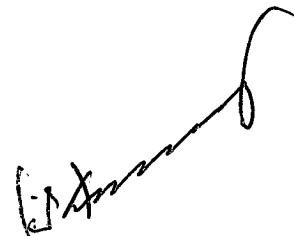
5. The matter has been considered. Judicial review on transfer is to a very limited extent only. However, when the Fifth Central Pay Commission, an august body, recommended certain guidelines on transfer with regard to posting of husband and wife in the same place, and when the same has been accepted by the Government, though no legal right ensues therefrom in favour of any government servant, the legitimate expectation is that such a decision is given



Its due respect and the matter considered. In the instant case, the applicant does not want to stick to the place where at present he is posted. All that he prays is for a transfer near Attingal, where his wife is working in a Government College. This aspect does not appear to have been considered by the Chief Commissioner, i.e. Respondent No. 3. It would, therefore, be appropriate, if consideration in the light of the instructions of the Ministry of Personnel as stated above be given to the case of the applicant and a just decision is arrived at.

6. In view of the above, the OA is disposed of with the suggestion to the respondent No. 3 to consider the case of the applicant and communicate the decision to the applicant. It is made clear that it is purely left to the Respondent No. 3 to arrive at the decision, keeping in view the administrative exigency and the guidelines as mentioned above and till then, the applicant be not disturbed from the existing place of work. No costs.

(Dated, the 27th September, 2006)


K B S RAJAN
JUDICIAL MEMBER

cvr.