

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 484 of 2006

Thursday, this the 21st day of September, 2006

CORAM :

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

P.M. Muhammed Shareef,
Inspector of Central Excise,
Customs (Preventive) Division,
Kannur.

...

Applicant.

(By Advocate Mr. C.S.G. 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,
I.S. Press Road, Cochin - 18.
5. Union of India, represented by the
Secretary, Department of Revenue,
Ministry of Finance, North Block,
New Delhi - 110 001. ... Respondents.


(By Advocate Mr. Sunil Jose)

(The Original Application having been heard on 21.09.06, this
Tribunal on the same day delivered the following:)

ORDER

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

Challenge in this case is against the transfer of the applicant
from Kannur to Kanhangad, vide impugned order dated 19.05.2006

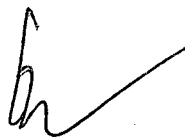


(Annexure A-4). His representation against the transfer has also been rejected vide order dated 20th June, 2006 at Annexure A-7. By way of an interim stay, the applicant continues in the same place.

2. The applicant has been in Kannur since 14-12-1992 as UDC/Tax Assistant and w.e.f. 19-12-2002 as Inspector. For seven months from February, 2003, the applicant had functioned at Kanhangad wherefrom, he was again posted back to Kannur from 15.09.2003. As per guidelines of transfer formulated by the respondents, annual general transfers of all officers who have completed a tenure of 6 years in Ernakulam and 4 years in other stations will be done at the end of the academic year annually. If the applicant's transfer from Kanhangad back to Kannur is taken into account, then his tenure at Kannur would be upto 2007.

3. The counsel for the applicant has submitted that the ward of the applicant is undergoing education at Kannur and already the first semester is over, leaving only five more months for completion of the current academic session. As such, he has prayed that the respondent be directed not to disturb the applicant till the completion of the current academic session. The counsel has stated that once the academic session is over, the applicant shall move to the new place of posting.

4. The counsel for the respondents has submitted that there is no vested right to the applicant which has been hampered by the



impugned order and if at all, the applicant could only make a request for consideration. However, it is left to the authorities to accede to/ reject the request.

5. Arguments have been heard and the documents perused. The law declared by the Apex Court in respect of judicial review in matters of transfer has also been kept in view.

6. The Courts do consider various adverse impacts of frequent transfers, and in this regard, it is appropriate to refer to the decision of the Apex Court in the case of B. Varadha Rao v. State of Karnataka, (1986) 4 SCC 131 wherein the Apex Court has held as under:-

"6. One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralisation. It therefore follows that the policy of transfer should be reasonable and fair and should apply to everybody equally. But, at the same time, it cannot be forgotten that so far as superior or more responsible posts are concerned, continued posting at one station or in one department of the government is not conducive to good administration. It creates vested interest and therefore we find that even from the British times the general policy has been to restrict the period of posting for a definite period. We wish to add that the position of Class III and Class IV employees stand on a different footing. We trust that the government will keep these considerations in view while making an order of transfer."

7. Children education is one of the primary responsibilities of responsible parents, as the children are the future builders of our

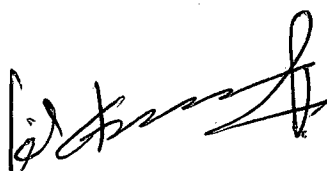
nation. As such, a request made on the ground of children education deserves full consideration by the respondents. Of course, if for any concrete administrative reasons, it is not desirable to retain a particular person in a particular place, then administrative exigencies and interest of administration pre-dominate and any grounds for retention including children education get thoroughly eclipsed. In the instant case, the transfer is one of routine nature and the request of the applicant is for retention only of five months. Acceding to the request of the applicant on the ground of children education would certainly benefit the applicant as he could ensure that the education of the ward is not unduly hampered due to the transfer. In fact, routine transfers are ordered at the end of the academic session which goes to show that the respondents always respect the interest of children education. And for shaping the future, tenth standard is considered as crucial since, selection of faculty for higher education is determined on the basis of the performance in the tenth standard. As the applicant's daughter is at tenth standard, the request of the applicant is genuine. Keeping in view the same, I am of the considered view that interest of justice would be met if the transfer of applicant is deferred till 31-03-2007 and he is ^{Thereafter} posted out to the new duty station (or any other station, should there be no possibility of accommodating the applicant at Kanhangad for any reason). For this purpose, the applicant shall, within ten days from the date of communication of this order, submit an undertaking to the effect that he shall move of the current place of posting after 31-03-2007. On the basis of such an undertaking, the respondents shall issue suitable



orders for the posting of the applicant after 31-03-2007. Ordered accordingly.

8. The O.A. is disposed on the above terms. No costs.

(Dated, the 21st September, 2006)



K B S RAJAN
JUDICIAL MEMBER

cvr.