

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.500/2005.

Friday this the 26th day of August, 2005.

CORAM:

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

P.N.Umnikrishnan, Accountant,
Office of the Accountant General (A&E),
Trissur Branch, Trissur.

Applicant's

(By Advocate Shri M.R.Hariraj)

Vs.

1. Union of India, represented by the Secretary to Government of India, Department of Personnel and Training, New Delhi.
 2. The Comptroller and Auditor General of India, New Delhi.
 3. The Accountant General (A&E), Kerala, Head Office, Trivandrum.
- Respondents

(By Advocate Shri George Joseph, ACGSC)

The application having been heard on 26.8.2005,
the Tribunal on the same day delivered the following:

ORDER(Oral)

HON'BLR MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant who claims to be a handicapped person eligible to take shelter under the Scheme for Physically Handicapped employees in the matter of transfer to his native place as per Annexure A-2 dated 10.5.1990. He was initially transferred from Trivandrum to Trichur in his turn based on his willingness, in accordance with the policy relating to transfer and posting prevalent under the 2nd and 3rd respondents. Thereafter on 19.12. 1998, he made a request for permanent transfer to his place of residence at Kozhikode vide A-5. The 3rd respondent has issued A-6 letter stating that the preferential claim of transfer available at A-2 will be on 1/3rd vacancies, and roster with 100 points will apply for the same. Aggrieved by the non-grant of transfer to his choice station the applicant has made a representation dated 11.2.2003(A7) to the Deputy Comptroller & Auditor General of India. Vide A-8 letter dated 27.5.2003 he was informed that, his case



for further transfer to Kozhikode Branch Office would be considered only as per his turn. Vide A-9 dated 18.3.2004 the matter was taken up before the Chief Commissioner for Persons with Disabilities. Based on A-9, the applicant has made another representation (A10) dated 9.7.2004 to the 3rd respondent. He made a reminder on 24.12.2004. The 3rd respondent issued orders of transfer, based on the position given to the individuals in list of volunteers to Kozhikode Branch exclusively on the basis of the dates of their requests, without considering the case of the applicant. The applicant has made another representation to the 3rd respondent vide A-11 dated 23.6.2005, which is not yet responded to. Aggrieved by the non-grant of transfer, the applicant has filed this O.A. Seeking the following main reliefs:

- i. To quash Annexure A6.
 - ii. To quash Annexure A1 to the extent it does not consider the applicant for transfer in preference to others in accordance with Annexure A2 and to direct the respondents to consider the applicant for transfer and posting to Kozhikode in preference to others giving due preference under Annexure A-2.
2. The respondents have filed a detailed reply statement contending that, the Accountant General (A&E) Offices are located in different states all over the country but each office is distinct and has separate cadre. Group B, C and D staff of each cadre are recruited locally and have no transfer liability to any other cadre. Accordingly, the applicant, Shri P.N.Unnikrishnan was initially appointed as Clerk/Typist on 23.9.1985 in the Office of the Accountant General (A&E) Gujarat at Rajkot and as per the usual terms and conditions governing the offer of appointment, the applicant is not entitled for transfer and posting to any other Accountant General (A&E)'s Office outside the State of Gujarat. Nevertheless, based on a request from the applicant, the Accountants General (A&E) of Gujarat and Kerala mutually agreed to transfer the applicant on compassionate grounds to the Office of the Accountant General (A&E), Kerala, Tiruvananthapuram. The applicant has applied for a posting to Thrissur on the ground that, his native place was Thrissur and that he was under the treatment of a local doctor at Thrissur and this was the second occasion when the applicant, Shri Unnikrishnan, sought transfer, and was given transfer on compassionate grounds. Again, on 1.2.1998, Shri Unnikrishnan sought transfer to the Kozhikode Branch Office of the Accountant General(A&E), Kerala on the ground that, this is his wife's native place. This is the third occasion when the applicant sought a transfer on compassionate grounds. The AG (A&E), Kerala, who is the cadre controlling authority, after careful consideration, firmly convinced that the applicant has time and again been using his physical disability and family circumstances as a reason to claim an undue advantage over his peers who have been waiting for a transfer to far more years than the applicant and that, his present claim for a third transfer



is without merit. The respondents further in para 10 of the reply statement contended that, one Shri Manoj had applied for a transfer to the Branch Office, Kottayam on 13.4.1994. The next vacancy of Physically Handicapped person is due and will be filled up with such persons, if available, on merit. The 100 points roster introduced through the transfer policy (Annexure A6) benefits the physically handicapped category as and when a transfer is made to any of the four Branch Offices under the third respondent. The interests of all the staff working under the third respondent has to be cared for in the interest of the smooth functioning of the Office. Again in para 12 of the reply statement the respondents contended that, since the applicant had applied for Thrissur earlier than Shri Sakkeer, he was accommodated earlier. However, since Shri Sakkeer had applied for Kozhikode earlier than Shri Unnikrishnan, he has been accommodated now. Shri Unnikrishnan will be accommodated in Kozhikode in his turn. It is further submitted in para 15 that, subsequent to the issuance of A6order, a 100 point roster with roster points 1, 34 and 68 earmarked for the physically handicapped officials is being maintained and the transfer is effected strictly on the basis of the seniority of the applicants for transfer. Accordingly Shri N.Manoj, Accountant, who was the first applicant among the physically handicapped officials was transferred to Branch Office, Kottayam on 12.5.2003. Since the maintenance of the above roster, 33 applicants were transferred to various Branch Offices under the third respondent strictly on the basis of the transfer policy in force. The next transfer to Kozhikode is earmarked for physically handicapped officials, and deserving applicants, if any, will be considered on merits and transferred accordingly.

3. The applicant has filed a rejoinder contending that, the transfer policy of the respondents must be subservient to Annexure A2. Annexure A2 does not contemplate a procedure like that in Annexure A6. The applicant was not accommodated at Trivandrum on compassionate grounds. Annexure A-2 must be given a meaningful reading. Assuming Annexure A6 to be valid, since admittedly 33 transfers were already made, the next roster point to be operated as per Annexure A6 is point No.34 and the applicant is entitled to be transferred to Calicut by operation of that roster point. There is one retirement vacancy at Calicut as on date. Sri. P.C.Damodaran, Senior Accountant has retired after the issuance of Annexure A1. Another person, M.Phalgunan, Senior Accountant would retire in August, 2005. Therefore, in any case the applicant is entitled to be transferred to Calicut.

4. I have heard Shri MR Hariraj, learned counsel appearing for the applicant and Shri George Joseph, learned ACGSC appearing for the respondents.

5. Counsel for the applicant's submitted that the roster point that has been enunciated as per impugned order in non-granting transfer to the applicant is not in conformity with the constitutional provisions. It can be applied on the question of

appointment and not on transfer. Therefore, he was constrained to challenge A6.

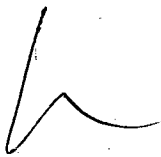
6. Counsel for the respondents on the other hand submitted that, the roster point has been strictly followed in A-6 transfer policy guidelines for the reason that the handicapped persons and other category of reserved persons should not be shuffled and overlap and therefore it is suggested to observe transfer policy strictly.

7. Annexure A-6 is the Transfer Policy issued on 7.10.1999, the relevant paragraphs 1 & 2 which are quoted below:

"The transfer policy was issued vide No.Admn. IV/dated 1.2.1999 followed by further clarifications vide Office Orders No. 219 dated 3.3.1999, No.225 dated 3.11.1999 and No.273 dated 26.7.2001. According to this transfer policy, a list of volunteers for transfer between Main Office and four Branch Offices is maintained in the Admn. Section. At the time of filling a vacancy in any Branch Office, Main Office, the name of the officials of a particular cadre, would be considered first. The said policy also provides that C/Ts/DEOs who get out of turn transfer as C/T /DEO, will revert back to their previous stations on promotion as Accountant to that Branch Office. It also provides that in case any volunteer refuses to avail of the opportunity on being offered a transfer to his desired station, his name would be deleted from the volunteers' list and further request would be treated as fresh with reference to his date of fresh application.

The above transfer policy is in operation in this office. However, we have been receiving representations from Physically Handicapped employees for preferential treatment to them in transfer to Branch Offices, as per Government of India, Department of Personnel and Training O.M.BN0.AB-14017/41/00-Estt.(RR) dated 10.5.1990. The matter was discussed with the representatives of the Service Associations/Union in this office. Accordingly, it has been decided that in the implementation of the policy for transfers to Branch Offices, the vacancy numbers 1st, 34th and 68th in a cycle of 100 points vacancy roster would be earmarked for filling by transfer of physically handicapped employees belonging to Group 'C' and Group 'D' cadres. The inter-se-seniority among the Physically handicapped applicants for transfers to a particular Branch Office would be decided by the date of such application. The term 'Physically handicapped' would denote the same meaning as mentioned in the above referred Government of India, O.M. dated 10.5.1990 and same certificate as required therein will be necessary for consideration under these orders. "

8. The applicant has also produced the Seniority List in which he figures at Sl.No.73. The case of the respondents is that the roster point is being followed as 1, 34 and 68 which are earmarked for handicapped persons. Sl.No. 1 had already been absorbed and transferred and what remains is Point No.34. Out of 1 : 33 candidates in the list have already been transferred and No.34 will fall very soon which is earmarked for handicapped persons. The respondents also assured in the reply statement that, since the next vacancy is for handicapped quota as per the roster point, eligible candidate will

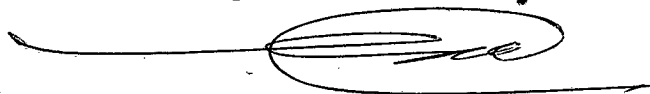


be accommodated at Calicut in his turn. At this point of time, I am of the view that since the chance of the next handicapped person as per the seniority list A-2 has already fallen due and the respondents have already taken a conscious decision to earmark the next available vacancy, i.e. Point No. 34, for handicapped, there is no reason to agitate the validity of A-6 guidelines. Therefore, this court do not have any reason to adjudicate the roster point that has been fixed by the respondents which is followed according to law, as far as the disposal of this case is concerned. Since the matter has been admitted by the respondents that the next vacancy of physically handicapped person is due and 100 % roster point is taken into consideration, Point No. 34 will be eligible for transfer. The question is whether the applicant is eligible for No.34 or not? The applicant's counsel submitted that, as per the priority list A-12, 33 persons have already been transferred and the persons between 34 and 72, to his knowledge, there is no handicapped person. Therefore, Shri Unnikrishnan, the applicant, is the handicapped person who may come under the handicapped quota.

9. The respondents have already given assurance in the reply statement that Shri Unnikrishnan will be accommodated at Kozhikode in his turn. Since the next transfer of a person to Kozhikode is earmarked for physically handicapped official, the respondents are directed to consider the claim of the applicant in view of the assurance and admissions given in the reply statement as quoted above and pass appropriate orders within a time frame of one month from the date of receipt of a copy of this order.

10. O.A. is disposed of as above. In the circumstance, no order as to costs.

Dated the 26th August, 2005.



K.V.SACHIDANANDAN
JUDICIAL MEMBER