

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 547/05

MONDAY THIS THE 28TH NOVEMBER 2005

CORAM

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIALMEMBER**

Jacob Kuruvila Data Entry Operator-C
A/C No. 8326540, Area Accounts Officer(Navy),
Perumanoor PO Kochi-15, Kerala.

Applicant.

By Advocate Mr.V. Ajith Narayanan

Vs.

- 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 Dy.Controller General of Defence
Accounts (Administration) West Block-V
RK Puram, New Delhi.
- 4 Principal Controller of Defence
Accounts (Navy) No.1, Cooperage road
Mumbai-39
- 5 The Joint Controller of Defence Accounts
Area Accounts Office(Navy), Perumanoor PO
Thevara, Cochin-15
- 6 The Senior Accounts Officer (Administration Section)
Area Accounts Office (Navy)
Perumanoor PO, Thevara, Cochin-15
- 7 Accounts Officer (AN) Area Accounts Officer:(Navy),
Perumanoor PO, Cochin-15
- 8 Accounts Officer (EDPL-In-Charge)
Area Accounts Office (Navy)
Perumanoor PO, Cochin-15.

Respondents

By Advocate Mr. Varghese P. Thomas, ACGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant is working as a Data Entry Operator 'C' in the Area
Accounts Office, Navy, Perumanoor, Cochin and is aggrieved by his transfer

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effected to Pay and Accounts Office (DSC), Kannur by Annexure A1 order dated 18.5.2005. The applicant represented through proper channel against the transfer and has filed OA 347/2005 before this Tribunal and a direction was issued to the second respondent to take a decision on the Annexure A2 representation of the applicant. The representation has been rejected on the ground that the applicant is having all India transfer liability and that on administrative grounds, he has been posted to Kannur. The applicant is also challenging Annexures A5 and A6 orders by which his representations have been rejected.

2 The applicant has submitted that generally the practice adopted by the Department is to transfer those who are continuing in Kerala State before 31.12.1993 outside the State and therefore the applicant who continued at Cochin from 4.2.1992 will have to be transferred out of the State to any of his choice stations. He had indicated his choice stations as Bangalore, Nasik, Hyderabad, Chennai or Mumbai. If he cannot be given any of these choice stations he has represented that he preferred to be retained at Cochin as his children are studying at Cochin and his wife is a chronic Asthma patient. According to the applicant there are six vacancies of DEOs in the Area Accounts Office at Cochin. The applicant also assails the transfer on the ground that as per Para 370 of DAD Office Manual Part-I, station seniority should be the criterion for transfer but number of station seniors to him are permitted to continue at Cochin Station. He also alleges that the present attempt to transfer him is nothing but punitive action with malafide intention to safeguard the interest of station seniors.

3 The respondents have denied the averments in the Application in their reply statement. They have mentioned that as per the terms and conditions for appointment, the officers and staff of the Defence Accounts Department have all India transfer liability and are therefore liable for transfer anywhere including to the field areas. The Defence Accounts Department is having more than nine hundred sub offices located at more than two hundred stations across the

country and they are required to maintain adequate presence of manpower in its various organisations. The transfers of staff/officers are carried out in accordance with customer requirements depending upon shortage of manpower resources at various field level offices. It is true that generally EDP trained staff (DEOs) are not being transferred. But the contention that the DEOs as a group are not transferable is not correct. It is for the Department to assess the vacancy position strictly on requirement basis and the applicant has been posted at Kannur due to administrative exigencies. They have also denied that any Casual Labourers are working on contract basis as DEO in the EDP Section which is a specialised job. The Casual Labourers are employed basically to assist section staff and to meet the requirement in the stations arising out of administrative exigencies. They also referred to the various judgments of the Hon'ble Supreme Court relating to transfer stipulating that the Courts/Tribunals should not interfere in transfers unless the transfer is patently mala fide or in violation of the statutory rules.

4 A rejoinder and an additional rejoinder were filed by the applicant contending that the employees in the computer section and the EDP trained hands are totally exempted from transfer and the said fact has been reiterated by the respondents in their pleadings before this Tribunal in O.A. 521/2004. He also enclosed a copy of the reply statement filed by the respondents in the above O.A (Annexure A-9). He also submitted that his real grievance is that if he is transferred to Kannur now he will have to continue at Kannur for a number of years and he will have to be transferred again out of the State on the basis of the cut off date principle and he will have to continue there for number of years further and thus will be deprived of an opportunity for returning to Cochin.

5 The respondents have filed an additional reply statement denying the above specific averments of the applicant and have submitted that the second respondent has carefully examined the vacancy position of the DEOs in the choice stations indicated by the applicant and found it comfortable. However, there was need to post one DEO in Pay and Accounts Office (Ors), DSC

Cannanore and the same was ordered on the basis of administrative exigency. The Department has not exercised any discrimination or highhandedness in the transfer. The averments of the applicant that the Department had accepted the position that the DEOs are exempted from transfer is totally incorrect. During the pleadings in OA 521/2004 the Department had emphatically clarified that generally the DEOs (EDP trained) are not transferred but all the staff in the Defence Accounts Establishment had all India transfer liability. They have also referred to the judgment of the Hon'ble High Court of Madras in Writ Petition Nos. 22790 and 22791 of 2005 (Annexure R-6) holding that "in view of the specific provision in paragraph 378 of the Office Manual, as rightly concluded by the Tribunal, if the transfer is on administrative grounds, it cannot be claimed that the guidelines contained in Paragraphs 368 to 377 are to be strictly complied with."

6 We have heard the learned counsel for both sides and perused the records. The learned counsel for the respondents reiterated the legal position that when the transfer is on administrative grounds the policy guidelines will not apply to the same and that the Hon'ble Supreme Court has repeatedly held that Court/Tribunals should not interfere in transfers unless there are very compelling grounds.

7. On consideration of the pleadings of the applicant it becomes evident that his resistance to be transferred to Cannanore is arising out of his perception that this transfer deprives him of future transfer or coming back to the home State. No Government servant has a vested right for posting and a right to remain in a particular state or station. This has been made very clear by the Hon'ble Supreme Court in many cases relating to transfer that transfer is an incident and condition of service. From the reply statements submitted by the respondents it is clear that the transfer of the applicant has been made on administrative exigencies which fact is evident from Annexure A1 order itself that it is at State expense. Para 378 of the Defence Accounts Department Office Manual Part-I specifically provides that the guidelines will not apply to such transfers on

administrative grounds. The portion is extracted below:

"378(i) The above mentioned guidelines will not apply to transfers on administrative grounds, which may be effected at the discretion of the administration.

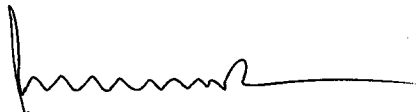
(ii) Those Principal Controllers/Controllers who have an all India jurisdiction will endeavour, to have a system of zonal transfers for rotation of staff where it is necessary, according to the principles cited above so that the staff of certain regions can be rotated within these zones and they can serve at reasonable distance from their home states."

8 The applicant has placed reliance on Para 375 of the Guidelines in the above Manual to seek an exemption from transfer. He has also relied on the reply statement filed by the respondents in O.A. 521/2004 to prove his point. A perusal of the above shows that the averments of the applicant are totally incorrect and that the Department has emphatically clarified that all staff and officers of the Department are transferable anywhere in India but that generally DEOs who are specifically trained in EDP are not being transferred outside. They have not stated anywhere that this category is totally exempted from transfer. The judgment of the Hon'ble High Court of Madras confirming the orders of the Madras Bench of the Tribunal in O.A.No 493/05 are also very relevant in this context. The Hon'ble High Court of Madras, while agreeing with the Tribunal's order held that if the transfer is on administrative ground it cannot be claimed that the guidelines contained in paras 368 and 377 are to be strictly complied with. The transfer of the applicant in the present OA also being on administrative ground falls very much within the purview of this decision. Moreover, the Hon'ble Supreme Court has also held in State of U.P. Vs. Vs. Govardhan Lal and others (ALSJ-244) that administrative guide lines cannot deprive or deny the competent authority its authority to transfer a particular officer to any place in public interest if it is found necessitated on the exigency of service as long as the status of the employee is not affected adversely. Courts cannot substitute its own decision in transfer cases. In the same judgment it has been laid down that allegations of malafides must have solid base. The applicant herein has also alleged malafides. The respondents have denied them and termed them as purely based on conjectures and surmises.. We reject this contention totally.

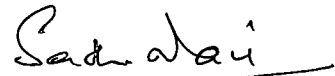
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9 In the result, for the aforementioned reasons, we are of the view that the impugned orders are not liable to be interfered with. The prayers of the applicant are rejected. However, we would like to add that since the transfer of the applicant has been made in accordance with para 378 of the Office Manual it is outside the purview of the transfer guidelines, in our view there should not be any bar for the applicant to be considered in future in accordance with the provisions in the guidelines for a transfer outside the State and the decision in this O.A. would not act as a bar for the applicant to approach the respondents for a transfer outside the state. With this observation the O.A. is dismissed. No costs.

Dated28TH.....November, 2005.



GEORGE PARACKEN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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