

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

O.A.No.567/04

Friday, this the 29th day of October, 2004

**C O R A M :**

**HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER  
HON'BLE MR. H.P.DAS, ADMINISTRATIVE MEMBER**

A.S.Antony,  
Foreman of Stores,  
Naval Armament Depot, Aluva.

Applicant

(By Advocate Mr.N.N.Sugunapalan)

**Versus**

1. The Flag Officer Commanding in Chief,  
Headquarters, Southern Naval Command,  
Naval Base, Cochin.
2. The Flag Officer Commanding in Chief,  
Headquarters, Eastern Naval Command,  
Visakhapatnam.
3. General Manager,  
Naval Armament Depot, Aluva.
4. Director General of Armament Supply,  
Integrated Headquarters of  
Ministry of Defence (Navy),  
New Delhi.
5. Union of India represented by  
the Secretary to Government,  
Ministry of Defence, New Delhi.
6. K.A.John,  
Foreman of Stores,  
Naval Armament Depot,  
Aluva.

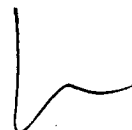
Respondents

(By Advocate Mr.C.Rajendran,SCGSC [R1-5] & Mr.Johnson Gomez [R6])

O R D E R

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

The applicant, a Foreman of Stores at the Naval Armament Depot (NAD for short), Aluva who is due to retire from service on 15.2.2005 has filed this O.A. challenging Annexure A-1 order dated 15.6.2004 by which he was promoted as Senior Foreman of Stores and transferred to NAD, Visakhapatnam. The 6th respondent, K.A.John, was also promoted as Senior Foreman of



Stores but retained in Aluva itself though he will be retiring only in July 2006. The applicant on earlier occasion was promoted as Storekeeper in 1983 and was transferred out in the first vacancy available in Mumbai. In the year 1992 when the applicant was again promoted as Senior Store Keeper he requested for deferring his transfer for some time as his father was ailing and bed ridden and was seriously ill. That request was refused and his father expired shortly thereafter. The promotion now given as per Annexure A-1 is the third promotion. The grievance of the applicant is that the 6th respondent had always been accommodated by the respondents. It is a clear case of favouritism. The applicant made Annexure A-2 representation, but ignoring the same Annexure A-1 impugned order was passed. Again on 24.6.2004 the applicant filed another representation (Annexure A-3). His contention is that mid term transfer of a person who is to retire on Feb.2005 is unjust and arbitrary. The applicant has sought the following reliefs :

1. to issue a writ of certiorari or any other appropriate writ, order or direction quashing Annexure A-1 order in so far as it relates to the transfer of the applicant from Aluva to Visakhapatnam is concerned.
2. to issue a writ of mandamus or any other appropriate writ, order or direction directing respondents 1 to 5 to retain the applicant in the Naval Armament Depot, Aluva itself as Senior Foreman of Stores and transfer the 6th respondent to Visakhapatnam if found necessary.

2. The official respondents have filed a counsel statement contending that against the panel for promotion to the post of Senior Foreman Stores the applicant as well as the 6th respondent have filed representations which were considered on merits taking into account the relevant facts of the previous transfers on promotion of the applicant and 6th respondent. The applicant in Annexure A-3 representation submitted that since he was not in a



position to move due to some domestic/personal health problems his transfer may be deferred up to 13.11.2004. Having considered the representation, the competent authority deferred the transfer of the applicant upto 31.8.2004 and further extension is not contemplated. The contention that it was deferred till 31.7.2004 is not correct. The applicant and the 6th respondent are holding a post in which an All India Transfer Liability is there and therefore they are bound to move to any place either on general transfer or on transfer cum promotion. If promotion is not acceptable for the time being, the affected person is at liberty to refuse the same and to continue in the station. Therefore, it is not fair on the part of the applicant to pray that the 6th respondent who is senior to the applicant in the panel should be transferred to NAD, Visakhapatnam, instead of the applicant more particularly when the applicant has a longer period of stay in NAD, Alwaye, than the 6th respondent. The applicant who has been in the post of SSK since 1994 onwards had been retained in NAD (A) against the vacant post but at the same time the 6th respondent was transferred out to NAD, Visakhapatnam, and subsequently he came back to NAD, Alwaye, in 2001. The next promotion to the post of Senior Foreman Stores needed a fair consideration and accordingly the 6th respondent was ordered to be promoted in the ensuing vacancy in consideration of his representation dated 7.6.2004. Though the right to file a detailed reply statement was reserved, it was not filed. However the 6th respondent, party respondent, has filed a detailed reply statement reiterating the contention of other respondents. He submitted that in the representation dated 24.6.2004 the applicant has not intimated his inability to proceed on transfer but has requested deferment of his transfer till 13.11.2004. The



6th respondent was transferred on promotion as Foreman of Stores to NAD, Visakhapatnam, and the applicant was promoted and retained at NAD, Alwaye. This aspect has been conveniently suppressed by the applicant in the O.A. The 6th respondent had submitted a representation dated 7.6.2004 with medical certificate stating health reason and pointed out that he is not in a position to move on transfer due to the same.

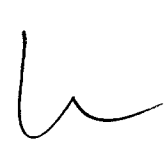
3. The applicant has filed a rejoinder to the counsel statement and also in reply to the 6th respondent contending that the official respondents have bypassed Annexure A-5 office order dated 20.9.1993 as far as the 6th respondent is concerned.

4. Shri.N.N.Sugunapalan and Shri.Balakrishna Gopinath appeared for the applicant and Shri.C.Rajenndran,SCGSC appeared for respondents 1-5 and Shri.Johnson Gomez for the 6th respondent. Counsel for the applicant submitted that it is not correct to say that vide representation the applicant has requested only for deferment of the transfer, on the other hand, the request of the applicant was for deferment/cancellation of the order till he retires in Feb.2005 and for considering his promotion at Alwaye. Learned counsel for the respondents, on the other hand, persuasively argued that the transfer is not a punishment and in the given circumstances, there is no other alternative but to transfer the applicant to Visakhapatnam.

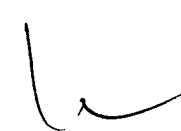
5. We have heard the learned counsel for the parties and given due consideration to the material, evidence and arguments advanced by them. It is an admitted fact that the applicant was promoted twice during his service and transferred from this



depot. It is reported that his wife is employed at Income Tax Department, Kochi and he himself is having health problem and at the time of transfer his father was ailing and subsequently died. Since he had earlier suffered a brain stroke and paralysis it is difficult for him to live alone without the support of the family. Therefore, in Annexure A-2 dated 11.6.2004 he requested for promotion and retention at NAD, Alwaye, in any coming vacancy since he is due for retirement with effect from Feb. 2005. When he found that it would not materialise he made another representation Annexure A-3 dated 24.6.2004 with a request for deferment upto 13.11.2004. It is said to have been granted by the respondents. Annexure A-5 dated 20.9.1993, a circular regarding acceptance or refusal of promotion is brought to our notice. It is specifically stated that as per instruction in force a person who refuses promotion is not to be offered fresh promotion for a period of one year from the date of acceptance of his request for refusal of promotion by the competent authority or till a next vacancy arises whichever is later. In that OM, it is made clear that (a) Govt. servant desirous of refusing the promotion will submit his application alongwith a declaration as per enclosed specimen, to the local administrative authorities. The refusal has to be unconditional. Requests for deferment/change in the posting orders will not be construed as refusal for the purpose of counting the period of embargo. (b) the local administrative authorities will authenticate the declaration indicating the date of its receipt in their office. The authentication will be done in writing by a Grade A Officer. This date of receipt will be taken as date of refusal for counting the embargo period, once the request has been accepted by the competent authority. (c) The local administrative



authorities will forward the applications alongwith their recommendations and suggestions, if any, to the competent authority through proper channel within 15 days of receipt of the declaration with the following information : (i) service particulars i.e. station/stations where the individual has served since joining the service. (ii) requests for refusal due to health reasons should be supported by medical certificate. (d) decision of the competent authority will be communicated to the Govt. servant. It will be final and no further correspondence on the subject will be entertained. Therefore it is clear that for imposition of embargo of one year in cases involving refusal of promotion the above criterion should be followed. It is born out from the pleadings and from the representation made by the applicant that he has never refused promotion but only requested to reconsider his posting at Alwaye. Under the said circumstances, one cannot say that he has refused promotion. None of the parties has produced the transfer guidelines on promotion. It is interesting to note that the 6th respondent had made a representation Annexure R-6(c) dated 7.6.2004 submitting that he is suffering from serious backbone ache and the doctor has advised him not to undertake any long journey. Therefore he is not in a position to move on transfer due to health condition and is ready to forego his promotion for three months so that his name can be considered for promotion at NAD, Alwaye, in Sept.2004. In the given circumstances, his case was considered and the promotion was made and he was placed at Alwaye whereas the applicant who has got only few months more for retirement, suffereing from more grave illness and given up promotion twice in earlier occasion, was placed at Visakhapatnam. Whether this act on the part of the respondents is faulted or



not. It is brought to our notice that a transfer during mid academic term in the absence of urgency is not proper. This is reported in Director of School Education Vs.O.Karuppa Thevan 1996 (1) SLR SC 225. It is argued by both parties that this is not transfer but transfer on promotion and it is argued on the respondents side that in that case the persons who refuses transfer will have an embargo for one year. Having perused the records and given due consideration to the facts, we are of the view that the applicant never refused his transfer but only requested to reconsider and deferment of the same. The 6th respondent filed a representation requesting for deferment for three months and promotion and retention at Alwaye. This is not in conformity with the Annexure A-5 Rules. If that treatment is given to the 6th respondent the applicant is also entitled to get the same. We are not happy with the way in which the applicant who is to retire on Feb.2005 (few months more in service) has been posted to Viskhapatnam without considering his personal inconvenience, ailment and other adverse circumstances. This is clearly brought from a situation where he had refused promotion twice. The respondents should have given due consideration to this aspect and should have accommodated the applicant in and around Alwaye.

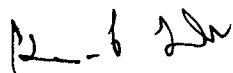
6. In the conspectus of the facts and circumstances, we are of the considered view that Annexure A-1 order transferring the applicant from Alwaye to Visakhapatnam even on promotion at the fag end of his career is not in good spirit of law and, therefore, Annexure A-1 order so far as the applicant's posting



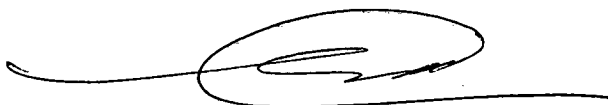
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to Visakhapatnam is concerned, is set aside with a direction to reconsider and adjust him to be posted at Alwaye. The O.A. is disposed of accordingly. In the circumstances no order as to costs.

(Dated, the 29th day of October, 2004)



**H.P.DAS**  
**ADMINISTRATIVE MEMBER**



**K.V.SACHIDANANDAN**  
**JUDICIAL MEMBER**

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