

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.569/2000

Tuesday this the 25th day of July, 2000

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K.P.Prethulan,
S/o P.K.Padmanabhan,
aged 44 years, working as Senior Auditor,
A/C No.8315630, Office of D.P.D.O>
Pathanamthitta.Applicant

(By Advocate Mr. N.Unnikrishnan)

Vs.

1. The Controller General of Defence Accounts,
New Delhi.
2. The Controller of Defence Accounts,
506, Anna Salai, Teynampet,
Chennai.18.
3. The Assistant Controller of Defence Accounts,
Zonal Office, (D.P.O), Poojappura,
Thiruvannthapuram.12.
4. The Defence Pension Disbursing Officer,
Pathanamthitta.45.
5. The Assistant Controller Defence
Account-in-charge, Pay and Accounts Officer
(ORS) Defence Security Core,
Cannanore.
6. Union of India rep. by Secretary
Ministry of Defence, New Delhi.Respondents

(By Advocate Ms. P.Vani, ACGSC)

The application having been heard on 25.7.2000, the Tribunal
on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant a Senior Auditor in the Office of the
Defence Pension Disbursing Officer (DPDO for short)
Pathanamthitta is aggrieved that though he has been asked to

furnish three choice stations for his transfer and he complied with the direction by indicating Kottayam, Quilon and Thiruvananthapuram as the choice stations, he has now been transferred to Kannur although there were vacancies in Thiruvananthapuram and Kottayam and though persons who had longer stay than him at Pathanamthitta are retained.

2. The undisputed facts of the case are as follows. In February, 1999 the applicant requested that he might be retained at Pathanamthitta and not transferred as he contemplated applying for voluntary retirement. Taking note of the fact the order of transfer was noted immediately issued in his case. But in June he sent another letter stating that he has not decided about the voluntary retirement and requesting for some more time. In July, 1999 he sent another representation stating that his wife had sustained injuries in two accidents, his children are studying and that he may be allowed to continue at Pathanamthitta till the end of the academic session. The request made in the letter dated 8.7.99 was not acceded to and the applicant was asked to mention three choice stations. The applicant accordingly mentioned three choice stations in his letter (Annexure.A4) indicating the choice stations as Kottayam, Thiruvananthapuram and Quilon and also stating that he was willing to go on transfer on State expenses. The applicant was transferred to Kannur by Annexure.A5 order dated 26.11.99. Thereafter considering his request for retention at Pathanamthitta till the end of

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the academic year an order dated 8.2.2000 was issued (Annexure.A7) deferring his relief till 31.5.2000 and directing his relief positively on 31.5.2000 afternoon with a direction to report to PAO, Kannur. The applicant is aggrieved of not giving him posting in any of the three choice stations and sending him to Kannur while persons senior to him in the station are retained at Pathanamthitta. The applicant has, therefore, filed this application to have the impugned order dated 26.11.99 (A5) set aside and for a direction that he may be posted to one of the choice stations mentioned in A4 representation.

3. The respondents in their reply statement have contended that there were no vacancies at the choice stations and the applicant has been posted to Kannur where there is a vacancy. Referring to the averments in the application that persons with longer length of service are retained, it has been contended that as they are above 54 years of age as per the transfer policy, they are not being shifted out. As the order in question is a routine administrative order issued bonafide, the respondents contend that the Tribunal may not interfere.

4. The applicant in his rejoinder has given certain details regarding the vacancies and has stated that even after the impugned order was issued one C.R.Prabhakaran and Smt.Santhamma have transferred to the choice stations indicated by them and therefore, the impugned order is unsustainable.

5. We have heard the learned counsel for the parties and have gone through the materials placed on record. Before entering into a discussion of the merits of the case we would like to mention that the position is well settled by now that transfer being an incident of service an officer holding a transferable post has no right to claim that he should be posted in a particular place or on a particular post. It has also to be mentioned that the Apex Court in a catena of rulings have held that judicial intervention in routine administrative matters like transfer can be justified only in cases where there is malafides or colourable exercise of power or infraction of statutory rules. It has also to be mentioned that courts and Tribunals have been forewarned by the Apex Court in a number of rulings that they are not to sit as appellate bodies to determine the correctness of the routine administrative orders like that of transfer. Bearing in mind these principles enunciated in various rulings of the Apex Court, we will deal with the present case.

6. It has to be stated at the outset that the applicant has not made any allegation of malafides against the authority who issued the impugned order of transfer. The sole case of the applicant appears to be that since he has indicated three choice stations, he should have been posted in one of the three stations and that he could not have been transferred when persons with longer stay in the station are retained. Just because the applicant has indicated three choice stations there is no compulsion on the competent

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authority to post the applicant in a choice station only. If the competent authority takes a decision to post an employee to a place not chosen by him taking into consideration the relevant facts unless the decision is patently malafide or against the provisions of the rules, Courts and Tribunals will not be interfered. We are not impressed with the averments made in the rejoinder that during the various years some persons have been transferred out and some have been transferred in and that there may be still vacancies to accommodate the applicant in his choice stations. It is not the duty of the Tribunal to go into such arithmetic calculation of vacancy position. It is the realm of the administration because we are not sitting as an appellate forum. The scope of judicial review is only to see whether the decision making power is vitiated or not.

7. Learned counsel of the applicant referred us to the ruling of the Apex Court in *V.Varada Rao Vs. State of Karnataka* reported in AIR 1986 SC 1955 especially to the following observations:

It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best judge to decide how to distribute and utilise the services of its employees. However, this power must be exercised honestly, bonafide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to malafide and colourable exercise of power.

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Frequent transfers, without sufficient reasons to justify such transfers, cannot but be held as malafide. A transfer is malafide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose than is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration that even administrative actions should be just and fair.

The observation that transfer is also an implied condition of service is just an observation in passing. It certainly cannot be relied upon in support of the contention that an order of transfer ipso facto varies to the disadvantage of a Government servant, any of his conditions of service making the impugned order appealable under Rule 19(1)(a) of the Rules."

He argued that as in this case the action of the respondents transferring the applicant to Kannur is not bonafide and therefore malafide has to be presumed. A mere reading of the observations made by the Apex Court would show that only under circumstances mentioned therein intervention is called for. The facts of this case does not present a situation which calls for interference by the Tribunal.

8. The respondents have been very considerate to the applicant. Acceding to his request for deferment of transfer on the ground that he was contemplating voluntary retirement, the applicant was not transferred in the first half of 1999. Again acceding to the request made by the applicant that his transfer may be deferred till the end of the academic year respondents deferred the same till 31.5.2000. If the applicant wishes to continue throughout his service at Pathanamthitta itself or to go only to his choice station, it may not be possible for the administration to accede to such requests.

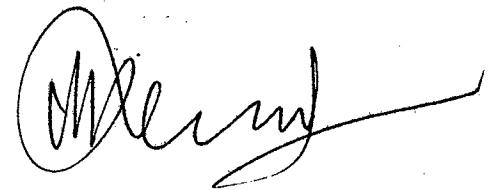
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9. In the light of what stated above, we do not find any merit in this application and therefore, we dismiss the same leaving the parties to bear their own costs.

Dated this the 25th day of July, 2000



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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List of annexures referred to:

Annexure.A4:True copy of letter dated nil submitted by the applicant.

Annexure.A5:True copy of letter No.AN/4/104/PTA dated 26.11.1999 issued by the second respondent.

Annexure.A7:True copy of letter No.ZO(DPD)/TVM1106/Tfr. dated 8.2.2000 issued by the third respondent.

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