

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 601 OF 2009

.....*FRIDAY*....., this the ^{30th} day of ~~October~~, 2009.

CORAM:

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

1. P.G. Xavier,
Assistant Accounts Officer (Adhoc),
AG (A&E) Office, Kottayam,
Residing at: "PAVANA" House,
Janatha Road, Vyttila, Ernakulam Dist.
2. A.P. Indira,
Senior Accountant, AG (A&E) Office,
Kottayam, Residing at: Matteplackal
House, Door No. 43/286-C,
Citizen Cross Road, Ayyappankavu,
Ernakulam North P.O., Kochi-18.
3. R.T. Revindran,
Senior Accountant, AG (A&E) Office,
Kottayam, Residing at:
Randuthengumthara House,
Kumbalanghy South P.O., Kochi-7. ... Applicants

(By Advocate Mr. T.C.G. Swamy)

versus

1. Accountant General (A&E),
Kerala, Trivandrum.
2. Alias O.P., Accountant,
Office of the Accountant General (A&E),
Kerala, Trivandrum.
3. John P.A., Accountant,
Office of the Accountant General (A&E),
Kerala, Trivandrum.
4. Udayavarma K.K., Accountant,
Office of the Accountant General (A&E),
Kerala, Trivandrum. ... Respondents

(By Advocate Mr. P. Nandakumar (R1)
Advocate Mr. P.K. Madhusoodhanan (R2-4))

The application having been heard on 29.10.2009, the Tribunal
on 30-10-09 delivered the following:

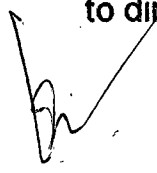


ORDER**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER**

The applicants, as early as in 1986, applied for transfer to Ernakulam, and as per the list of volunteers for transfer, vide Annexure A-2 to A-4, their names promptly figure in. The details of their seniority and date of application as per the latest position, as contained in Annexure A-4 are as under:-

"Applicant No. 1 (Ad hoc SO) : SI No. 12 Date of application: 09-09-1986
Applicant No. 2 (Sr. Accountant): SI No. 13 Date of application: 22-09-1986
Applicant No. 3 (Sr. Accountant): SI No. 15 Date of application: 08-10-1986"

2. All the three applicants who had been posted to Kottayam, still continue there. According to the applicants, as those seniors to them in the list of volunteers are not interested for posting at Ernakulam, for all practical purposes, in respect of Ernakulam, they are the senior most (of course between the second and the third applicant, there is one individual). Three Posts of Ad hoc A.A.O. and one post of Sr. Accountant are vacant at present at Ernakulam and the applicants are sanguinely hoping to be posted there. However, to their shock and surprise, the impugned order posting the three private respondents has been issued posting them to Ernakulam vide Annexure A1, which would reduce the chances of their transfer to Ernakulam and hence this O.A. for quashing of the impugned Annexure A-1 order and for a declaration that the applicants are entitled to be considered and transferred to Ernakulam Bench office against the existing vacancies of Assistant Accounts Officers/Senior Accountants in preference to respondents 2 to 4 and to direct the respondents to act accordingly.




3. Both Private respondents and the official respondents have contested the O.A. According to the official respondents, the three private respondents who originally were appointed at Ernakulam were, on their promotion as Accountants, posted to Trivandrum against casual temporary posts to complete the task of revision of pension under the One Rank one Pension (OROP) scheme. Annexure A-5 order dated 28-05-2008 refers. The posts of Clerks/Typists left by them at Ernakulam were kept unfilled and transfer order was issued vide impugned order dated 17-08-2009 for their transfer to Ernakulam. The official respondents have referred to the decisions of the Apex Court in the case of *Shilpi Bose vs. State of Bihar 1991 Supp (2) SCC 659* and *State of UP vs. Gobardhan Lal (2004, AIR SCW 2082)*.

4. Private respondents filed their version stating that by their posting from Trivandrum to Ernakulam, no prejudice could be caused to the applicants, as the applicants are all holding higher scale of pay and higher posts. Thus, they cannot be posted in the place of the applicants.

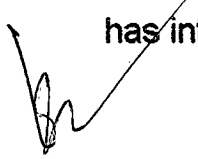
5. Applicant has filed his rejoinder in which he has annexed a copy of the Statement of Asst. Solicitor General, wherein certain averments have been made, which would go in favour of the applicants.

6. Initially, a stay of the impugned order was issued in so far as it related to the posting of the private respondents to Ernakulam and the same still operates.

7. Counsel for the applicant submitted that the posting of the private respondents from Trivandrum to Ernakulam has thoroughly prejudiced the



chances of the posting of the applicants to Ernakulam, who have been waiting for their turn for more than a score of years, undergoing innumerable inconveniences in their domestic front. As the promotion of these private respondents was on regular basis, in case they wanted their transfer to Ernakulam, they should have applied for the same, as did the applicants, and should wait for their turn. Instead, their posting as Accountants at Ernakulam amounts to affording them of undue benefits, at the cost of the applicants' chance of transfer to Ernakulam. In fact, the contention of the respondents that the posts vacated by the private respondents prior to their promotion as Accountants have been kept vacant so that on their posting back, these individuals could be accommodated, is not the reason for keeping the said posts unfilled, as there existing a ban for direct recruitment, keeping the posts vacant became inevitable. Further, the private respondents who are holding higher post than the vacant posts of Clerk/Typists, cannot be accommodated against them, as the same would invite audit objection at the time of payment of salary to them. As such, necessarily these private respondents would be accommodated against the higher posts only, which means that the applicants cannot be getting their transfer against the posts of A.A.O./Sr. Accountant. Hence, the impugned order is illegal, and violative of the equality clauses of the Constitution. Counsel for the applicants also narrated the domestic situation of the three applicants to hammer home the point that they should be transferred to Ernakulam at the earliest. Counsel for the applicants referred to, in this regard, the observation of the Apex Court in the case **B. Varadha Rao vs State of Karnataka (1986) 4 SCC 131** and another decision of the High Court of Kerala reported in **1999 (1) KLT 191**. In **B. Varadha Rao (supra)** the Apex Court has inter alia observed as under:-

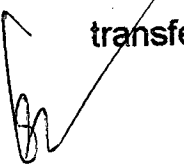


"6. One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralisation. It therefore follows that the policy of transfer should be reasonable and fair and should apply to everybody equally. (Emphasis supplied)."

8. Counsel for the official respondents submitted that the posts vacant at Ernakulam are of higher posts, and the applicants cannot be accommodated against them. There can be interchangeability of responsibilities/duties but not the posts as such, as contended by the counsel for the applicant.

9. Counsel for the private respondents has contended that the impugned order does not reflect that the private respondents are adjusted against any particular posts. The pay scales would show that the applicants are holding higher posts and they cannot hold the posts of Accountants. Hence, their claim is independent of the posting, as accountants, of the private respondents. Thus, in no way, does the impugned order reduce the chance of transfer of the applicants.

10. Arguments were heard and documents perused. A perusal of Annexures A-2 to 4 would go to show that the respondents are meticulously following the list of volunteers for transfer to their choice station and the three applicants have registered their names as early in 1986 and they were at present first, second and fourth in the list, as all those who had registered prior to them had either already been accommodated or are not aspirants for transfer to Ernakulam. As such, it is understandable that the applicants were



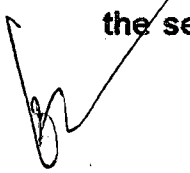
sanguinely hoping that their turn would come soon and their hope increased when there are four vacancies at present at Ernakulam.

11. And in so far as the private respondents are concerned, they were promoted and posted for a year plus at Trivandrum for a specific work and have been posted back as Accountants to Ernakulam. Their's transfer is not a request transfer.

12. Now the question is whether there is any vested right of the applicants that have been hampered by issue of the impugned order.


13. Applicants have contended in Ground A that Annexure A-1 is violative of equality clauses enshrined in Art. 14 and 16 of the Constitution of India. This contention would hold good, if the private respondents figured in the list of volunteers and if their posting to Ernakulam is overlooking the seniority of the applicants. That is not the case here. However, the counsel for the applicant argued that in fact, on their promotion and posting at Trivandrum, if the private respondents wanted their transfer back to Ernakulam, then they should first apply and get enlisted in the list of volunteers and then have to wait for their turn. But their transfer is not at their request. Nor are the respondents lack the power and authority to transfer their employees. Thus, this point cannot hold good.

14. In the rejoinder, the applicant has annexed a copy of the counsel statement of the respondents, wherein it has been averred, "The duties of Clerk/Typists, Accountants and senior accountants are interchangeable and" therefore, whenever a post in a branch office is required to be filled, normally the senior most in the list of volunteers irrespective of the cadre to which he



belongs is considered for transfer." This has not been rebutted by the respondents. Of course, not much of time was available for them, as a copy of the said rejoinder has been served only before filing on 29th October, 2009. Nevertheless, there could be less possibilities of respondents rebutting the same as the tenor of the counter filed by them in this case also would go to show that the applicants who were earlier working as Clerks/Typists have on their specific function at Trivandrum been over, have been brought back to Ernakulam and the posts left by them were kept vacant. Impliedly it meant that the accommodation of the private respondents is against the said posts of Clerks/Typists. In that event, the other posts i.e. posts vacated by the three A.A.Os and one Senior Accountant are available in tact and if the respondents are keen to fill up the same they could well fill the posts from the list of volunteers strictly on the basis of seniority. In that event, there is no question of the private respondents' posting at Ernakulam coming in the way of the applicants' chances of transfer. Thus viewed from any point of view, the posting of the respondents to Ernakulam can be stated to have reduced the chance of transfer of the Applicants.

15. At the same time, a caution should be administered that if for any reason, the posting to Ernakulam of the private respondents against the posts of A.A.O./Sr. Accountant, same would belie the averment of the respondents vide para 5, wherein they have stated, "The transfer of respondents 2 to 4 back to their parent offices on completion of the temporary and specific work assigned to them has nothing to do with the transfer of officials waiting in the list of volunteers and do not infringe the rights of the applicants, in any manner." Thus, adjustment of the private respondents against these posts cannot be permitted.




16. But if the respondents do not fill up the posts of A.A.O./Sr. Accountant, for any plausible reason, the applicants cannot have any grievance, as it is purely the discretion of the respondents to fill up the posts or keep them vacant. The claim of the applicants would crystallize only in case the respondents have decided to fill up the posts of A.A.O./Sr. Accountant, from the list ignoring the seniority of the applicants. Thus, if the respondents are to fill up the vacant posts, the same should be only from the list of volunteers.

17. In view of the above discussion, the impugned orders cannot be quashed or set aside. The interim order is vacated. Respondents shall, however, abide by the observations in the preceding paragraph in regard to filling up of the vacant posts of A.A.Os/Sr. Accountants.

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

(Dated, the 30th October, 2009.)


Dr. K.B.S. RAJAN
JUDICIAL MEMBER

rkr