

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHO.A No. 88 / 2010Friday, this the 19th day of February, 2010.

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HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE MR K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

L.Ramesh,
Working as Tax Assistant (on deputation),
Custom House, Willington Island, Kochi-09.Applicant

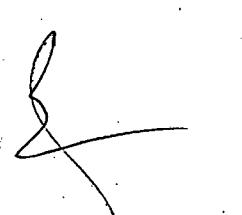
(By Advocate Mr O.V.Radhakrishnan, Senior with Shri K Ramachandran)

v.

1. Commissioner of Customs,
Customs House, Cochin-9.
2. Commissioner of Customs(General),
New Custom House, Ballard Estate,
Mumbai-400 001.
3. Chief Commissioner of Customs & Central Excise,
Kerala Zone, Central Revenue Building,
I.S.Press Road, Cochin-682 018.
4. Chairman,
Central Board of Excise & Customs,
North Block, New Delhi.
5. Union of India,
represented by Secretary,
Department of Revenue,
Ministry of Finance, New Delhi.Respondents

(By Advocate Mr. George Joseph, ACGSC)

This application having been finally heard on 19.2.2010, the Tribunal on the same day delivered the following:


ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

In this O.A the applicant is seeking a direction to the respondents to implement their instructions regarding Inter Commissionerate Transfer (ICT for short) contained in the Annexure A-5 letter No.A-22015/19/2006-Ad.III.A dated 27.3.2009 of respondent No.5, namely, Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, New Delhi in his favour.

2. Brief facts of the case: The applicant, a native of Cherthala District of Kerala, was initially appointed as a Lower Division Clerk as a direct recruitment under the control of Commissionerate of Customs, Mumbai with effect from 15.10.1998. He was later promoted to the post of Tax Assistant with effect from 22.12.2003. He submitted an application for ICT to Cochin Customs House on 8.1.2004. However, his request was not accepted in view of the instructions issued later vide Annexure A-2 letter No.A.22015/3/2004-Ad.IIIA dated 19.2.2004 withdrawing the facilities ICT enjoyed by the Group B, C or D employees. However, in exceptional circumstances, employees were allowed to go on deputation without any allowance, to other commissionerate for a period of 3 years extendable by one more year on the orders of the Commissioner and another one more year on the orders of Chief Commissioners concerned. In terms of the aforesaid instructions of the 5th respondent, the applicant, vide Annexure A-3 letter dated 25.2.2005, was transferred Commissionerate of Customs, Mumbai to the Chief Commissioner of Customs, Cochin and he joined there for a period of 3 years with effect from 28.2.2005. His said deputation period was extended by one year by the Annexure A-4 i.e. upto 24.2.2009 and again for one more year i.e. upto 24.2.2010. During his deputation period itself, vide Annexure A-5 letter No.A.22015/19/2006-Ad.IIIA dated 27.3.2009, the 5th respondent relaxed ban on ICT issued vide Annexure A-2 letter dated



19.2.2004 and exempted the cases covered by the Department of Personnel O.M.No.28034/7(86-Estt(A)) dated 3.4.1986 as amended by their subsequent O.M. dated 12.6.1997 and 23.8.2004 which provide that "*a husband and wife are, as far as possible and within the constraints of administrative convenience, posted at the same station.*" Accordingly, the respondents have decided to permit ICT to Group B, C and D officers subject to the following conditions:

"a) The transfer/change of cadre shall be permissible only in cases where the spouse is employed with either the Central Government or a State Government or a Public Sector Undertaking of the Central government/a State Government.

b) The option for change of cadre must be exercised within six months of the initial appointment of the officer, if the officer is married at the time of such initial appointment. In case of marriage taking place subsequent to the initial appointment, the option must be exercised within six months of the marriage. Further, as far as the past cases are concerned, the option must be exercised within six months of the issue of these instructions."

Having fulfilled the aforesaid conditions, the applicant made the Annexure A-8 representation dated 22.4.2009 to the 1st respondent for ICT on spouse ground to Customs House, Cochin under the 2nd respondent. After due consideration of his representation the appointing authority of the applicant, i.e. the Additional Commissioner of Customs, Personnel & Establishment has conveyed the 'No Objection' for his ICT to Cochin Commissionerate after obtaining approval of the Chief Commissioner of Customs, Mumbai (Annexure A-10). The applicant has submitted that the Cochin Commissionerate should not have any objection in accepting his transfer as 32 out of 51 posts of Tax Assistants were lying vacant. However, his request for ICT was not materialised as 3 other Tax Assistants in the Cochin Commissionerate had filed O.A.650/2009 before this Tribunal to quash the Annexure A-5 dated 27.3.2009 to the extent it allow ICT without loss of seniority against promotion quota and for other consequential reliefs. This Tribunal had initially stayed the aforesaid letter vide its order dated 24.9.2009. Thereafter the applicant has impleaded himself in the aforesaid O.A vide



M.A.977/2009 and sought a direction to vacate the interim order. After considering the matter, this Tribunal modified the said interim order vide its order dated 7.12.2009 to the effect that the respondents are at liberty to issue transfer orders provisionally subject to the out of the O.A. Thereafter, the applicant submitted Annexure A-14 representation dated 9.12.2009 followed by Annexure A-15 reminder dated 24.12.2009. Since the applicant's present deputation period was expiring on 24.12.2010 he has approached this O.A seeking a direction to be issued to the respondents 1 to 3 to give effect to the ICT of the applicant to Cochin Commissionerate on spouse ground.

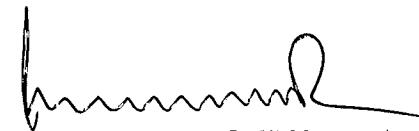
4. The respondents in their reply have accepted that the Additional Commissioner of Customs (P&E), Mumbai vide letter NoS/05-496/2004 Estt dated 12.8.2009 informed that their office has 'No Objection' to the transfer of the applicant to Cochin Commissionerate subject to the availability of post at their end and acceptance by Cochin Commissionerate. They have also admitted those submissions of the applicant regarding availability of posts in the cadre of Tax Assistants as on 1.9.2009. The other submission of the applicant regarding the status of O.A.650/2009 has also been confirmed by the respondents in their reply.

5. We have heard Shri O.V.Radhakrishnan, Senior counsel appearing on behalf of the applicant and Shri George Joseph, ACGSC for respondents. There is no dispute between the 2 commissionerates of customs, viz, Commissioner of Customs, Cochin and Chief Commissioner of Customs, Mumbai regarding the ICT of the applicant on spouse ground. As understood from the averments made by the respondents also, vacant posts of Tax Assistants are available in the Cochin Commissionerate to accommodate the applicant's request for transfer.

Even though this Tribunal stayed the operation of Annexure A-1 order in O.A.650/2009 dated 27.3.2009 the same was modified vide a subsequent order dated 7.12.2009. The issue involved in O.A.650/2009 is regarding the seniority of the inter commissionate transferees i.e. whether they have to be given bottom seniority in the Commissionate where they are accepted or they should retain the original seniority which they were having at their original commissionate. This issue has to be considered in due course after hearing the parties in O.A.650/2009 and connected cases. However, since both the commissionates have agreed for the implementation of Annexure A-5 regarding ICT on spouse ground, we allow this O.A making it clear that the applicant's inter se seniority in the Cochin Commissionate is yet to be decided. As the Applicant's present tenure of deputation is expiring on 24.2.2010, the respondents shall effect the transfer of the applicant to the Cochin Commissionate as early as possible. There shall be no order as to costs.



K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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