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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.12/11

Tuesday this the 12th day of April 2011

C O R A M :

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

V.Prakash,
S/o.Velayudhan,
Watchman, Army Recruiting Office, Trivandrum.
Residing at Ambika Bhavan, T.C.19/1431(3),
Thamalam, Poojappura, Trivandrum.

...Applicant

(By Advocate Mr.M.R.Sudheendran)

V e r s u s

1. Union of India
represented by the Secretary to Government,
Ministry of Defence, New Delhi.
2. The Deputy Director General Recruiting (States),
HQ Recruiting Zone, 148, K.M.Cariappa Road,
Bangalore – 900 493, C/o.56 APO.
3. The Director Recruiting,
Army Recruiting Office,
Trivandrum – 695 006. ...Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC)

This application having been heard on 12th April 2011 this Tribunal on the same day delivered the following :-

O R D E R

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is a Watchman working with the 3rd respondent, namely, the Director Recruiting, Army Recruiting Office, Trivandrum. Vide Annexure R-1 order dated 27.10.2010 he was transferred to HQ, Rtg Zone, Bangalore. Against the said transfer order, he made the Annexure A-3 representation dated 2.11.2010 through proper channel seeking

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cancellation of the same on various ground. However, vide Annexure A-4 order dated 25.11.2010 the respondents have informed the applicant that his representation for cancellation of the posting order has not been agreed to by the 2nd respondent and he was directed to move and complete the transfer process by 10.1.2011. Since the respondents have not agreed to the cancellation of the posting order, he immediately submitted the Annexure A-5 application dated 1.1.2011 seeking voluntary retirement by giving them 90 days notice with the request to relieve him from service by 31.3.2011.

2. In the above background, he has filed this OA seeking a direction to the respondents to quash the aforesaid posting order dated 27.10.2010 or to direct them to consider his application for voluntary retirement alternatively and to retain him in the present station at Trivandrum pending decision in the matter.

3. When the matter came up for consideration before this Tribunal on 6.1.2011, it was observed that generally the civilian employees in the Group D cadre are not subjected to transfer even within the State. It was also observed that eversince his transfer from NSD Naval Base, Kochi on 1.5.1990, he has been continuously working in the same office for the past two decades and in the absence of any guidelines for transfer it was inferred that no rotational transfer has been prescribed in the case of Group D staff. While issuing notices to the respondents and admitting this case, an interim order was also passed staying the transfer order till the disposal of the OA.

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3. The contention of the counsel for the applicant is that in terms of Rule 48-A of the CCS (Pension) Rules, 1972, after 90 days of notice for voluntary retirement one is deemed to have been retired voluntary from service. The said rule reads as under :-

.....The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the Appointing Authority :

Provided that where the Appointing Authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

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4. We have heard the counsel for the parties. The applicant is only a Watchman. He is not interested to serve the department at Bangalore where he is transferred in terms of the order dated 27.10.2010 for personal reasons. He has, therefore, sought voluntary retirement from service as provided under Rule 48-A of the CCS (Pension) Rules as aforesaid stated.

5. Counsel for the respondents has submitted that even though the applicant was transferred on 27.10.2010 he has made a request for voluntary retirement only on 1.1.2011 when he came to know that his request for transfer was rejected. He has, therefore, submitted that the applicant's request for voluntary retirement is a conditional one and it cannot be accepted. He has further submitted that the applicant should obey the order of the respondents and join at Bangalore at the earliest. Further, he has submitted that the transfer of the applicant is not an isolated case and so many Watchmen was transferred along with him in the exigencies of service.

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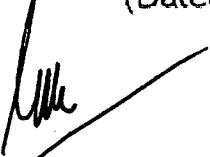
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6. The fact of the matter is that the applicant is only a Watchman belonging to Trivandrum. He is not prepared to work at Bangalore where he is posted. In our considered view the respondents cannot compel the applicant to work, particularly, in view of the right of an employee as provided under Rule 48-A of the Pension Rules (supra).

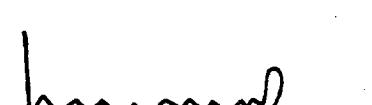
7. In view of the above, we direct that the respondents shall admit the applicant into voluntary retirement at the earliest as the applicant is deemed to have retired from service on the expiry of 90 days notice period ie. 31.3.2011. Since the applicant was not relieved and he continued to work on the strength of the interim order, his voluntary retirement shall be effective from today ie. 12.4.2011 (A/N). Counsel for the parties have undertaken to inform this order telephonically to the applicant and the respondents. It goes without saying that the retirement benefits of the applicant shall be reimbursed to him at the earliest.

8. With the aforesaid direction, the OA is allowed. There shall be no order as to costs.

(Dated this the 12th day of April 2011)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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