

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.126/05

Wednesday this the 19th day of October 2005

C O R A M :

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

Narayanan Edacherry,
Clerk A/c. No.8332711,
Pay Account Office (other ranks),
Defence Security Corps,
Mill Road, Kannoor – 13.

...Applicant

(By Advocate Mr.V.Ajith Narayanan)

Versus

1. Union of India represented by its Secretary,
Ministry of Defence, New Delhi.
2. The Controller General of Defence Accounts,
R.K.Puram, New Delhi.
3. The Deputy Controller General of Defence Accounts,
(Administration), R.K.Puram, New Delhi.
4. The Controller of Defence Accounts,
Annassalai, Teynampet, Chennai – 18.
5. The Assistant Controller of Defence Accounts (in charge),
Pay & Account Office (other ranks),
Defence Security Corps,
Mill Road, Kannoor – 13.

...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

ORDER

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

The applicant is presently working as Clerk (A/c. No.8332711), Pay Account Office (other ranks), Defence Security Corps, Mill Road, Kannoor under the respondents 1 to 5. From 6.8.1969 to 31.3.1994 (25 years) the applicant had worked as a competent Subedar Clerk in the Indian Army and he had served in different stations like Sikkim, Nagaland, Delhi, Pune,



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Ahmedabad, Bangalore etc. After getting voluntary retirement, the applicant was re-employed as a Clerk in the Ministry of Law and Justice and worked at Delhi and Chennai for a total period of four years. While so, the applicant opted for an inter departmental transfer from the Ministry of Law & Justice to the Defence Accounts Department coming under the Ministry of Defence. The reason for opting the said inter departmental transfer by the applicant itself was to reach a place nearer to his home and which was even by loosing seniority, increments etc. in connection with his four years service under the Ministry of Law & Justice. The permanent residence of the applicant is at Udinoor in Trikkarippur, Kasaragod District i.e. about 40 kms away from his present place of work and he is attending the office by travelling from his house regularly. Annexure A-1 is the appointment order. From the terms and conditions at Sl.No.1 in Annexure A-1 appointment order it is very clear that the Defence Accounts Department Rules (DAD Rules) are applicable to the applicant as that of all other candidates and the applicant will not in any way be treated in a different manner by stamping him as an inter departmental transferee. The applicant have two daughters. The 1st daughter is married and his 2nd daughter is a II year M.Sc student so the applicant's physical presence in his house is highly necessary. Clause 370 of the transfer policy of the Defence Accounts Department says that the station seniority should be the one and only criterion for conducting transfer from the stations like Kannoor. Clauses 373, 374, 375 and 376 are the exemption clauses from transfer and clause 373 says that the candidates of 54 years of age should be exempted from transfer. Clause 375 says that candidates or whose relatives are suffering from ailments should be exempted from transfer. The applicant is of 54 years of age and as per the clause he is exempted



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from transfer. Apart from that the applicant is suffering from diabetics and "Santhivadam" and on the basis of clause 375 in DAD Office Manual also he is entitled to get exemption from transfer. However the 5th respondent transferred the applicant from PAO (ORS) DSC, Kannoor to CDA (Funds) Meerut (place which is more than 2400 kms away from Kannoor) by stating that he is a candidate who entered into service by getting inter departmental transfer from another Ministry and he completed three years at Kannoor is not justified. No alert message was issued nor any choice station was asked even though which are mandatory. The applicant has filed a detailed representation on 28.12.2004 which is still not disposed of. Aggrieved by the said transfer order he has filed this O.A seeking the following reliefs :-

1. To set aside Annexures A-2, A-7, A-9 & A-10 and all other actions pursuant to them.
2. To direct the respondents to retain the applicant as Clerk in Pay Account Office (other ranks), Defence Security Corps, Mill Road, Kannoor – 13.
3. To issue such other reliefs as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. The respondents have filed a detailed reply statement denying that the terms of appointment of the applicant was as per Annexure A-1. The applicant was appointed as a Clerk in the Defence Accounts Department with effect from 15.3.1999 as a fresh entrant on transfer basis in relaxation of Defence Accounts Department Recruitment Rules applicable to Group C & D posts. As per the terms and conditions of appointment specified under Sl.No.1, it was made clear that posting of the applicant at Kerala



(PAO DSC, Kannur) cannot be ensured for an indefinite period. The specific proviso relating to liability for transfer to any station in India including field service in and out of India as per the DAD Recruitment Rules is made applicable. This does not mean that the applicant is to be treated on par with the regular employees in so far as transfers are concerned. The department has kept him at Kannur for more than five years. The transfer policy mentioned in the OM Part I of the Defence Account Department serve as guidelines to be followed to the extent administratively feasible and are not statutory Rules. In the case of the applicant the transfer order issued is based on overriding public interest. Because of the Government policy of ban on Recruitment for filling up of retirement vacancies, the department is facing a huge shortage of about 24% in the clerical grade throughout the country. To tide over the shortage and considering the need to effectively discharge the requirement of Armed Force Service by providing required manpower, the department is forced to transfer personnel from stations having comfortable staff position to stations where staff shortage adversely affects work output. Therefore a policy has been evolved to transfer such employees who were posted to the Defence Accounts Department from other Departments with specific conditions of appointment. All those fresh entrants on transfer basis from other departments including the applicant were initially posted to the stations of their choice which is not the case with regular appointees, who stand posted, on initial appointment, to station where vacancy exists. They have no choice of place of posting unlike the IDT, like the applicant, who are posted to their choice station/states. Para 373 of OM Part I states that the persons above 54 years of age will not normally be subjected to transfers. This provision do not act as a shield against transfer of persons

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above 54 years of age. Furthermore this does not take into account that the retirement age from Government service has since been raised to 60 years of age. The decision to transfer the applicant is not on station seniority basis where different criterias are applied. The station seniors are transferred to accommodate the request of employees serving in other stations so that everyone is given an equal chance to serve in the stations of their choice. The vacancies pointed out by the applicant have no bearing since the decision to transfer the applicant to a station which has more staff shortage i.e., Meerut is taken administratively in public interest as per specific terms of appointment applicable to him. The provisions of OM Part I which are only general guidelines do not apply in such similar cases. His transfer is ordered as per specific conditions of his appointment. The medical condition cited by the applicant was also considered but in the opinion of the competent authority, the same is not of a nature which would warrant cancellation of transfer. Moreover he has been posted to Meerut which has reasonable medical facilities. The applicant has made a representation which was forwarded to the 2nd respondent. The said representation was disposed of as there is no merit. The applicant was transferred only to meet the acute clerical shortage in the Department's office in Meerut. Annexure A-11 order passed by this Tribunal in O.A.521/04 would not apply in the instant case. The vacancy at the PAO DSC Kannur cannot be a reason for the applicant's retention as the transfer is ordered to bridge the staff shortage prevailing in other stations which is more acute in Meerut.

3. The applicant has filed a rejoinder reiterating his contentions in the O.A and emphasised that the D.A.D Office Manual Part I is the one and



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the only authority in the defence service enunciating the policy and guidelines about the service conditions of the defence personnels. The respondents have not produced any other authority replacing D.A.D Office Manual Part I, therefore, it is abide by the said rules and as per the said rules the applicant cannot be disturbed.

4. The respondents have filed an additional reply statement further contending that the provision of Office Manual Part I is not tenable as those provisions act as general guidelines only and they are not statutory rules. The applicant's entry into the Department itself is by way of a special dispensation in relaxation of D.A.D Recruitment Rules. The applicant's transfer was as a result of Administration's strategic planning with the available resources by shuffling staff from one place to another. The applicant's transfer is not on station/state seniority basis but out of administrative necessity in public interest. The applicant also filed an additional rejoinder reiterating his contentions in the O.A and rejoinder.

5. When the matter came up for hearing Shri.V.Ajith Narayanan appeared for the applicant and Shri.T.P.M.Ibrahim Khan,SCGSC appeared for the respondents. Learned counsel took me to various pleadings, material and evidence on record. Counsel for the applicant argued that he has joined at Kannur after 25 years of military service by opting inter departmental transfer loosing his seniority and increments etc. to reach and work in his home station during the rest of his service period. As per the D.A.D Office Manual (Part I) the applicant cannot be considered differently from other employees and from the CGDA Website it could be seen that there are about 13 similarly situated clerks all over India desirous



to reach at the office of the CDA (Funds) Meerut. Having so many people aspiring to go to Meerut depriving their choice the applicant has been picked to be transferred. Learned counsel for the respondents, on the other hand, persuasively argued that the Office Manual Part I mentioned in the O.A is a guideline to be followed to the extent administratively feasible and it is not a statutory rule. Vide Annexure A-2 order the applicant has been transferred from Kannur to Meerut and as per Annexure A-7 he has been directed to relieve. This Court had earlier directed the respondents in its order in OA 33/05 dated 12.1.2005 to consider the pending representation within a time frame. The respondents had complied with the order by disposing of the representation vide Annexure A-9 order. Admittedly the applicant, who had completed 25 years of service, had spent best of his life in all the nooks and corner of the country away from the home and has joined the respondent's department with the hope that he could have a comfortable permanent stay at the native place at the fag end of his life but the abrupt transfer to Meerut has put his life out of gear. At the very outset I am very conscious about the fact that the jurisdiction of this Tribunal in interfering with the transfer matter is very much limited/restricted. The Hon'ble Supreme Court in a catena of decisions as also in the case of National Hydroelectric Power Corporation Ltd. Vs. Shri.Bhagwan & Another (2002 [1] SLJ 86) has laid down the dictum that Court cannot interfere in transfer matters unless it is irregular and against the rules/guidelines. So also, the Hon'ble High Court of Kerala in the case of P Pushpakaran Vs. Chairman, Coir Board, Cochin & Another (1979 [1] SLR 309) has laid down the following dictum on transfer :

The right to transfer an employee is a powerful weapon in the hands of the employer. Sometimes it is more dangerous than other punishments. Recent history bears testimony to this. It may, at times, bear the mask of innocuousness. What is ostensible in a transfer order may not be the real object. Behind the mask of innocence may hide sweet revenge, a desire to get rid of an inconvenient employee or to keep at bay an activist or a stormy petrel. When the Court is alerted, the Court has necessarily to tear the veil of deceptive innocuousness and see what exactly motivated the transfer.

6. Therefore the entire gamut of the case has to be evaluated with the perception that is laid down in the above decisions. The respondents' case is that there is a transfer policy of Defence Account Department mentioned in the Office Manual and only as per the said guidelines the transfer was effected. It is submitted that in the case of the applicant, the transfer order issued is based on overriding public interest. Because of the Government policy of ban on recruitment for filling up of retirement vacancies, the department is facing a huge shortage of about 24% in the clerical grade throughout the country. In some stations, the shortage is as high as 40-50% and in some stations the shortages are meagre. To tide over the shortage and considering the need to effectively discharge the requirement of Armed Force Service by providing required manpower, the department is forced to transfer personnel from stations having comfortable staff position to stations where staff shortage adversely affects work output. Therefore, a policy has been evolved to transfer such employees who were posted to the Defence Accounts Department from other Departments with specific conditions of appointment. All those fresh entrants on 'transfer basis' from other departments including the applicant herein were initially posted to the stations of their choice which is not the case with regular appointees recruited through Staff Selection



Commission/Employment Exchanges etc., who stand posted, on initial appointment, to a station where vacancy exists. They have no choice of place of posting unlike the IDT, like the applicant, who are posted to their choice stations/states. Admittedly there is a transfer policy which is notified in the Defence Accounts Department Office Manual. The specific contention of the respondents is that those provisions act as general guidelines only and they are not statutory rules. The general guidelines are followed to the extent administratively feasible. Learned counsel for the respondents tried to canvass for a position that the authorities are well within their right to deploy employees on administrative ground which is not open to question. I also agree to the proposition canvassed to the extent that guidelines are only general in nature and it is not a statutory rule. But I am also of the view that if a guideline is prescribed and is being followed it should be uniformly applied to all the employees and there should not be any discrimination. Counsel for the respondents contended that the persons who have been posted to Defence Accounts Department from other Departments were given choice stations initially and they cannot be equated with that of the regular employees recruited through Staff Selection Commission/Employment Exchanges. In other words, since the regular employees have no choice place of posting unlike the IDT, like the applicant, they cannot be disturbed. This procedure said to be a policy decision taken by the respondents will lead to a situation where regular employees can never be subjected to any transfer but the employees who came on transfer from other departments like the applicant losing their seniority etc. will at the fag end of his life be thrown pillar to post. The applicant has pointed out large number of employees retained in the same station without any transfer for years together for the mere fact

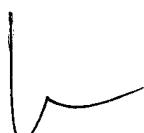


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that they have been recruited through the Staff Selection Commission/Employment Exchanges. This is a very unhealthy situation. Even those who wanted to have transfer from among such category of persons are compulsorily retained at a particular station without any transfer liability. The applicant in the rejoinder also pointed out that there are about 27 vacancies in the very same office itself and two persons have been transferred inter departmentally to Kannur which will show that there is acute shortage of clerical staff in the office where the applicant is working. Therefore I consider that the reason given in the reply statement for transferring the applicant to a far off place is totally irrational and without any grounds. In Annexure A-1 appointment order of the applicant it is made clear that clause (i) of the terms and conditions that the posting of the individual to Kerala cannot be ensured for an indefinite period and the individual would be liable for transfer to any station in India including field service in and out of India as per DAD Rules. Clause 368 of the Annexure A-3 transfer policy is quoted as follows :

The fundamental principles governing the transfers of members of the Department from one office to another are (1) to safeguard the interests of Government and to maintain the efficiency of the service in the highest possible degree. (2) to ensure equality of treatment for all, so far as it is possible to attain this. (3) to make the Section Officers (Accounts) proficient all round in the work of the Department to enable them to occupy pivotal positions, and (4) to meet the convenience and wishes of individuals when there is an opportunity of doing so with the regard to the interests of the service.

7. The clause makes it clear that this policy will ensure equality of treatment for all so far as it is possible. Clause 369 (iv) is quoted as follows :



Individuals due to be posted out of difficult stations will be accommodated at one of three stations of their choice, to be specified by them, to the extent administratively feasible. Selection of staff for manning vacancies a difficult stations will be made from amongst those serving at popular or other stations, with due regard to their stay at the present station(s), their previous service etc.

8. This clause also stipulates the previous service that an employee has put into. Admittedly the applicant has served 24 years in the Army which is not taken into consideration at all. The exemption clause which the applicant relying is clause 373 and clause 375 which are reproduced as follows :

373. Persons above 54 years of age will not normally be subjected to transfer. Such persons if not serving at their home stations or stations of choice, will be repatriated to those stations (if so desired by them) to the extent administratively feasible.

375. In cases where an employee or a member of his family is suffering from serious ailments such as cancer, polio, blindness, mental disease, paralysis etc., Controllers may, at their discretion grant exemption from transfers, provided the disease/disability is certified by the authorised specialist.

9. Clause 378 (ii) declares that those controllers who have all Indian Jurisdiction will endeavour to have a system of zonal transfers for rotation of staff, where it is necessary, according to the principles cited above, so that the staff of certain regions can be rotated within these zones, and they can serve at reasonable distances from their home states. From the above exemption and general clauses it is clear that if a person cross 54 years will not normally subjected to any transfer and also if any of the family member is suffering from serious ailments the employee is exempted from transfer. On the material available on record and medical certificate of age



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of the applicant that has been produced in this case I am fully convinced that the guidelines are not followed in its true spirit. The reasoning given by the respondents in the reply statement in not considering the exemption clause is that the persons above 54 years of age will not normally be subjected to transfers. This provision do not act as a shield against transfer of persons above 54 years of age. Furthermore this does not take into account the reason that the retirement age from Government service has since been raised to 60 years of age. The rule has not changed. Still the 54 years age is prevailing as per the guidelines which is followed by the respondents in many other cases. If that is so, the respondents are estopped from saying that the applicant cannot take shield of that provision. Thus I am of the considered view that until and unless that exemption of 54 years of age is enhanced in tune with the retirement age, the 54 years of age will stand as a rule of the day. The respondents cannot interpret the rule at their whims and fancies. Therefore the transfer of the applicant cannot be said to be made in the true spirit of the guidelines. It also appears that the sickness of the family members was also not given due consideration while transferring the applicant. For all the above reasons I find that there is no administrative necessity as borne out from the record to transfer the applicant alone whereas large number employees were retained in the same station for years together merely stating that they have been selected through Staff Selection Commission/Employment Exchanges. Sufficient vacancies are also available to retain the applicant at Kannur.

10. In the conspectus of facts and circumstances I am of the considered view that the transfer of the applicant is not in the true spirit of the

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guidelines and therefore Annexure A-2, Annexure A-7, Annexure A-9 and Annexure A-10 impugned orders will not stand in its legs. The same are set aside. Respondents are directed to grant proper reliefs to the applicant by retaining him at Kannur since he is entitled for the same as per the guidelines.

11. The O.A is allowed as indicated above. No order as to costs.

(Dated the 19th day of October 2005)



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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