

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.19/2002

Tuesday this the 8th day of July, 2003.

C O R A M

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

1. Denny A.Kaitharan
Senior Accountant
Office of the Accountant General (A&E)
Branch Office,
Kottayam.
2. V.Unnikannan
Senior Accountant
Office of the Accountant General (A&E)
P.B.26, Branch Office,
Thrissur.
3. P.A.Antony Flemmy Mathew
Senior Accountant
Office of the Accountant General (A&E)
G 31, Branch Office,
Thrissur.

: Applicants

[By Advocate MR.M.V.Bose]

Vs.

1. The Accountant General (A&E)
Kerala, Thiruvananthapuram
2. Smt.R.Lola
Section Officer (Adhoc)
P.F.II,
Office of the Accountant General (A&E)
Branch Office,
Ernakulam.
3. K.A.Muraleedharan Nair
Section Officer (Adhoc)
P.F.7,
Office of the Accountant General (A&E)
Branch Office,
Ernakulam
4. Union of India represented by
The Comptroller and Auditor
General of India, New Delhi

: Respondents

[By Advocate Mr.N.Mahesh, ACGSC (R1 & 4)
Mr.O.V.Radhakrishnan, (R 2 & 3)]

The application having been heard on 10.06.2003, the
Tribunal on 08.07.2003 delivered the following :

O R D E R

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

The applicants presently working as Senior Accountants
and Section Officer (Adhoc), are holding inter changeable posts

in the matter of their duties and functions as their work being of the same nature. Therefore, in the case of posting from the list of those who volunteered for posting in a particular station, the seniors in that list are to be given preference to the Station to which they have volunteered for posting. The applicants are entitled to get a posting to their preference station viz., Ernakulam earlier than the juniors, like respondents 2 and 3. But the applicants are discriminated in the matter of postings and transfers as the same was done without adhering to the position assigned in Annexure A-1 list and this action is challenged by the applicants in this Original Application.

2. The first applicant is at present working at Kottayam and second and third applicants are working at Thrissur. Annexure A-I is the copy of list of volunteers who preferred for Ernakulam Branch. In the list, applicants figure at S1.Nos. 2, 3 and 12 respectively. Section Officers/Adhoc Section Officers though group together, the Adhoc SOs are equated with Sr.Accountants/Accountants in the matter of nature of work and posting. Annexure A-II dated 13.9.2001 will reveal the same. It is contented that Sr.Accountant and SO Adhoc are inter changeable posts in the matter of their duties and functions as their work being of the same nature. Therefore, from the list of those who volunteered for posting to a particular station, the seniors in that list are to be given preference in the matter of posting to the station to which they have volunteered for posting. Annexure A-III dated 21.9.2001 will show that these are interchangeable posts. To



show that the nature of work being done by them are the same, a copy of posting order dated 25.6.2001 is filed as Annexure IV. Another order dated 31.5.2001 referred to by the applicants will also prove the same. But overlooking the seniority of the applicants persons belonging to SO Adhoc are being posted. Smt.Lola R. and Shri K.A.Muraleedharan Nair were given posting at their volunteered stations overlooking the claim of the applicants. The representation dated 19.6.2000 preferred to the 1st respondent Annexure A - VIII was lying unattended. Again on 6.8.2001, 1st applicant made another representation Annexure A - IX. Similar representations were prepared by other applicants also. But ignoring the claims of the applicants, the respondents have posted respondents 2 and 3 at the stations they volunteered without following the guidelines. Again the 3rd applicant made a representation on 14.12.2001 (Annexure A-X) pointing out that the applicant is senior than Shri K.A.Muraleedharan Nair, who was transferred. The applicants are discriminated in the matter of postings and transfers as it was done without adhering to the position assigned in Annexure A-I list. Aggrieved by the inaction on the part of the respondents, the applicants have filed this Original Application seeking the following reliefs:-

1. To call for the entire records relating to the case and set aside Annexure A-VI and A-VII orders affording out of the way transfers for respondents 2 and 3.
2. To direct the respondents to post applicants to Ernakulam in place of respondents 2 and 3 strictly in accordance with the position available in Annexure A-I list.
3. To issue such further or other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.



3. Initially, the learned counsel for the Respondents 1 & 4 have filed a counsel's statement on 20.03.2002 and thereafter, a detailed reply statement was filed on 4.09.2002. Respondents 2 & 3 have also filed a reply statement on 9.09.2002. Applicants have filed rejoinder to the statement filed by R 1 & 4. The respondents inter-alia contended that the pleadings of the applicants that the transfer of SO(Adhoc) to Ernakulam Branch was out of turn overlooking the claim of Sr.Accountant /Accountant is not correct. There is no violation of seniority list maintained in Ernakulam Branch. Respondents have not made any out of turn transfer to Ernakulam Branch overlooking the claim of the applicants. Since there were large number of volunteers belonging to different cadres requesting for posting in different branch offices, this office is maintaining a combined list of all such volunteers. As and when occasion arises for filling vacancy in a particular cadre post, the inter-se-seniority of the volunteers belonging to a particular cadre is considered for posting in a particular station as per the transfer policy laid down in consultation with the representatives of the staff side. In the said transfer Annexure R - 2, Para (ii) categorically states that if on promotion the individual concerned has to be entrusted with a specific work in accordance with the relevant Recruitment Rules/orders from Headquarters and if such work is not available at the place where the official is stationed, he would be transferred to the place where such work is available. However, such transferee can, on joining their new station, apply at their discretion to be either posted back to the earlier station or to any other place of his choice. Such an application will be considered in the concerned category of

staff. Efforts would be made to accommodate the transferees at their preferred places to the extent administratively feasible. As per the said transfer policy, transfers to respective branch offices are being effected according to the seniority in the particular cadre on the basis of date of application. The applicants are belonging to the Group 'C' cadre of Sr.Accountant in the scale of Rs.5000-150-8000 whereas the SO(Adhoc) is Group 'B' (Non-gazetted) cadre in the scale of Rs.5500-175-9000. Therefore, both cadres are distinct from each other. Name of posts, pay scales and recruitment rules are different. The nature of duties are also different to the extent that the incumbents who are holding the post of SO(Adhoc), have to attend the computer related jobs or any other work considered important by the Head of Department (Accountant General). The incumbents posted as Section Officer (Adhoc) are also imparted the necessary computer training before their deployment on such computer related jobs or any other works considered as important. In the case of Sr.Accountants, they are assigned to perform routine duties of a post of Sr.Accountant, which may or may not involve any computer training or computer related work. As the incumbents of the post of SO(Adhoc) are promoted only from Section Officer Grade Examination passed Sr.Accountants/Accountants/Clerks and attend to duties which are considered to be important in nature, the post of Sr.Accountant cannot be equated with the post of S.O(Adhoc) either in the pay scale or in the nature of duties of the post.

4. Shri P.Rajan, on his promotion as S.O(Adhoc) was posted to the SSW unit in PF 31/EDP to rectify the mistakes with the



help of computer. The vacancy caused by Shri P.Rajan was filled by Shri P.Sasikumar, Sr.Accountant in OE Section as that unit was considered fit to be handled by a Sr.Accountant. Shri M.Mohandas, on his promotion as SO(Adhoc) was posted to PF 10 section in place of Smt.T.K.Lilly, Sr.Accountant, as that unit entrusted with the work of checking of schedules and debit vouchers, attending to complaints from subscribers, tracing out of missing credits and debits, annual review reports etc. which require frequent use of computer and was considered important. Likewise, Shri Joy Palayur, SO(Adhoc) was posted to PF 10 section to expedite the due authorisation of final payment of GPF subscribers. These instances indicate that the local administration in Branch Office, Thrissur have utilised the limited resources of SO(Adhoc) to attend to duties of important nature which, it was felt, can be more efficiently handled by SO(Adhoc).

5. The first applicant joined the service on 5.5.1986, second applicant on 18.10.1985 and the third applicant on 19.6.1986. The contention of the applicants that the Adhoc SOs are equated with Sr.Accountants/Accountants in the matter of nature of work and postings, is not correct. Annexures II,III,IV & V were issued by the Branch Office, Thrissur, keeping in view the local requirements of manpower for duties of different nature in that Branch Office. It has no relation with the inter branch office transfers from one place to another on the post of SO(Adhoc). Keeping in view the limited number of SO(Adhoc) available in Thrissur Branch office and the administrative exigencies of attending to the duties of a

particular post, the Officer in charge of that Branch Office can post Sr.Accountants/Accountants to the posts which are otherwise considered important to be held by SO(Adhoc). Such local arrangements in a Branch Office in the interests of office work, do not entitle those Sr.Accountants/Accountants either to claim promotion to the post of SO(Adhoc) or a transfer to any other Branch office on the post of SO(Adhoc).

6. Respondents 2 and 3 were transferred to Ernakulam Branch Office as per the existing transfer policy on the basis of the volunteers' list maintained in that office. The applicants could be considered for transfer to the Branch Office, Ernakulam as and when they become eligible for such transfer on the basis of their inter-se-seniority among the Sr.Accountants only when a vacancy of Senior Accountant would arise in that Branch Office. Transfer to different stations are effected on the basis of vacancies in each cadre at each station and as per the inter-se-seniority among the volunteers in each category. Therefore, it is obvious that the SO(Adhoc), Sr.Accountant/Accountant are considered separately for transfer to different stations. The transfers of SO(Adhoc) were made to the Branch Office, Ernakulam strictly as per transfer policy adopted in consultation with the representatives of the staff side. Since the respondents belong to a distinct category of SO(Adhoc) and the vacancies occurred at the Branch Office, Ernakulam in that post, the 2nd and 3rd respondents were transferred to that section. The applicants will be considered for posting at Ernakulam Branch subject to their inter-se-seniority among the Sr.Accountants on the volunteers list as and when vacancies arise in the cadre of Sr.Accountant in Branch Office, Ernakulam. Hence no discrimination has been done in the case of applicants.

7. In the reply statement filed by the Contesting private respondents 2 and 3, it is submitted that these respondents were promoted on 22.8.1991 and 1.1.1992 and later passed the Section Officer Grade Examination in November, 1991 and November, 1992 respectively. Thereafter, the 2nd respondent was promoted as SO (Adhoc) with effect from 11.8.2000 and 3rd respondent was promoted as SO(Adhoc) on 11.6.2001. The statement to the effect that at the time of entering service in the year 1986 they had volunteered for a posting at Ernakulam is irrelevant, immaterial and inconsequential for the obvious reason that subsequently, the applicants were promoted to the cadre of Accountants and again promoted to the still higher cadre of Sr.Accountant. According to Annexure R - 1 (i) office order dated 1.02.99, the Branch Offices would be manned through volunteers in different cadres of staff. Therefore, volunteers in each cadre of staff are to be considered for transfer and posting on the basis of the dates of their volunteering the respective cadre. The list of volunteers for transfer to different stations for various categories are separately maintained, updated and kept up. Annexure A-I combined list is prepared category-wise volunteers for the obvious reason that transfer request can only be considered within the category. The contention that SO/Adhoc SO, though grouped together, the Adhoc SOs are equated with Sr.Accountants/Accountants in the matter of nature of work and postings, is incorrect and misleading. The applicants 1 to 3 have not passed the SOG Examination and they cannot aspire for promotion as Section Officer Group 'B' in the scale of pay of Rs.5500-9000. Annexure A-III is only a posting order and on the basis of

posting order equivalence of posts cannot be determined. It is also contented that no legal right can be claimed by the applicants for transfer and posting to a place of their choice. None of their rights is infringed by Annexure VI and VII posting orders.

8. Mr.M.V.Bose, learned counsel appeared for the applicants. Shri N.Mahesh, ACGSC appeared for R 1 & 4 and Shri O.V.Radhakrishnan appeared for R 2 & 3.

9. The learned counsel took me to various pleadings, material and evidence placed on record. Learned counsel for the applicants argued vehemently that the Annexure A-I makes it clear that in the matter of posting concerning Accountants/Sr.Accountants, their original seniority in that category will be retained. So the authorities are bound to follow the positions allotted to the volunteers in Annexure A-I list. SO(Adhoc) though coming under the category of SOs in the matter of work arrangements and postings, they are equated with Sr.Accountants/Accountants as evidenced from Annexures III, IV & V. Any violation in the position assigned to them vide Annexure I list will be discriminatory and violative of Fundamental Rights under Article 14 and 16 of the Constitution of India. On the other hand, the Learned counsel for the official respondents submitted that it is prerogative of the administration to transfer any official as and when exigencies exist and such transfer orders cannot be challenged and even the respondents had not violated any guidelines. The Learned counsel Shri O.V.Radhakrishnan appearing for R 2 & 3 submitted

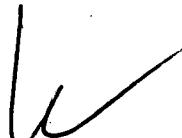


that the cadres in question are distinct from each other. The name of posts, pay scales and recruitment rules are different. The nature of duties are also different to the extent that the incumbents of the post of SO(Adhoc) have to attend to the computer related jobs or any other work considered as important by the Head of Department (Accountant General).

10. I have given due consideration to the arguments advanced by the learned counsel for the parties and analysed the rule position. The question to be decided in this case whether non transfer of the applicants to the choice station as per Annexure A-I is correct or not. Therefore, it will be obvious to go through Annexure A-I document. On perusal of the records, it could be seen that Annexure A-I and R-2 is one and the same except that R-2 does not contain the list as shown in Annexure A-I (3). Annexure A-I/R-2 is an Office Order No.273, publishing list of volunteers for transfer. The preamble of the said order reads as follows:-

" The updated list of volunteers for transfer to different stations for various categories which is Senior Accounts Officer/Accounts Officer/Asstt.Accounts Officers/Section Officers/Section Officers (Adhoc) /Senior Accountants/Accountants/Clerk-typist /Data Entry Operators and Group D are enclosed for information of all concerned. The applicants are requested to verify the details and bring to the notice of administration on or before 6.8.2001 if any deficiencies or errors are noticed which may warrant rectification. In the absence of any communication by due date it would be presumed that the details are correct and would be given immediate effect."

11. Annexure A-I is an exact reproduction of Annexure R-2. In the updated list of volunteers for transfer to different stations for various categories, time is given upto 6.8.2001 to



the applicants to rectify the errors and bring the anomalies to the notice of the administration and it has also been cautioned that in the absence of any communication by due date it would be presumed that the details given in the list are correct and would be given immediate effect to. Respondents though submitted Annexure R-2, has not chosen to file the complete list of various categories of employees whereas the applicants have reproduced Annexure A-I (3) which is said to be a certified true copy, which consists of Adhoc SO/Sr.Accountants /Accountants. At the prima facie impression, this list indicates that these three categories of persons are interchangeable. The said office order denotes different categories of persons Clerk-typist/Data Entry Operators/Group 'D' employees etc. Probably, there will be a separate list for these categories of persons maintained date - wise. On going through Annexure A-I, it could be seen that the names of all categories of persons in Annexure A-I (3) have been shown on the date-wise preference. Therefore, it is a true indication that these employees are interchangeable whatsoever reason it may be. Annexure A-I/R-I is a list of "volunteers for transfer" in which there is no whisper about the alleged promotion and Sr.Accountant/Accountant/Adhoc SO are put in the same category and in the same list. Moreover, the material placed before this Tribunal does not throw light as to whether the post of Section Officer is a promotion post or not. Even assuming so, an adhoc posting will never confer the right of regular promotion on an employee. Therefore, there is reason to believe that such large number of adhoc promotion in the Section Officer cadre is for obvious reasons which consequently deprive the right of transfer of the applicants on priority basis from Annexure A-I list.



12. The specific plea made by the learned counsel for the respondents is that Shri P.Rajan, on his promotion as SO (Adhoc) was posted in SSW unit Thrissur to rectify the mistakes with the help of computer. The resultant vacancy caused by Shri P.Rajan was filled by Shri P.Sasikumar, Sr.Accountant in O.E Section. Shri M.Mohandas on his promotion as SO(Adhoc) was posted to PF 10 section in the place of Smt.T.K.Lilly, Sr.Accountant for checking of schedules and debit vouchers, attending to complaints from subscribers, tracing out of missing credits and debits, annual review reports etc. Smt.T.K.Lilly was posted in GE 32 section to attend to the routine duties of the Sr.Accountant in that section. From this, it is quite evident that due to administrative exigencies or for a particular work in the unit, these persons have been interchanged and asked to work. The reasons given by the respondents that it is only a posting order and on the basis of a posting order, equivalence of a post cannot be determined and cannot be sustained in the eye of law. SO(Adhoc) is being posted in place of Sr.Accountant and Sr.Accountant is posted in place of SO (Adhoc) which means that it is interchangeable and can interchange for a particular unit or office or anywhere. If such is the position, there is no reason why these persons cannot be transferred to their choice stations as they have been registered for the same as early as 1986. If the arguments of the respondents are accepted, the situation is that only those persons who have been allegedly promoted as SO (Adhoc) can get a transfer and who alone can be utilised as Sr.Accountant in the choice stations. The applicants have been waiting since 1986 in the priority list for their choice station and it is



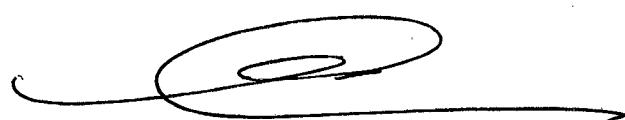
not made clear whether they will be considered as per their turn, which may or may not come, because as per the contention of the respondents only alleged promotees are eligible to be transferred to the choice station, which cannot be sustained in the eye of law. This uncertainty should not be permitted to continue, in the matter of transfer against the guidelines and priority list published by the Respondents. Moreover, on reading of Annexure A-I list and the pleadings of the respondents it appears that the cadre created was that of Office Superintendent (Adhoc). The word "adhoc" denotes that it is only a temporary post and the same would not confer any legal right to retain or claim preferential treatment to a permanent cadre. In a celebrated decision reported in 2002 SCC (L&S) 995, Chandgi Ram Versus University of Rajasthan, the Apex Court has deprecated the practice of adhoc appointment. It appears that respondents has made category of adhocism in their department which has got an adverse affect on other employees like the applicants at least on the question of their transfer. The contention of the respondents that applicants are having different pay scales and therefore, they cannot be transferred stand to no reason because as per Annexure A-II & A-III such categories of employees were interchanged, whatsoever the reason may be. It has also brought to my notice that the culture of adhocism has developed in the respondents department which is not a healthy practice for the future of the Institution. The Hon'ble Supreme Court held that " sometimes adhoc filling is for a coloured purpose to favour one or the other. This has to be denounced. This not only permits irregular appointees to continue for a long time but thwarts a regularly competent appointee to come in deteriorating the very standard of the Institution.



13. This Court is not called upon to determine the legality of the adhoc cadre that is being noticed in this case but is concerned to note how it stagnate the chance of transfer of this notified employees in the list. The applicants transfers have been jeopardized despite the fact that priority list has been notified and published and is in existence. Therefore, I am of the view that the impugned orders Annexure A-VI & VII are not justified since it is against the guidelines and the priority list and the applicants are prejudicially affected. However, I do not propose to interfere with Annexure A-VI & VII orders in view of the fact that it will put the administration and its functioning in a inconvenient situation. Hence Respondents No.2 & 3 will not be disturbed. Let it be in existence and no interference is being called for. But I direct the respondents to act upon Annexure A-I and consider the applicants transfer to their choice stations in accordance with the priority list Annexure A-I in future in the next available vacant posts of Sr.Accountant/Accountant/ Adhoc so notwithstanding the fact that they are qualified for the alleged promotion or not. An order to this effect will be issued by the respondents with a copy to the applicants as and when vacancy arises.

The Original Application is disposed of as indicated above. In the circumstances, the parties are directed to bear their costs.

Dated, the 8th July, 2003.



K.V.SACHIDANANDAN
JUDICIAL MEMBER