

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.212/09

Friday this the 1st day of May 2009

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

P.P.Panicker,
Superintendent of Central Excise,
Alleppey II Range, Alleppey.

...Applicant

(By Advocate Mr.C.S.G.Nair)

Versus

1. Union of India represented by its Secretary,
Department of Revenue, North Block,
New Delhi – 110 001.
2. The Chief Commissioner of Central Excise & Customs,
Central Revenue Buildings, I.S.Press Road,
Kochi – 18.
3. The Commissioner of Central Excise,
Central Revenue Buildings,
I.S.Press Road, Kochi – 18.
4. The Assistant Commissioner of Central Excise,
Ernakulam II Division, Central Excise Bhavan,
Kathrikadavu, Cochin – 682 017.

...Respondents

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

This application having been heard on 1st May 2009 the Tribunal on the same day delivered the following :-

ORDER


HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

This is second round of litigation by the applicant before this Tribunal regarding his grievance against the transfer order.



2. The applicant belongs to Alleppey and his family is also settled there. While the applicant was working in the Service Tax Range, Tripunithura he requested for a transfer to his native city on the ground that his wife is suffering from various ailments and she is advised to take specialised ayurvedic treatment. The respondents have, therefore, agreed to the request and vide Annexure A-2 order dated 4.2.2009 he was transferred to Alleppey II Range and he joined there on 6.2.2009. Thereafter, by the impugned Annexure A-5 letter dated 20.3.2009, the aforesaid Annexure A-2 transfer order was cancelled and one V.T.Joseph has been posted in his place. As a result of the cancellation order, the applicant had to go back to his original place of posting ie., Service Tax Range, Tripunithura. The applicant made representation to the aforesaid cancellation. As no positive result came out, he approached this Tribunal vide O.A.185/09. The said OA was disposed of vide Annexure A-9 order dated 23.3.2009 at the admission stage itself giving liberty to the applicant to make a representation to the Commissioner, Central Excise and Customs, Cochin within ten days time. The applicant was also directed to give a copy of the OA to the Commissioner so that the Commissioner should consider the submissions made there in also. The Commissioner, in turn, was directed to dispose of the said representation with a reasoned and speaking order within a period of three weeks. Till such time the impugned order dated 25.3.2009 was not to be given effect to.

3. According to the reply filed by the respondents, the Commissioner, Central Excise and Customs, Cochin waited for the representation of the applicant for ten days as directed by this Tribunal. Since no representation was received within the prescribed time, he considered the copy of the OA



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which was available with him and passed the impugned Annexure A-11 order dated 3.4.2009 by which his request for retention at Alleppey was allowed. But he was posted to a new place of posting, namely, CPU, Alleppey vide Annexure A-12 order dated 3.4.2009.

4. The applicant has challenged the aforesaid orders before this Tribunal on various grounds including the incompetency of the officer who has issued these orders.

5. I have heard Shri.C.S.G.Nair for the applicant and Shri.T.P.M.Ibrahim Khan,SCGSC for the respondents. I do not intend to go into the technicalities like the competency of the officer who has issued the impugned orders in this case. The applicant's request was to post him at Alleppey, his native city, to look after his wife who is undergoing specialised ayurvedic treatment. The respondents have, therefore, agreed to his request and posted him there. Later on, the respondents realised, rightly or wrongly, that his posting from one place to another was against the guidelines for posting. However, on the direction of this Tribunal his case was re-considered by the respondents and posted him in Alleppey itself but in a different office. Now the Applicant wants his posting in a particular office in Alleppey. In my considered opinion, the applicant has exceeded his limits by making such unreasonable demands under the mistaken notion that the forum of this Tribunal can be used in aid of it. As held by the Apex Court in Union of India Vs. S.L. Abbas (1993) 4 SCC 357, "who should be transferred where, is a matter for the appropriate authority to decide". Again in the case of State of U.P. Vs. Siya Ram,

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(2004) 7 SCC 405, the Hon'ble Supreme Court has held that transfer is not only an incidence of service but also a condition of service and the employee has no legal right to be posted in a particular place. Therefore, unless shown to be malafide or in violation of statutory provisions, the Court cannot interfere with such transfer. The following extract from the aforesaid judgment of Siya Ram (supra) is relevant:

"5.....Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in *National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan*."

6. I, therefore, dismiss this OA. There shall be no order as to costs.

(Dated this the 1st day of May 2009)


GEORGE PARACKEN
JUDICIAL MEMBER

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