

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 230 of 2008

Friday, this the 19th day of December, 2008

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

**Sujatha Radhakrishnan,
Senior Auditor, A/c. No. 8332749,
Area Accounts Office (Navy),
Perumanoor P.O., Kochi -15** ... **Applicant.**

(By Advocate Mr. V. Ajith Narayanan)

v e r s u s

- 1. Union of India, represented by its
Secretary, Ministry of Defence,
New Delhi.**
- 2. The Controller General of Defence Accounts,
West Block – V, R.K. Puram, New Delhi.**
- 3. The Principal Controller of Defence Accounts (Navy),
No. 1, Cooperage Road, Mumbai – 39**
- 4. The Senior Accounts Officer (A.N),
Area Accounts Office (Navy),
Perumanoor P.O., Kochi – 15**
- 5. The Joint Controller of Defence Accounts (Navy),
Office of the Joint Controller of Defence
Accounts (Navy), Perumanoor P.O., Kochi – 15 ... **Respondents.****

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

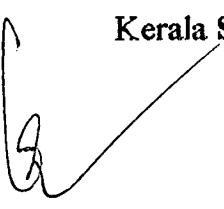
**O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

The applicant was initially appointed as Lower Division clerk in the Armed Forces Headquarters, Delhi in March, 1984 and after getting her promotion as



Upper Division Clerk, she had sought inter departmental transfer to the Defence Accounts Department, at the cost of her long 16 years past service benefits of seniority. Thus, in August 2000, she had joined the Pay and Accounts Office (ORS), DSC Office, Kanoor and thereafter got a transfer to Cochin w.e.f. May, 2006. At present she is holding the post of Senior Auditor. In April 2008 the applicant has been issued with Annexure A-3 transfer order, posting her to Bangalore in public interest. The grievance of the applicant is that by a catena of cases, this Tribunal has held that by virtue of the provisions of Clause 370 and 373-376 of the Transfer Policy Guidelines, enunciated in the DAD Office Manual (Part I), candidates coming under the Defence Accounts Department are entitled to getting the protection from transfer. Annexure A-6 to A-10 are such orders passed by the Tribunal. Again, when there are as many as 20 vacancies available at Kochi, there was no justifiable reason to issue the transfer order. Even if transfer is inevitable, it may not be of the applicant but very many seniors (ten in number) with longer station seniority being there, one of them should have been transferred first.

2. Respondents have contested the O.A. According to them, the employees of Defence Accounts Department have an All India Transfer Liability. For transfer purpose, the entire Kerala has been taken as one station for determining station seniority as has been held in order dated 25-01-1991 in OA No. 343/1990 vide Annexure R-1. By a circular dated 09th August, 2007 issued by Respondent No. 2, all the field offices wherein individuals below 56 years of age have been serving in Kerala State since 31-12-2000 were alerted for their ex-Kerala transfer. Annexure



R-2 refers. In the three choice stations opted by the applicant, Bangalore was one, the other two being Avadi and Trichy. Accordingly the applicant was issued with a transfer order to Bangalore. Such transfers are made strictly in accordance with station seniority, with full transparency and in a fair manner. Annexure A-3 is not the actual transfer order, and it is Annexure R-5 which is the actual transfer order of the applicant. This has been passed as a common order for three persons. The respondents have also itemized the law laid down through decisions of the Apex court such as transfer is an incidence of service and condition of service and that no transfer is interfered with save when such transfer is vitiated by malafide or violation of professed norms etc., As regards vacancies at Kochi, it is not only here but in almost all places that such vacancies exist and the administration is running with the existing complements. Such vacancies are available in other places as well. Though the applicant has claimed that she falls within the exempted category under Clause 375, provisions of Clause 375 are not applicable to her. As regards the decisions of this Tribunal, many of them have been challenged before the Hon'ble High Court.

3. The applicant has filed her rejoinder, in which it has been stated that contention that Kerala is treated as one Station is absolutely false. Such a stand has never been taken up by the respondents in the past. If it were one state, there would not have been classification of such stations as A1, B1, B2, C1, etc., Again, had these been treated as single station, the applicant would not have been transferred from Kannur to the present place of posting. There are as many as 15 individuals who have higher station seniority compared to the applicant. The



applicant has brought in certain compelling domestic contingencies, including children education, which, according to her, deserve consideration for her retention at Trivandrum.

4. Additional rejoinder has also been filed wherein the points as raised in the OA have been highlighted.

5. Counsel for the applicant submitted that the applicant has lost her 16 years' seniority in the Armed Forces Headquarters civil services for a shift to her native place and it hardly a few years since she had come down here, when she is shifted out of the native state. Again, the immunity from transfer as given in clauses 370 and other attendant clauses have been given a go bye, by the respondents. There are seniors above the applicant and they must be transferred first.

6. Counsel for the respondents has stated that the applicant's move is on the basis of station seniority and as such, on the basis of the general rule that transfer is an incidence of service and condition of service and the employer has the discretion to transfer within his powers, judicial interference is permissible only to a limited extent.

7. Arguments were heard and documents perused. Initially the transfer order was effected at the commencement of the academic session. As there was a lone individual, vide Annexure A-3, it was considered as not a rotational transfer. It was for this reason that the Tribunal has granted the stay. However, from the

counter it is seen that the transfer is one of rotational transfer. In that event, this Tribunal would not interfere save when the transfer is manifestly malafide or against professed norms. Of course, Children education is one such aspect that is to be kept in view while considering the transfer as the career of a child should not be spoiled by unscheduled transfer. The applicant's son is studying in college, while the daughter is ten years old and studying in school. This aspect has to be kept in view. (See para 6 of the judgment in the case of *B. Varadha Rao vs State of Karnataka, 1986 (4) SCC 131*)

8. Yet another aspect is that the parents of the applicant are sufficiently old and ailing and they need some one's presence.

9. From the perusal of the exempted category, such as 373 and 375, it appears that the applicant does not fall within any of these categories. However, if 370 is considered, the same warrants that transfers of individuals serving at popular stations will be effected generally on the basis of seniority of stay at those stations, barring compassionate cases, cases where the CDA considers the retention of an individual to be essential in the interest of Work etc., to the extent necessary to accommodate members who have legitimate claim to serve at stations and those who are being repatriated, after a spell of service at difficult stations. It is to be seen whether the applicant's case has been considered fulfilling this condition that no senior save those who are specifically exempted has been retained. The applicant has identified as many as 15 individuals, who, according to her, have been having higher station seniority (Kerala as a whole) than the applicant. And,

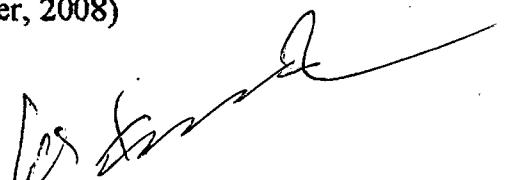
none of these falls under the exempted category of 373 or 375. In fact, out of these at least in respect of 5, the respondents have in their counter given the reason for their retention. These fall within the exempted category. However, it is not exactly known whether the others referred to in the additional rejoinder are seniors and are not within the exempted category. This has to be considered by the Respondents only. If none above the applicant is available for transfer, the applicant would have absolutely no case. Instead, if there be any one whose retention is without the immunity available under clause 373, 375 etc., then the applicant's claim for retention in accordance with clause 370 has to be allowed.

10. Taking into account the service exigencies, and at the same, considering the applicant's wards' education, as also the fact that the applicant has been posted to Cochin only in 2006, ends of justice would be met if the applicant is allowed to continue till 10th April 2009 in the same station so that the end of academic session and the transfer may synchronize. That would result in the applicant's being at Cochin for a span of three years which cannot be considered as a short tenure. In the meantime, the respondents shall verify as to whether any other person holding the same post as the applicant has higher station seniority (on the basis of Kerala State as a single station) and if so, the matter may be placed before the Principal Controller of Defence Accounts (Navy), Mumbai (Respondent No. 3 herein) for his consideration and decision. In case all the persons above the applicant qualify within any of the exempted category, the applicant's transfer order to Bangalore be effected. If for any reason, Bangalore could not be possible, she may be accommodated either at Trichy or at Avadi as per the choice stations

mentioned by her.

11. With the above directions, the O.A. is disposed of. No costs.

(Dated, the 19th December, 2008)



(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.