

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.248/2008

FRIDAY, this the 3RD day of OCT., 2008.

CORAM:

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

K.Balachandran,
S/o I.Narayan Nair, Accountant,
Office of the Accountant General (A&E) Kerala,
Trivandrum, residing at; 'Bansuri',
Marakkal Sir Memorial Road, HMT Colony P.O.,
Kalamassery, Pin-683 503. Applicant

(By Advocate Shri M.R.Hariraj)

Vs.

1. Union of India, represented by
Comptroller & Auditor General of India,
New Delhi.
2. The Accountant General (A&E) Kerala,
Thiruvananthapuram,
3. The Senior Deputy Accountant General
(Administration),
Thiruvananthapuram, Respondents

(By Advocate Shri P.Nandakumar)

The application having been heard on 24.9.2008,
the Tribunal on 3-10-08..delivered the following.

ORDER

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

The applicant is functioning as Accountant in the office of the second respondent. A branch office of the second respondent was established in 1972 at Thrissur and by way of an agreement between the management and the representatives of the Service organizations, vide Annexure A-1, as per which, as a rule, seniority should be the criteria for posting to Thrissur and such a seniority

would be on the basis of the date of application for transfer to Thrissur. Various individuals volunteered for posting at Thrissur as well as another office at Ernakulam and the applicant's name figured at Serial No. 2 in the seniority for posting at Thrissur and 64 for *Ernakulam*, vide Annexure A-2. Subsequently, the Respondents had decided that such a volunteering should be only for one place and not for multiple places and hence all those who had volunteered for such a transfer were asked to exercise their option. Annexure A-3 refers. By Annexure A-4 communication, the applicant submitted that he opts for Thrissur. However, he has also mentioned that if the policies of transfer undergo changes in future, his option for Ernakulam be restored.

3. While the above is the situation with regard to exercise of option for transfer, independent of the same, the applicant was served with a memorandum dated 25th April, 2008 alleging that he had participated in an unauthorized demonstration of a group of employee shouting slogans derogatory and insubordinate in nature, thereby violating the provisions of CCS Conduct Rules. Annexure A-5 refers. Applicant gave his explanation and requested the authorities to accept the same and drop further proceedings on the memo so as to avoid a situation of his career being affected. Annexure A-6 refers.

4. Vide Annexure A-7, one Shri OR Aravindakshan, Accountant has been transferred and posted to Branch Office, Thrissur. This individual is stated to be junior to the applicant as per Annexure A-2 seniority list. According to the applicant certain other juniors have also been transferred to Thrissur. Thus, the applicant has challenged the respondents' action in transferring the juniors, deviating from the rules laid down by them vide Annexure A-1. The applicant, through this OA has prayed for a direction to the respondents to consider the

92

applicant for transfer to Thrissur in preference to other persons below him in the list of volunteers for Thrissur Branch published as per Annexure A-2.

5. Respondents have contested the O.A. They have stated that transfer is purely an administrative prerogative and orders of transfer are issued considering administrative exigencies only. The applicant was not considered for transfer to Branch Office Thrissur (a) since he had not given a clear option for one station as required by the competent Authority and (b) as disciplinary action is contemplated against him along with other participants for their participation in an unauthorized congregation within the office premises on 24-03-2008. In addition, the respondents have relied upon Apex Court's decisions in the case of Union of India vs S.L. Abbas (1993) 4 SCC 357, Shilpi Bose vs State of Bihar (AIR 1991 SC 532), State of UP vs Gobardhan Lal 2004 AIR SCW 2082, State Bank of India vs Anjayn Sanyal 2001 (5) SCC 508.

6. Applicant has filed his rejoinder denying all the contentions of the respondents. He has contended that the option exercised cannot be termed as one with any condition. Again, in so far as participating in the alleged unauthorized congregation, it has been stated by the applicant in his rejoinder that the individual who stands transferred vide Annexure A-7 too had been issued a memorandum for his alleged participation in the so called unauthorized congregation, yet he has been transferred. Thus, none of the two grounds raised by the respondents to justify their action of ignoring the applicant from being considered for transfer to Thrissur on the basis of Annexure A-2 seniority survives.

7. Respondents have filed an Additional reply wherein they have stated that the explanation offered by *Shri Aravindakshan* over his participation in the

unauthorized congregation had been found to be satisfactory and hence no embargo has been clamped on the ground that he had participated in the unauthorized congregation. The same is not the case with reference to the applicant as he had used unparliamentary word in his slogan against the senior officers.

8. Counsel for the applicant submitted that his option cannot be termed as conditional. Whatever wordings or phraseology the respondents needed, i.e. that the applicant forfeits his rights to seek transfer elsewhere have been found in the final paragraph of his option. His request for restoration of his name for Ernakulam is contingent upon the change in the policy, if at all made and as and when made. This request, according to the counsel for the applicant, can, under no stretch of imagination, be stated to be conditional. Save that the option and the request for restoration of name for Ernakulam, should there be a change in the policy are independent of each other. It has been stated by the counsel that on perusal of records produced by the respondents, it is seen that at one stage, his option had been held to be only unconditional. Hence, the ground for non-transfer of the applicant does not survive. Similarly, if participants in the unauthorized congregation are to be ignored from being considered for transfer on request, the same holds good in respect of Shri Aravindakshan also, whereas he stands transferred.

9. Counsel for the respondent reiterated the contentions as in the reply and additional reply.

10. Arguments were heard and documents perused. True, at a particular level, the authority concerned remarked that the option by the applicant is not one of

conditional in nature. However, the authority higher than that who had made the above noting did not agree and held that the option was conditional.

11. As regards transfer of Aravindakshan, the same could materialize since the said individual submitted an explanation as called for and the same was found to be satisfactory.

12. The option exercised by the applicant has been gone through. The same is as under: -

I beg to submit the following points in response to the advice contained in the memorandum referred to above.

My family is settled at Ernakulam as my wife is working there on an untransferable post in FACT Ltd. Getting a transfer to Thrissur branch office will be a great relief for me because I can be at least 70 kilometres away from my family.

In the existing circumstances mentioned in the Memo referred to above, I am to submit that I am willing to forfeit herewith my claims for transfer to all other branches, if I am transferred to Thrissur Branch now.

Since getting a transfer to Ernakulam Branch office is the last and only chance for me to join my family after 21 years of service, I am to request that my seniority to Ernakulam branch may be reinstated if the policies of transfer undergo such changes in future.

13. Perusal of the above undertaking goes to show that the applicant is keen in his transfer to Thrissur only. This is evident from para 2 wherein he has stated that getting a transfer to Thrissur would be a great relief to him. The requisite undertaking to forfeit claims for transfer to all other branches is also in tact. As regards the last paragraph, the same cannot in any way be held to be conditional to the undertaking but an independent request, that too subject to change in the policy in future. That request is in the nature of a distant astrology. Hence, it cannot be stated that the undertaking given is not unconditional.



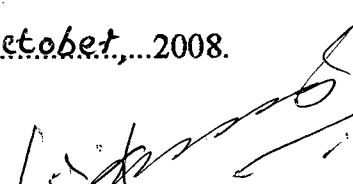
14. Coming to the second reason, if the transfer of Aravindakshan has been effected after his explanation has been found to be satisfactory, then the case of applicant and the said individual cannot be said to be identical. In the case of the applicant he has already submitted his explanation and it is for the respondents to consider the same. One vacancy has been kept alive at Thrissur, as the applicant has filed this O.A.

15. Interest of justice would be met if an order is passed to the extent that the respondents shall consider the explanation offered by the applicant vide Annexure A-6 and arrive at a judicious conclusion and depending upon the decision arrived at his transfer to Thrissur be considered. Till then, one vacancy at Thrissur Branch Office shall be kept alive. *Ordered accordingly.*

16. Time limit calendared for consideration of the explanation of the applicant is two months from the date of communication of this order.

17. The OA is disposed of. No cost.

Dated the3rd October, 2008.



Dr. K.B.S. RAJAN
JUDICIAL MEMBER

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