

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

OA No.265/07

Thursday this the 6<sup>th</sup> day of September, 2007

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***HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER***

P.K.Raghavan,  
Senior Auditor,  
A/C No.8318617  
Naval Local Audit Office (A),  
Perumanoor PO  
Kochi.15.

.....

Applicant.

(By Advocate Mr. V.Ajith Narayanan)

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- 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 Principal Controller of Defence Accounts  
(Navy), No.1 Cooperage Road, Mumbai.39.
- 4 The Accounts Officer (AN)  
Area Accounts Office (Navy)  
Perumanoor PO, Kochi.15.
- 5 Joint Controller of Defence Accounts (Navy)  
Office of the Joint Controller of Defence Accounts  
(Navy) Perumanoor PO, Kochi.15. ....Respondents

(By Advocate Mr. P.S.Biju, ACGSC)

This application having been finally heard on 23.8.2007, the Tribunal on  
6.9.2007 delivered the following:

ORDER

***Hon'ble Mr. George Paracken, Judicial Member***

The applicant's grievance is against the Annexure.A6 letter  
dated 10.4.2007 from the Respondent No.4 informing him that the  
Respondent No.3 vide their confidential No.AN/1/39 dated 5.4.2007 has

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posted him to the Office of CDA, Bangalore at state expense and he will be relieved from the place of his present posting on 30.4.2007. The contention of the applicant is that the aforesaid posting order was issued in violation of clauses 370, 373 and 375 of the transfer policy guidelines enunciated in DAD Office Manual Part -I and therefore, the same was liable to be set aside by this Tribunal. The said provisions are as under:

"370 Transfers of individuals serving at popular station will be effected generally on the basis of seniority of stay at those stations, barring compassionate case, cases where the CDA considers the retention of an individual to be essential in the interests of work etc., to the extent necessary to accommodate members who have a legitimate claim to serve at such stations and those who are being repatriated, after a spell of service, at difficult stations.

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.

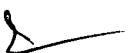
375 In cases where an employee, or a member of his family, is suffering from serious ailments such as cancer, polio, blindness, mental disease, paralysis etc. Controllers may at their discretion grant exemption from transfers provided the disease/disability is certified by the authorized specialist."

2 According to the applicant, there are about ten station seniors than him working in the post of Senior Auditors in the very same office where he is presently working in violation of Clause 370 of the DAD Office Manual. He has further submitted that he was 54 years and 5 months with his date of birth as 10.11.1952 when the impugned transfer order was issued and the same was in violation of Clause 373 of the DAD Office Manual, according to which the employees above the age of 54 years should not be subjected to any transfer except to their home station/choice station. Again, in terms of Clause 375 of the DAD Office Manual, according to him, he is protected from transfer as his father is suffering from tumor, his wife is suffering from depression and obsession neurosis

and daughter from epilepsy. The applicant has further submitted that he is a permanent resident of Trichur and he has been residing there with his family consisting of his wife, his school going son studying in 12<sup>th</sup> standard, daughter studying in the 10th standard and his father aged 92 years. He has produced Annexures.A1 and A2 medical reports in support of his father's illness, Annexure.A3 medical report in support of his wife's illness and the Annexure.A4 certificate to the effect that his daughter is undergoing treatment for epilepsy.

3 The applicant has also submitted that his case is squarely covered by the orders of this Tribunal in OA 521/04 decided on 20.1.2005, OA 126/05 decided on 19.10.2005 and OA 808/05 decided on 30.8.2006.

4 The respondents in their reply submitted that the applicant was transferred as a part of the annual transfer exercise which was done after options were obtained from approximately thousand volunteers at the level of Senior Auditor/Clerks who are desirous of posting to their choice stations and to accommodate them, station seniors serving on popular stations are considered for transfer to nearby stations so that in their place volunteers can be accommodated. The applicant was one of such persons who was to be transferred to a nearby place. Accordingly, the Annexure.R2 consolidated station seniors list in respect of Kerala stations was prepared excluding those who were completing 56 years of age as on 30.6.2007. A list of individuals who were allowed retention in Kerala State for reasons on compassionate/administrative grounds was also prepared. According to the respondents the transfers were ordered strictly on the basis of administrative requirements of the department in a fair manner. 19 individuals senior to the applicant and 3 individuals junior to the applicant were transferred out of Kerala. 21 individuals whose names were falling



within the cut off date were allowed retention in Kerala for various reasons. Six of them were physically handicapped, 12 of them were widows and one of them was having a mentally challenged daughter. Another individual was allowed to be retained at Kannur in view of an important project relating to pay and allowances. The respondents have, therefore, submitted that the transfer of the applicant from Kerala to Bangalore cannot be held as in violation of the transfer policy.

5 In the rejoinder, the applicant has alleged that the respondents were trying to intentionally ignoring the clauses 370,373 and 375 of the DAD Office Manual Part I and the Annexure.A8, A9 and A.10 orders of this Tribunal. He has particularly referred to Paras 9 and 10 of the Annexure.A9 order of this Tribunal in OA 126/05 dated 19.10.2005 wherein it has been held as under:

"9 Clause 378 (ii) declares that those controllers who have all Indian jurisdiction will endeavor 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 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. Further more 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 guidelines which is followed by the respondents in many other case. 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 the rule of

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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 consideration while transferring the applicant."

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 guidelines and, therefore, Annexure.A2,Annexure.A7,Annexure.A9 and Annexure.A10 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."

6 He has also taken exception to the respondents' contention that certain station seniors have been retained in Kerala for various other reasons when there are no such provisions in the DAD Office Manual to do so. In this regard, he has relied upon the following findings of this Tribunal in Para 10 of the Annexure.A8 order in OA 521/04 dated 20.1.2005:

"No where it is mentioned that widows, handicapped and EDP trained persons are coming under exempted category. All of them having all India transfer liability and having station seniority and state seniority than the applicant, cannot be considered as the exempted category in preference to applicant's category."

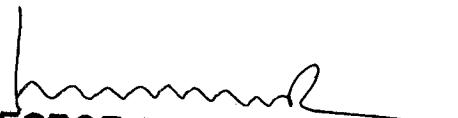
7 I have heard Shri V.Ajith Narayanan for the applicant and Shri P.S.Biju for the respondents. There is no denial of the fact that the applicant is above 54 years of age on the date of his transfer. Clause 373 of the DAD Office Manual Part I clearly states that persons above 54 years of age will not normally be subjected to transfer and if they are not serving at their home stations or stations of choice, they will be repatriated to those stations (if so desired by them) to the extent administratively feasible. However, the contention of the respondents is that the employees above 56 years have only been exempted from such transfer. As observed by this Tribunal in Annexure A9 order dated. 19.10.2005, when Clause 373 of the DAD Office Manual Part I has not been changed, persons above 54

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years age cannot be subjected to transfer to an outstation. Undisputedly the applicant was above 54 years at the time of issue of the impugned Annexure A6 letter dated 10.4.2007. Again, as observed by this Tribunal in its order dated 20.1.2005 in OA 521/04, all the employees having all India transfer liability except those belonging to the exempted categories and those having higher Station/State seniority should have been subjected to transfer first. The respondents also should have given due consideration to the serious ailments being suffered by the members of the family of the applicant. In my considered opinion, the applicant has clearly made out a case for his retention in the present place of posting or at his place of choice posting in terms of Clauses 370, 373 and 375 of the DAD Office Manual Part I.

8 In consideration of the above aspects of the matter, I allow this OA and set aside Annexure A6 letter dated 10.4.2007. The second respondent shall, therefore, either retain the applicant at his present place of posting in Naval Local Audit Office, Kochi or repatriate him to his home station/choice station at Trichur. There shall be no order as to costs.

Dated this the 6th day of September, 2007

  
GEORGE PARACKEN  
JUDICIAL MEMBER