

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A No. 288/07

Wednesday, this the 2<sup>nd</sup> day of January, 2008.

**CORAM**

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

K.T.Varghese,  
Senior Auditor, A/c No.8318330,  
O/o. The Joint Controller of Defence Accounts,  
Navy, Area Accounts Office,  
Navy, Kochi. ....Applicant

(By Advocate Mr Shafik M.A)

1. Union of India represented by the 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), Cooperage Road, Mumbai.
4. The Joint Controller of Defence Accounts, Area Accounts Office (Navy), Perumanoor.P.O. Thevara, Cochin.
5. The Senior Accounts Officer, (Administration), Area Accounts Office, Thevara, Cochin. ....Respondents

(By Advocate Mrs K Girija, ACGSC )

This application having been finally heard on 5.12.2007, the Tribunal on 2.1.2008 delivered the following:

ORDER

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

The applicant's grievance in this O.A is against his transfer to the Office of the Controller of Defence Accounts, Bangalore from his present place of posting

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in the Office of the 4<sup>th</sup> respondent, viz, the Joint Controller of Defene Accounts, Area Accounts Office (Navy), Perumanoor, Cochin, conveyed to him vide Annexure A-1 letter dated 10.4.2007.

2. The contention of the applicant is that his transfer order has been issued in violation of the existing transfer policy (Annexure A-2), particularly, Clause 370, 373 and 375 of Defence Accounts Department Office Manual, Part-I, (Manual for short) which are reproduced below:

"370. 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 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.

Xxxxx       xxxxx       xxxxx

#### EXEMPTION FROM TRANSFERS

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.

Xxxxx       xxxxx       xxxx

375. In case where an employee, or a member of his family, is suffering from serious ailments such as cancer, polio, blindness, mental disease, paralysis etc., Principal Controllers/Controllers may, at their discretion grant exemption from transfers, for a specific/limited period, provided the disease is certified by the authorised specialist. The case may be reviewed after the period of exemption is over.

Physically handicapped employees may be granted exemption from transfer taking into account the seriousness of the physical disability of the employee due to less of limbs, spinal, cord injuries, paralysis, parasis, visual disability etc."

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3. In anticipation of his impending transfer, the applicant had made Annexure A-3 representation dated 4.4.2007 stating that he was posted in the office of the AAO, Navy, Cochin in June 1999 after serving 5 years at CDA, Bangalore and he should not be further transferred in the coming General Transfers. Moreover, in response to the alert notice dated 5.10.2004 for transfer, he had already given Kottayam, Trichur and Kollam as his choice stations in the said order of priority. When he was given the second alert notice on 19.9.2006 also, he had given the same option. However, according to him, the respondents have not considered those options given by him and he was being posted to CAD, Bangalore on station seniority basis. He has pointed out to the respondents that his colleagues who are seniors to him are still continuing in Cochin without any transfers. He specifically pointed out the cases of Smt. Usha Dilip, Senior Auditor who had been serving at DPDO, Trichur with effect from 1993 to 1995 and thereafter at A.O., Navy, Cochin, and Shri G Haridas, Senior Auditor who served in DPDO, Kollam with effect from 1987 to 1991 and thereafter continuing at A.O., Navy, Cochin from 1991 onwards.

4. Secondly, he has contended that he had already crossed the age of 54 years in October, 2006 and his wife is also a Government employee at Cochin. The other contention of the applicant is that his sister who lost her husband is fully bed ridden due to the accident which caused the loss of life of her husband. He has also produced Annexure A-4 medical certificate dated 1.5.2007 issued by Orthopaedic Surgeon, of General Hospital, Ernakulam.

5. The respondents in their reply have submitted that the employees of Defence Accounts Department have an All India transfer liability and transfers are integral part of man power management at all levels in the department. They have also submitted that the fundamental principles of governing the transfers of

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members of the department from one office to another are (i) to safe guard the interests of the Government and to maintain the efficiency of the service in the highest possible degree, (ii) to ensure equality of treatment for all, so far as it is possible to attain this, (iii) to make its officials proficient all round in the work of the Department to enable them to occupy pivotal positions and (iv) to meet the convenience and wishes of individuals when there is an opportunity of doing so with due regard to the interests of the service. They have submitted that vide Annexure R-1 letter dated 9.8.2006 options were invited from station seniors from each station along with their 3 choice stations including those individuals who will be completed 56 years of age as on 30.6.2007. The applicant was one such person who was given the option. They have further submitted that along with the consolidated station seniority list in respect of persons below 56 years as on 30.6.2007, another list of individuals who were in dire need of being retained at various stations in Kerala was also prepared. Such a list had to be prepared in order to allow retention of those individuals who could not move out of Kerala for various reasons including compassionate and administrative reasons (Annexure R-3).

6. Respondents have further submitted that the transfer of the applicant from Cochin to Bangalore has been issued on the basis of his seniority as per the provisions of para 370 of Office Manual Part I which reads thus:

“370. 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 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.”

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As regards the applicant's contention that in terms of the provisions of para 373 ibid he should be exempted from transfer, the respondents have submitted that consequent on revision in age limit of superannuation, the age limit of 54 years prescribed therein was enhanced by two years i.e. 56 years. They have further submitted that though it was stated in the aforesaid provisions that persons above 54 years will not be normally subjected to transfer, there were more than 70 individuals who were serving at various stations for considerable time and waiting for transfer to Kerala Stations and administrative requirement is such that unless those serving in Kerala are rotated to other stations, they cannot be accommodated. They have also submitted that action to incorporate the amendment in the relevant Para of the Office Manual was also initiated by the respondents. They have submitted that there are 5 other similarly placed individuals who are more than 54 years of age and transferred out of Kerala on the basis of their station seniority in Kerala stations. As regards the option given by the applicant, to post him at Trichur or at Kottayam or at Trivandrum within Kerala they have submitted that he was transferred to Bangalore on the basis of his Kerala seniority and it was strictly on the basis of administrative requirement of the department. They have also submitted that 21 individuals whose names are falling within the cut off date are allowed retention at various Kerala Stations for reasons such as, 6 of them were physically handicapped, 12 of them were widows, 1 being a divorced lady and 1 individual having a mentally challenged daughter to look after.

7. They have also relied upon the judgment of the Apex Court in State of U.P. v. Gobardhan Lal (2004) 11 SCC 402 and stated that it is a settled law that unless the order of transfer is shown to be an outcome of malafide exercise of power or violative of any statutory provision or passed by an authority not competent to do so, an order of transfer cannot be lightly interfered with for any

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or every type of grievance to be made.

8. I have heard the learned counsel on both sides. This Tribunal has decided at least 4 cases earlier which are similar to the present one viz, O.A.521/04, 126/05, 808/05 and 265/07. In all these cases, this Tribunal has considered the question of age limit of 54 years as prescribed in Clause 373 of the transfer policy of the Department, wherein it has been specifically stated that according to the said policy, persons above 54 years of age will not be normally subjected to transfer. The respondents have to show some extra ordinary situation which warrant the transfer of the applicant who is admittedly above 54 years. The contention of the respondents is that the age limit is proposed to be enhanced to 56 years as the retirement age has been enhanced from 58 years to 60 years. In case respondents wanted to increase the age limit from 54 years to 56 years, they could have done so without any delay in the matter. However, proposal made by the Department remained as proposal only and it has never been carried out by formally amending the relevant provision in the Manual. The inference that can be drawn from such a situation is that the respondents still have not decided as to whether the age limit of 54 years is to be enhanced to 56 years or not. When there is a clear cut policy that persons who have crossed 54 years will not be normally transferred that policy has to be uniformly applied in all cases. Moreover, I have seen that there are several people who are station seniors to the applicant are retained in Kerala stations without any valid reasons. The contention of the respondents that certain people have been retained in Kerala stations for reasons such as physically handicapped, divorced ladies, widows, persons having mentally challenged children etc. is not supported by any policy decisions by the Department. In view of these facts and circumstances of the case, I hold that the transfer of the applicant is in violation of the transfer policy of the respondents. In the result, the O.A is allowed,

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Annexure A-1 order of transfer of the applicant to CAD, Bangalore is quashed and set aside. No costs.

Dated, the 2<sup>nd</sup> day of January, 2008.

  
**GEORGE PARACKEN**  
**JUDICIAL MEMBER**

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