

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No.304/10

Tuesday this the 19th day of October 2010

C O R A M :

**HON'BLE Mr.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

**K.I Thankappan
Senior Auditor (MACP)
A/C No.8318596
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
R.K.Puram
New Delhi**
3. **The Principal Controller of Defence Accounts (Navy)
No.1, Cooperage Road
Mumbai – 39**
4. **The Accounts Officer (A.N)
Area Accounts Office (Navy)
Perumanoor P.O
Kochi – 15**
5. **Deputy Controller of Defence Accounts (Navy)
Area Accounts Office (Navy)
Perumanoor P.O
Kochi – 15**

... **Respondents**

(By Advocate Mr.Sunil Jacob Jose, SCGSC)

This Original Application having been heard on 19th October 2010, the Tribunal on the same day delivered the following :-

ORDER
HON'BLE Mr.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

1. The applicant filed this Original Application apprehending that he will be transferred to Bangalore and prayed that the authorities may be directed to retain him at the present station. Further, the applicant prayed that his representation (a copy of which is produced as Annexure A-2) dated 05.04.10 shall also be considered by the respondents.

2. When the application came up for admission, this Tribunal admitted this Original Application and issued notices to the respondents on 09.04.10. This Tribunal also passed an interim order to keep status quo as on that day until further orders. Respondents have filed their reply statement on receipt of the notices from this Tribunal. In the reply statement it is stated that the 2nd respondent being the competent authority to order transfers and postings of the applicant, as the Head of the Defence Accounts Department, the present transfer was intended to be made on the basis of administrative requirement. Further, it is stated in the reply statement that the senior officers who were retained in the present station are all over 56 years of age and as per clause 375 and 373 of the transfer guidelines, such persons have to be retained in the station. There are no other senior officers than that of the applicant who were retained in the office and it is also stated that the age limit for getting any benefit of the transfer guidelines is 56 and not 54 as stated by the applicant. The cases which are relied on by the applicant is ordered by this Tribunal and the same have been challenged before the Honorable High Court of Kerala and that writ petitions are still pending. If so, the present intended transfer is in accordance



with the directions of the letter of the D.A.D Office Manual Part I and from the above letter the applicant is liable to be transferred to Bangalore. Further, it is stated in the reply statement that the applicant can not be posted at Trichur as there is no vacancy at Trichur. Hence, the request of the applicant for transferring him to Trichur instead of Bangalore is also not accepted.

3. We have heard the counsel appearing for the applicant Mr.V.Ajith Narayanan and also Mr.Sunil Jacob Jose, SCGSC appearing for the respondents. We have also perused documents produced before this Tribunal. The applicant, admittedly, has outside service of 8 years and he is between 56 to 55 years of age at the time of filing this O.A. At present the counsel for the applicant states that the applicant has only 18 days left to complete 56 years. As per clause 373 of the guidelines, if an officer attains the age of 56 years he shall not normally be transferred and he may be given a choice posting of his own choice considering the administrative feasibility. Learned counsel also brought to the notice of this Tribunal certain orders of this Tribunal and produced Annexure A3 to A-7 to show that this Tribunal has considered identical facts and ordered retaining such officials in the station itself. In the light of the above contentions, we also heard Mr.Sunil Jacob Jose, SCGSC appearing for the respondents. Reiterating the statements contained in the reply statement the counsel for the respondents further submits that all the seniors who are retained in the station are above 56 years of age and two persons who are retained, though below 56 years of age, are physically challenged and have medical problems. Hence, no senior of the applicant is retained. Apart from that, the counsel submits that clause 373 can be applied to an officer only on attaining the age of 56 years and not 54. When the applicant filed this O.A, the applicant is

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not having 56 years of age. In the above circumstances, this O.A shall be dismissed.

4. On an anxious consideration of the contentions of the counsel for the parties, we have to decide whether the applicant should be allowed to continue in the present station or not. Admittedly, the applicant is attaining 56 years of age within 18 days from today. At the time of admission we have found that the applicant is apprehending his transfer to Bangalore on the basis of the letter issued from P.C.D.A, a copy of which is produced as Annexure A-1. The contention of that letter has been extracted in paragraph 9 of the Original Application as follows:-

"The applicant is going to be transferred to CDA Bangalore and he will be relieved shortly. But neither the copy of the said communication nor any transfer order was issued to the applicant till date even though he had asked to the authority to serve the copy of the said letter."

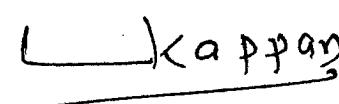
5. From a reading the above pleadings and the contentions of the letter, it is not possible to hold that present transfer is on administrative reason or administrative exigencies exists to transfer the applicant to Bangalore except that of a letter issued by the CDA. In the above circumstances, we are of the view that as this Tribunal has admitted similar factual circumstances in Annexure A3 to Annexure A-7 orders the same stand can be taken in the case of the applicant also. If so, we are inclined to allow this application and direct that the applicant may be retained in the present station and he may not be transferred at the fag end of his service period unless he wants to choose another station of his choice.



6. With the above observations, this Original Application stand allowed to the extent indicated above. No costs.

(Dated this the 19th day of October 2010)


K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE K. THANKAPPAN
JUDICIAL MEMBER

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