A

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Common order in O.A.No.389/2006 and connected O.As.

Friday this the 9 th day of June 2006.

CORAM:

HON'BLE MR. KBS RAJAN, JUDICIAL MEMBER
HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

O.A.389/06:

1. All India Federation of Central Excise Gazetted Executive Officers, Kerala Unit represented by its General Secretary, Rajan G.George, Superintendent of Central Excise. Office of the Chief Commissioner of Central Excise, Cochin, CR Buildings I.S.Press Road, Cochin, residing at "Anugraha" 41/3052, Janata, Palarivattom, Cochin-25.

2. V.P.Omkumar, Superintendent of Central Excise, Office of the Commissioner of Central Excise, Cochin, Central Revenue Buildings I.S.Press Road, Cochin, residing at "Panakkal", ACSRA 27, Kaloor, Cochin-18.

3. K.S.Kuriakose, Superintendent of Central Excise, Central Excise Divisional Office, Kollam, residing at; Kochukaliyikal Bethany, Mangamkuzhi P.O.Mavelikkara. Applicants

(By Advocate Shri Shafik M.A.)

Vs.

Union of India, represented by the Secretary, Ministry of Finance, New Delhi and 4 others. Respondents

(By Advocate Shri. Sunil Jose, ACGSC)

O.A.304/06:

Mr. K.B.Mohandas, Superintendent of Central Excise, Office of the Commissioner of Central Excise, Central Revenue Buildings I.S.Press Road, Cochin-18. Applicant

(By Advocate Mr.CSG Nair)

Vs.

The Commissioner of Central Excise & Customs,
Central Revenue Buildings
I.S.Press Road, Cochin-18 & 3 others. Respondents

(By Advocate Shri. P.M.Saji, ACGSC(R.1-3)

O.A.306/06:

Mr. Sudish Kumar S,
Inspector of Central Excise,
Divisional Preventive Unit,
Palakkad I Division, Palakkad-678 001. Applicant

(By Advocate ShriCSG Nair)

Vs.

The Commissioner of Central Excise & Customs,
Central Revenue Buildings
I.S.Press Road, Cochin-18 & 3 others. Respondents

(By Advocate Mrs. Mini R Menon, ACGSC(R.1-3)

O.A.306/06:

K.P.Ramadas,
Inspector of Central Excise,
Quilandy Range, Quilandy,
Kozhikode District. Applicant

(By Advocate ShriCSG Nair)

Vs.

The Commissioner of Central Excise & Customs,
Central Revenue Buildings
I.S.Press Road, Cochin-18 & 3 others. Respondents

(By Advocate Shri Sunil Jose, ACGSC)

O.A.308/06:

V.P.Vivek,
Inspector of Central Excise,
Customs Preventive Division, Kannoor,
(residing at Shalima, Palikulam,
Chirakkal P.O., Kannur District.) Applicant

By Advocate Shri CSG Nair)

Vs.

The Commissioner of Central Excise & Customs,
Central Revenue Buildings
I.S.Press Road, Cochin-18 & 3 others. Respondents

(By Advocate Shri C.M.Nazar, ACGSC)

O.A.309/06:

Josey Joseph,
Inspector of Central Excise,
Office of the Chief Commissioner of
Central Excise, Kerala Zone, Central Revenue Buildings
I.S.Press Road, Cochin-18, residing at 32/931 A-1,
Souparnika(Ist Floor) Kaithoth Road,
Palarivattom, Ernakulam. Applicant

(By Advocate Shri Shafik M.A.)

Vs.

Union of India, represented by the
Secretary, Ministry of Finance,
New Delhi and 2 others. Respondents

(By Advocate Shri C.M.Nazar, ACGSC)

O.A.310/06:

1. Kerala Central Excise & Customs Executive
Officers Association, represented by its
JCM Member, N.P.Padmanakumar,
Inspector of Central Excise,
O/o The Commissioner of Central Excise,
Cochin, Central Revenue Buildings
I.S.Press Road, Cochin, residing at
"Sreehari" Eroor Vasudeva Road,
North Janatha Road, Cochin-682 025.

2. Sunil V.T., Inspector of Central Excise,
Office of the Assistant Commissioner of Central Excise,
Muvattupuzha Division, KPC Tower,
Muvattupuzha, residing at Chirayil Bhavanam,
Kadayiruppu, Kolenchery,
Ernakulam District. Applicants

(By Advocate Shri Shafik M.A.)

Vs.

Union of India, represented by the
Secretary, Ministry of Finance,
New Delhi and 4 others. Respondents

(By Advocate Shri George Joseph, ACGSC)

O.A.312/06:

M.K.Saveen,
Inspector of Central Excise,
Head Quarters Office, Calicut. Applicant

(By Advocate Shri CSG Nair)

Vs.

The Commissioner of Central Excise &
Customs, Central Revenue Buildings
I.S.Press Road, Cochin-18 and two others. Respondents

(By Advocate Shri S.Abhilash, ACGSC)

O.A.313/06:

P.V.Narayanan,
Inspector of Central Excise,
Kannur Division, Kannur. Applicant

(By Advocate Shri CSG Nair)

Vs.

The Commissioner of Central Excise
& Customs, Central Revenue Buildings
I.S.Press Road, Cochin-18 and two others. Respondents

(By Advocate Mrs. Aysha Youseff, ACGSC)

O.A.314/06:

C.Parameswaran,
Inspector of Central Excise,
Trichur V Range, Trichur Division. Applicant

(By Advocate Shri CSG Nair)

Vs.

The Commissioner of Central Excise
& Customs, Central Revenue Buildings
I.S.Press Road, Cochin-18 and two others. Respondents

(By Advocate Shri Thomas Mathew Nellimoottil, ACGSC)

O.A.315/06:

Biju K Jacob,
Inspector of Central Excise,
Trichur Division, Trissur. Applicant

(By Advocate Shri CSG Nair)

Vs.

The Commissioner of Central Excise & Customs,
Central Revenue Buildings
I.S.Press Road, Cochin-18 and two others. Respondents

(By Advocate Shri S.Abhilash, ACGSC)

O.A.316/06:

P.C.Chacko,
Inspector of Central Excise & Customs,
Thalassery Range, Thalassery,
Kannoor District. Applicant

(By Advocate Shri CSG Nair)

Vs.

The Commissioner of Central Excise & Customs,
Central Revenue Buildings
I.S.Press Road, Cochin-18 and three others. Respondents

(By Advocate Shri M.M.Saidu Muhammed, ACGSC)

O.A.317/06:

Chinnamma Mathews,
Inspector of Central Excise,
Wadakkanchery Range, Trichur District. Applicant

(By Advocate Shri CSG Nair)

Vs.

The Commissioner of Central Excise & Customs,
Central Revenue Buildings
I.S.Press Road, Cochin-18 and two others. Respondents

(By Advocate Shri George Joseph, ACGSC)

O.A.318/06:

C.J.Thomas,
Inspector of Central Excise,
Head Quarters Office, Calicut. Applicant

(By Advocate Shri CSG Nair)

Vs.

The Commissioner of Central Excise & Customs,
Central Revenue Buildings
I.S.Press Road, Cochin-18 and two others. Respondents

(By Advocate Shri P.J.Philip, ACGSC)

O.A.319/06:

K.Subramanian,
Inspector of Central Excise,
Tellichery Range, Tellichery. Applicant

(By Advocate Shri CSG Nair)

Vs.

The Commissioner of Central Excise & Customs,
Central Revenue Buildings
I.S.Press Road, Cochin-18 and two others. Respondents

(By Advocate Smt. Mini R Menon, ACGSC)

O.A.320/06:

Gireesh Babu P.,
Inspector of Central Excise,
Head Quarters Office, Calicut. Applicant

(By Advocate Shri CSG Nair)

Vs.

The Commissioner of Central Excise & Customs,
Central Revenue Buildings
I.S.Press Road, Cochin-18 and two others. Respondents

(By Advocate Smt. K.Girija, ACGSC)

O.A.321/06:

K.V.Balakrishnan,
Inspector of Central Excise,
Central Excise Range,
Manjeshwaram, Kasarkode District. Applicant

(By Advocate Shri CSG Nair)

Vs.

The Commissioner of Central Excise & Customs,
Central Revenue Buildings
I.S.Press Road, Cochin-18 and two others. Respondents

(By Advocate Shri Thomas Mathew Nellimoottil, ACGSC)

O.A.322/06:

I.S.Antony Cleetus,
Tax Assistant,
Central Excise Division,
Ernakulam I, Cochin-17. Applicant

(By Advocate Shri CSG Nair)

Vs.

The Commissioner of Central Excise & Customs,
Central Revenue Buildings
I.S.Press Road, Cochin-18 and three others. Respondents

(By Advocate Shri P.A.Azis, ACGSC)(R.1-3)

O.A.323/06:

P.T.Chacko,
Senior Tax Assistant,
Central Excise Division, Kottayam. Applicant

(By Advocate Shri CSG Nair)

Vs.

The Commissioner of Central Excise & Customs,
Central Revenue Buildings
I.S.Press Road, Cochin-18 and three others. Respondents

(By Advocate Shri C.M.Nazar, ACGSC)

O.A.324/06:

V.V.Vinod Kumar,
Inspector of Central Excise,
Head Quarters Office, Calicut. Applicant

(By Advocate Shri CSG Nair)

Vs.

The Commissioner of Central Excise & Customs,
Central Revenue Buildings
I.S.Press Road, Cochin-18 and two others. Respondents

(By Advocate Shri Sunil Jose, ACGSC)

O.A.325/06:

C.Gokuldas,
Inspector of Central Excise,
Head Quarters Office, Calicut. Applicant

(By Advocate Shri CSG Nair)

Vs.

The Commissioner of Central Excise & Customs,
Central Revenue Buildings
I.S.Press Road, Cochin-18 and two others. Respondents

(By Advocate Smt. Mariam Mathai, ACGSC)

O.A.326/06:

Joju M Mampilly,
Inspector of Central Excise,
Head Quarters Office, Calicut. Applicant

(By Advocate Shri CSG Nair)

Vs.

The Commissioner of Central Excise & Customs,
Central Revenue Buildings
I.S.Press Road, Cochin-18 and two others. Respondents

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

O.A.327/06:

T.N.Sunil,
Inspector of Central Excise,
Kanhangad, Kasarkode District. Applicant

(By Advocate Shri CSG Nair)

Vs.

The Commissioner of Central Excise & Customs,
Central Revenue Buildings
I.S.Press Road, Cochin-18 and two others. Respondents

(By Advocate Shri P.M.Saji, ACGSC)

O.A.328/06:

M.Sasikumar,
Inspector of Central Excise,
Divisional Preventive Office,
Trichur Division. Applicant

(By Advocate Shri CSG Nair)

Vs.

The Commissioner of Central Excise & Customs,
Central Revenue Buildings
I.S.Press Road, Cochin-18 and two others. Respondents

(By Advocate Shri P.Parameswaran Nair, ACGSC)

O.A.329/06:

A.P.Suresh Babu,
Inspector of Central Excise,
Head Quarters Office, Calicut. Applicant

(By Advocate Shri CSG Nair)

Vs.

The Commissioner of Central Excise & Customs,
Central Revenue Buildings
I.S.Press Road, Cochin-18 and two others. Respondents

(By Advocate Shri Varghese P. Thomas, ACGSC)

O.A.330/06:

R.Satheesh,
Inspector of Central Excise,
Office of the Asst. Commissioner of Central Excise,
Muvattupuzha Division, KPC Towers, Muvattupuzha,
residing at: "Srihari" A.M.Road, Vaidyasala Pady,
Iringole P.O., Perumbavoor,
Ernakulam District. Applicant

(By Advocate Shri Shafik M.A.)

Vs.

Union of India, represented by the
Secretary, Ministry of Finance,
New Delhi and 2 others. Respondents

(By Advocate Smt. Mariam Mathai, ACGSC)

O.A.331/06:

K.V.Mathew,
Inspector of Central Excise,
Office of the Superintendent of Central Excise,
Palai Range, Opposite, KSRTC Bus Stand, Palai,
Kottayam District, residing at "Karinattu Kaithamattom",
Poothakuzhy P.O.Pampady, Kottayam District. Applicant

(By Advocate Shri Shafik M.A.)

Vs.

Union of India, represented by the
Secretary, Ministry of Finance,
New Delhi and 2 others. Respondents

(By Advocate Shri M.M.Saidu Muhammed, ACGSC)

O.A.332/06:

Thomas Cherian,
Inspector of Central Excise,
Office of the Commissioner of Central Excise,
Calicut, residing at: "Mattathil" 33/541 A,
Paroppadi, Malaparamba,
Calicut. Applicant

(By Advocate Shri Shafik M.A.)

Vs.

Union of India, represented by the
Secretary, Ministry of Finance,
New Delhi and 2 others. Respondents

(By Advocate Shri P.A.Aziz, ACGSC)

O.A.333/06:

P.G.Vinayakumar,
Inspector of Central Excise,
Kalpetta Range Office, Kalpetta,
Wynad District, residing at 19/241(3), Vattakary Lane,
Near St.Joseph's School, Pinangode Road, Kalpetta,
Wynad District. Applicant

(By Advocate Shri Shafik M.A.)

Vs.

Union of India, represented by the
Secretary, Ministry of Finance,
New Delhi and 2 others. Respondents

(By Advocate Shri P.Parameswaran Nair, ACGSC)

O.A.341/06:

A.K.Surendranathan,
Superintendent of Central Excise,
Trichur II Range Office, Trichur,
residing at Kottassery House, Post Akikavu,
Via Karikad, Trichur District. Applicant

(By Advocate Shri Shafik M.A.)

Vs.

Union of India, represented by the
Secretary, Ministry of Finance,
New Delhi and 2 others. Respondents

(By Advocate Shri Varghese P Thomas, ACGSC)

O.A.342/06:

Rasheed Ali P.N.,
Superintendent of Central Excise,
Central Excise Range, Quilandy,
LIC Road, Quilandy, residing at
C-3, Alsa Apartments, Red Cross Road.
Calicut.-673 035. Applicant

(By Advocate Shri Shafik M.A.)

Vs.

Union of India, represented by the
Secretary, Ministry of Finance,
New Delhi and 2 others. Respondents

(By Advocate Smt. Aysha Youseff, ACGSC)

O.A.343/06:

C.V.George,
Superintendent of Central Excise,
Central Excise Divisional Office, Trichur,
residing at Cheruvathoor House, St.Thomas Road,
Pazhanji, Trichur, District. Applicant

(By Advocate Shri Shafik M.A.)

Vs.

Union of India, represented by the
Secretary, Ministry of Finance,
New Delhi and 2 others. Respondents

(By Advocate Smt. Aysha Youseff, ACGSC)
(By Advocate Shri Shafik M.A.)

Vs.

Union of India, represented by the
Secretary, Ministry of Finance,
New Delhi and 2 others. Respondents

(By Advocate Smt. K.Girija, ACGSC)

344/06:

N.Muralidharan,
Superintendent of Central Excise,
Central Excise Division II Palghat,
Permanently residing at TC II/120, 'Ushus'
Green Park Avenue, Thiruvanbady P.O.,
Trichur. Applicant

(By Advocate Shri Shafik M.A.)

Vs.

Union of India, represented by the
Secretary, Ministry of Finance,
New Delhi and 2 others. Respondents

(By Advocate Shri George Joseph, ACGSC)

O.A.346/06:

P.Venugopal,
Superintendent of Central Excise,
Central Excise Range Office, Irinjalakuda
residing at G-41, Kaustubhom,
Green Park Avenue, Thiruvanbady P.O.,
Trichur. Applicant

(By Advocate Shri Shafik M.A.)

Vs.

Union of India, represented by the
Secretary, Ministry of Finance,
New Delhi and 2 others. Respondents

(By Advocate Shri P.J.Philip, ACGSC)

O.A.358/06:
Rafeeque Hassan M,
Inspector of Central Excise,
Perintalmanna Range, Perintalmanna. Applicant

(By Advocate Shri CSG Nair)

Vs.

The Commissioner of Central Excise & Customs,
Central Revenue Buildings
I.S.Press Road, Cochin-18 and two others. Respondents

(By Advocate Shri P.M.Saji, ACGSC)

O.A.359/06:

A.Syamalavarnan Erady,
Inspector of Central Excise,
Range III KozhikodeDivision,
Calicut Commissionerate. Applicant

(By Advocate Shri CSG Nair)

Vs.

The Commissioner of Central Excise & Customs,
Central Revenue Buildings
I.S.Press Road, Cochin-18 and two others. Respondents

(By Advocate Smt. Mariam Mathai, ACGSC)

O.A.360/06:

Dolton Francis forte,
Inspector of Central Excise,
Service Tax Section,
Central Excise Division, Calicut. Applicant

(By Advocate Shri CSG Nair)

Vs.

The Commissioner of Central Excise & Customs,
Central Revenue Buildings
I.S.Press Road, Cochin-18 and two others. Respondents

(By Advocate Shri C.M.Nazar, ACGSC)

O.A.361/06:

C.George Panicker,
Superintendent,
Customs Preventive Unit II,
Thiruvananthapuram. Applicant

(By Advocate Shri Arun Raj S.)

Vs.

Union of India represented by the
Secretary, Ministry of Finance,
Department of Customs and Excise,
New Delhi and three others. Respondents

(By Advocate Shri Aysha Youseff, ACGSC)

O.A.364/06:

Sashidharan,
Inspector of Central Excise,
Central Excise Head Quarters Office (Audit), Calicut,
residing at: 1/2985 A, Rithika Apartments, East Hill Road,
West Hill P.O., Calicut-5. Applicant

(By Asdvocate Shri Shafik M.A.)

Vs.

Union of India represented by the
Secretary, Ministry of Finance,
New Delhi & 2 others. Respondents

(By Advocate Shri Sunil Jose, ACGSC)

O.A.368/06:

A.M.Jose,
Inspector of Central Excise,
Central Excise Head Quarters Office (Tech), Calicut,
residing at:"Ayathamattom House", Chevayur P.O.,
Calicut-II. Applicant

(By Advocate Shri Shafik M.A.)

Vs.

Union of India represented by the
Secretary, Ministry of Finance,
New Delhi & 2 others. Respondents

(By Advocate Smt. Mariam Mathai, ACGSC)

O.A.369/06

K.K.Subramanyan,
Superintendent of Central Excise, Internal Audit
Section, Central Excise Commissionerate,
Calicut, residing at: Bhajana Kovil, Chalappuram,
Calicut. Applicant

(By Advocate Shri Shafik M.A.)

Vs.

Union of India represented by the
Secretary, Ministry of Finance,
New Delhi & 2 others. Respondents

(By Advocate Shri C.M.Nazar, ACGSC)

O.A.370/06:

V.K.Pushpavally,
W/o Kesavankutty,
Inspector of Central Excise,
O/o the Central Excise I B range,
Palakkad, residing at "Karthika", Kanniyapuram,
Ottapalam, Palakkad District. Applicant
(By Advocate Shri Shafik M.A.)

Vs.

Union of India represented by the
Secretary, Ministry of Finance,
New Delhi & 2 others. Respondents

(By Advocate Shri S.Abhilash, ACGSC)

O.A.371/06:

M.K.Babunarayanan,
Inspector of Central Excise(PRO),
Central Excise Head Quarters Office, Calicut,
residing at:"31, Netaji Nagar, Kottuli P.O.,
Calicut. Applicant

By Advocate Shri Shafik M.A.)

Vs.

Union of India represented by the
Secretary, Ministry of Finance,
New Delhi & 2 others. Respondents

(By Advocate Shri M.M.Saidu Muhammed, ACGSC)

O.A.384/06:

Bindu K Katayamkott,
Inspector of Central Excise. Hqrs. Office
Calicut. Applicant

(By Advocate Ms. C.S.Sheeja)

Vs.

The Commissioner of Central Excise & Customs,
Central Revenue Buildings
I.S.Press Road, Cochin-18 and two others. Respondents

(By Advocate Mrs. K.Girija, ACGSC)

O.A.387/06:

Tomy Joseph,
Superintendent of Central Excise
Customs Preventive Unit, Thodupuzha. Applicant

(By Advocate Shri CSG Nair)

Vs.

The Commissioner of Customs(Preventive),
Central Revenue Buildings
I.S.Press Road, Cochin-18 and two others. Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil, ACGSC)

O.A.401/06:

A.Praveen Kumar,
Superintendent of Central Excise,
Head Quarters Adjudication Section,
Calicut Commissionerate. Applicant

(By Advocate Shri P.Rejinark)

Vs.

The Commissioner of Central Excise & Customs,
Central Revenue Buildings
I.S.Press Road, Cochin-18 and two others. Respondents

(By Advocate Mr. Sunil Jose, ACGSC)

The Application having been heard on 9.6.2006
the Tribunal on the same day delivered the following:

O R D E R

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

In the above OAs, as the issue involved is one and the same all the cases are disposed of by a common order.

2. In OA No. 389/2006, it is the All India Federation of Central Excise Gazetted Executive Officers Association and two other individuals that have filed the said OA. Similarly, in yet another OA No. 310/2006 it is another Association with certain other individual applicants that have filed the O.A. The respective M.As filed under Rule 4 (5) of the C.A.T (Procedure) Rules (M.A. No. 466 of 2006 in OA 389 of 2006 and MA No. 429/2006 in OA No. 310/2006) are allowed. For easy reference, the annexures and other documents as contained in OA 389 of 2006 are referred to in this common order.

3. Briefly stated, the members of the Applicants' Associations and other individual applicants are all working under Respondent No. 2, the Chief Commissioner of Excise and Customs and they are aggrieved by the annual general transfer order dated 11th May, 2006 (AnnexureA-1).

4. The case of the applicants is that in regard to their transfer (either inter commissionerate or intra

Commissionerate), the same is guided by the Transfer Policy/guidelines as contained in Annexur A-2 letter dated 30th June 1994, passed by the Central Board of Excise and Customs, addressed to all Principal Collectors, all Director General/Narcotic Commissioners and all Heads of Departments of Central Board of Excise and Customs. According to the said guidelines, for Executive Officers the period of stay at one station should normally be 4 years and transfers may be earlier if administrative requirements or compassionate grounds so warrant. Again, certain other concessions like posting of spouses at the same stations etc. have also been provided in the aforesaid guidelines. These guidelines issued by the Board have been promulgated in the Commissionerate of Cochin vide order dated 29.11.1999 wherein it has been provided that " to avoid inconvenience to officers for reasons of continuity of officers in a charge, annual general transfer of all officers who have completed a tenure of 6 years in Ernakulam and 4 years in other Stations will be done at the end of the academic year, every year. Certain other guidelines which go in tandem with the Board's guidelines have also been spelt out in the order of the Commissioner. A latitude to the administration has

also been given to the extent that the guidelines will not apply in case of extreme nature or where administrative contingencies require otherwise. The Cochin Commissionerate was trifurcated in 2002 with two more Commissonerates and one separate Preventive Unit. Again, in February, 2003, the Ministry of Finance, Central Board of Excise and Customs passed an order declaring the Cheief Commissioner as Cadre Controlling Authority in respect of all the Commissionerate . While specifying the powers and responsibility of the Cadre Controlling Authority, the Board, inter alia, prescribed as under:-

> 2. (c) Monitoring the implementation of the Board's instructions with regard to transfers and equitable distribution of manpower and material resources between Commissionerates / Zones;
>
> 3. It is also clarified that in the formalities comprising both Commissioners and Chief Commissioners, it would be the Chief Commissioner who would allocate and post staff to various formations including Commissioners'/Chief Commissioners' office.

5. In April, 2003, a discussion took place between the official and staff side members in regard to various issues and one of the issues related to guidelines for transfer. Annexure A/4

refers. In October, 2005 responcent No.2 had passed an order dated 5.10.2005 which had the effect of reduction of about 50 ranges in the entire Kerala State which would mean redeployment of surplus staff. However, at the intervention of the 1st respondent the said order was to be kept in abeyance vide order dated 27.10.2005.

6. On 3rd January, 2006, the respondents have issued a communication to all the officials in relation to the choice station prescribing certain specific dates and a copy of the same has been endorsed, inter alia to All General Secretaries of Staff Associations of Cochin Commissionerate.

7. The respondent No.3, the Commissioner of Central Excise and Customs, Cochin Commissionerate had issued the impugned transfer order which involves inter-Commissionerate and intra-Commissionerate transfers. Ofcourse, this order was issued with the approval of the Chief Commissioner of Central Excise, Kerala Zone, Kochi. The applicants' Association immediately preferred a representation dated 12.5.2006 addressed to respondent No. 4 followed by another dated 16.5.2006 to the same addressee. As a matter

of fact, the individual applicants have also preferred respective representations for reconsideration of their transfers. Apart from the same, Calicut Commissionerate had also addressed a communication to the Commissioner, Central Excise, Cochin, with reference to the transfer orders issued by the latter and therein brought out as follows:-

> 4. It is further observed that in the AGT 30% (of the working strength) of Inspectors, 37% of Superi-ntendents, 50% of Senior Tax Assistants and 40% of Group D staff have been transferred, which is very high. In a 4 year tenure criterion, not more than 25% of the staff should be transferred. Any abnormal transfer of staff would seriously impair administrative efficiency and we should , to the extent feasible, avoid such a situation.
>
> 5. We have received a large number of representations from officers of various cadres requesting for retention in the Commissionerate itself for the reason that the tenure of 4 years, prescribed in the transfer policy is with respect to a station and not with respect to a Commissionerate and since they have not completed the station tenure of 4 years, they are not liable for transfer. There is some merit in this argument. The transfer policy followed in all the Commissionerates prescribes only station tenure and not Commissionerate wise tenure. If in a Commissionerate there are different stations, only station tenure should be taken into account for considering transfer and not the total stay of an officer within the Commissionerate. This aspect should be kept in mind while effecting transfer and it appears in these orders, this fact has not been taken into account.
>
> 6. ....
>
> 7. It is further seen that there are a number of lady officers who have been transferred from

Calicut to other Commissionerates. The general policy of Government of India is to have positive discrimination in favour of lady officers and they have to be treated in a more considerate way than gentlemen officers. This aspect also has not taken into account in the transfer orders. Even among the Group 'D' staff, I find that more than 6 lady officers have been transferred out of the Commissionerate. On account of this large number of representations have been received which are being forwarded to your office for consideration. Unless and until these matters are resolved and a consensus is arrived, it is difficult to implement the AGT orders as mentioned above."

8. The applicants are aggrieved by the transfer order on various grounds such as, the same not being in tune with the general policy guidelines and in addition it has been the case of the applicants that as recently as 23.11.2005 the Department of Expenditure has emphasised the transfer to be kept to the minimum. Para 12 of the said order reads as under :-

"The transfer policies and the frequency and the periodicity of transfers of officials whether within the country or overseas, shall be reviewed as frequent transfers cause avoidable instability, resulting in inadequate development of expertise and grasp of the responsibilities, besides resulting in avoidable expenditure. All Ministries, including Ministry of External Affairs shall review the policies with a view to ensuring longer tenures at posting, thereby reducing the expenses on allowances and transfers.

9. On 31.5.2006, when the cases were listed for consideration, while granting time to the learned counsel for the respondents to seek instructions, the impugned order dated 11.5.2006 was directed to be stayed till the next date of hearing. Since mala fide has been alleged , notice also was sent to respondents 4 and 5 in their individual capacities.

10. The respondents have filed an M.A. for vacation of the interim stay granted. However, xx the case was to be heard finally, subject to certain clarifications sought by the Bench relating to the interpretation xxxxxxxx of para 2 (c) and 3 of order dated 16-11-2003 (Annexure A-11). A counter contesting the O.A. has also been filed by the respondents. In the said counter the respondents have submitted that this year the competent authority has decided to transfer the Superintendent who have completed 5 years in a Commissionerate rather than a station. Other submissions such as guidelines issued are not mandatory and hence, the same be not strictly followed etc. have also been made in the counter.

11. Arguments were heard and documents perused.

12. Certain preliminary objections have been raised in respect of non recognition of the Association and it was submitted on behalf of respondents that the Associations have no locus standi. The learned counsel for the applicants however, submitted that the A.T. Act nowhere prescribes that the Association which takes up a class action should be recognised. This objection need not dilate us as apart from the fact that the A.T. Act has nowhere stated that the Associations should be recognised, in the instant case the very circular dated 03-01-2006 having been endorsed to the Applicant Association, the respondents cannot be permitted to raise this objection. The other procedural requirement relating to the authority which would prosecute the case on behalf of the Association does stand fulfilled in this case. Hence, the objection raised by the respondents in this regard is rejected.

13. The learned counsel for the applicant submitted that the impugned transfer order suffers from the following inherent legal infirmity:-

(a) The same has not been passed by the Competent Authority.

(b) The Chief Commissioner has not applied his

mind in passing the transfer of order.

(c) Even if the Chief Commissioner has passed this order, or the order otherwise is held to have been passed by the Competent authority, the same is violative of the order dated 16-01-2003 (Annexure A-11) inasmuch as per para 2(c) the Chief Commissioner has the power only to monitor ***the implementation of the Board's instructions with regard to transfer.***

(d) The act of respondents No. 4 and 5 (i.e. the Chief Commissioner and Commissioner, Cochin) smacks of malafide.

14. Per contra the counsel for the respondents submitted that there can be no indefeasible right as held by the Apex Court in respect of Transfer and that guidelines, which stipulate four years in a station need not be followed as the same are not statutory in character and hence are not mandatory to follow. As regards the issue of the inter commissionerate Transfer by the Commissioner, it has been submitted that the same was with the specific approval of the Chief Commissioner and as such issue by the Commissioner cannot be held invalid. As

regards malafide, the respondents' counsel argued that in a transfer involving hundreds of individuals, there is no question of malafide.

15. The limited scope of judicial review on transfer is well settled. Right from E.P. Royappa vs State of Tamil Nadu (1974 (4) SCC 3), till the latest judgment of ***Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey, (2004) 12 SCC 299***, the apex Court has struck a symphonic sound which in nutshell, as reflected in the above case of Damodar Prasad Pandey, as under:-

> ***"4.*** *Transfer which is an incidence of service is not to be interfered with by courts unless it is shown to be clearly arbitrary or visited by mala fide or infraction of any prescribed norms of principles governing the transfer (see Abani Kanta Ray v. State of Orissa1995 Supp (4) SCC 169) . Unless the order of transfer is visited by mala fide or is made in violation of operative guidelines, the court cannot interfere with it (see Union of India v. S.L. Abbas (1993) 4 SCC 357). Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any operative guidelines or rules the courts should not ordinarily interfere with it. In Union of India v. Janardhan Debanath (2004) 4 SCC 245 it was observed as follows: (SCC p.250, para 9)*
>
> > *"No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan*

(2001) 8 SCC 574 "

16. Again, in the case of ***State of U.P. v. Gobardhan Lal, (2004) 11 SCC 402,*** the Apex Court has held as under:-

> ***7.*** *It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.*

17. The case of the applicants, as such is required to be considered in the light of the aforesaid judgments and the facts of the case.

18. Admittedly there is no statutory transfer policy. As such, it is only the guidelines that are to govern the transfers of the applicants. A three judges' Bench constituted by Hon'ble Mr. Justice V.N. Khare, CJI, Justice

S.B. Sinha and Justice Dr. A.R. Lakshmanan has observed in the case of ***Bimlesh Tanwar v. State of Haryana, (2003) 5 SCC 604*** as under:-

> ***47.*** *It is also well settled that in the absence of rules governing seniority an executive order may be issued to fill up the gap. Only in the absence of a rule or executive instructions, the court may have to evolve a fair and just principle which could be applied in the facts and circumstances of the case.*

19. The above may be borrowed in the present case as well as there is no statutory order on transfer. Again, in the case of *State of U.P. v. Ashok Kumar Saxena, (1998) 3 SCC 303* the Apex Court has held as under:-

> *In N.K. Singh v. Union of India (1994) 6 SCC 98 this Court held that interference by judicial review is justified only in cases of mala fides or infraction of any* ***professed norms or principles*** (Emphasis supplied)

20. Thus, when the guidelines as contained in the 1994 order of the Board of Excise and Customs are the professed norms, it has to be seen whether the same have been violated.

21. The counsel for the respondents has submitted that the Chief Commissioner is competent to design his policy on transfer keeping in view the ground realities occurring in the State. The counsel for the applicant, on the other hand stated that there is absolutely no power vested with the Chief Commissioner in this regard, as, under the

provisions of para 2(c) of order dated 16-1-2003 (Annexure A-11) all that he could do is only to monitor the implementation of the Board's Instructions with regard to transfer. There is substance in the submissions made by the learned counsel for the applicants. The Board having prescribed some norms and the same having been implemented in the past, and on the basis of the same when the discussion between the JCM members and the administration has been held and consensus arrived at vide Annexure A-4, the Chief Commissioner cannot, in our opinion, design his own policy of transfer in such a way that the same frustrates the norms prescribed by the superior authority, i.e. the Board. Again, when for the entire country one transfer policy subsists, the Chief Commissioner cannot have a separate transfer policy for his zone. As a mater of fact, according to the applicant's counsel, even in regard to the five years in the same commissionerate, the same has not been followed inasmuch as persons with less than 2 months' service in a Commissionerate have been shifted by the impugned order. Again, when the Trivandrum Commissionerate had been constituted only in 2003, there is no question of persons therein having put in five years commissionerate seniority. As such, we are inclined to accept the submissions made by the applicant's counsel.

22. In our opinion, there is a rationale in prescribing a period as "station seniority". In the case of *B. Varadha Rao* v. *State of Karnataka, (1986) 4 SCC 131,* at page 135 the Apex Court has held as under:-

> ***6.*** *One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralisation. It therefore follows that the policy of transfer should be reasonable and fair and should apply to everybody equally. But, at the same time, it cannot be forgotten that so far as superior or more responsible posts are concerned, continued posting at one station or in one department of the government is not conducive to good administration. It creates vested interest and therefore we find that even from the British times the general policy has been to restrict the period of posting for a definite period."*

23. The learned counsel for the applicants submitted that the transfer is completely in violation of the instructions of the Finance Ministry as extracted above and this transfer would cost to the exchequer a stupendous amount of Rs 2 Crores which perhaps would not be allowed by the Ministry of Finance. It is not for this Tribunal to delve on this issue as if there is any objection from the Ministry of Finance, it is for the authority which effected the transfer entailing such expenditure to explain. Hence, we are not entering into this aspect while dealing with the case of the applicants.

24. Next point urged on behalf of the applicants is

malafide. Though specific act of malafide has been levelled against any one by the applicants, it has been submitted that right from the day the Chief Commissioner had taken over charge of Kerala zone, his acts would reflect the extent of use of power in an irrational way. The counsel for the respondents on the other hand submits that there is no question of malfide when the transfer order is for more than 100 individual. Thus, the question here is whether the act of the Chief Commissioner is accentuated by malafide or not. It is worth referring to the exact scope and ambit of the term "malafide in jurisprudence of power. In the case of *State of Punjab* v. *Gurdial Singh, (1980) 2 SCC 471*, at page 475 the Apex Court has held as under:-

> ***9.*** *The question, then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power — sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions — is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated: "I repeat . . . that all power is a trust — that we are accountable for its exercise — that, from the people, and for the people, all springs, and all must exist". Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and*

embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power vitiates the acquisition or other official act."

25. The presence of malafide in the action on the part of the Chief Commissioner has to be viewed in the light of the above. However, for the decisions as herein being stated, we are not entering into this controversy.

26. The counsel for the applicant submits that justice would be met if the applicants are permitted to pen a representation to the higher authority (i.e. the Secretary, Ministry of Finance) who would take into account all the aspect and arrive at a just conclusion in regard to the transfer of the applicants and till such time the decision of the highest authority is communicated, the status-quo order may continue. The counsel for the respondents, however, submits that the case be decided on merit.

27. We have given our anxious consideration to the submissions made by the both the parties. We have also expressed our views as to how far the Chief Commissioner framing his own policy which substantially varies from the one taken by the higher authority i.e. the Board of Excise

and customs in one of the paragraphs above. The aspect of financial implication is not touched by us. So is the case with regard to malafide. For, when the Board's instructions are to cover the entire peninsula, when the powers to the Chief Commissioner as contained in Annexure A-11 order confines to monitoring the implementation of Board's instructions in regard to transfer, whether any malafide exists or not, whether the exchequer permits the extent of expenditure or not, whether such an order if passed by other Chief Commissioners would result in chaos, etc., would better be analyzed and a just decision arrived at by the higher authority i.e. either the Board or the Secretary, Ministry of Finance. As the Board of Excise and Custom has not been arrayed as respondents in these OAs, it is felt that the matter be appropriately dealt with by the Secretary, Ministry of Finance, Department of Revenue, New Delhi who has been impleaded as respondent No. 1 to deal with the entire issue for which purpose, the Associations who are applicants before us may pen representations within a specific period. They may, in that representation, give specifically, as to which of the individuals in the transfer order they represent. Of course, the Secretary, Ministry of Finance may well arrange consideration of such representation at an appropriate level, either of the Board or even other Chief Commissioners (other than respondent

No. 2 here) and till such time the decision is arrived at and communicated, the transfer order be not given effect to in respect of those whose names figure in the list of individuals represented by the Associations. Those who abide by the transfer and want to join the new place of posting may be allowed to join. In a situation where one person moves to a particular place, and the one who has to move from that place happens to be one agitating against the transfer, the authorities may adjust the transferred individual within the same Commissionerate till the disposal by the Secretary of the representations of the Association.

28. In some cases the individuals who have been asked to move from one place to another, have represented that while they are prepared to move from the earlier place of posting, their posting be to some other place and not the one where they have been posted. It is for the respondents to consider this aspect also, after the decision of the Secretary, Ministry of Finance, communicated his decision.

29. In the conspectus of the above, the OAs are disposed of with a direction to the Applicants' Association (in OA 310/06 and 389/06) to submit a fresh representation on behalf of various individuals whom they are representing

(whose names should figure in as a separate list in the representation) within a period of ten days from the date of communication of this order addressed to the Secretary, Ministry of Finance, Department of Revenue, with copy to the Board of Excise and Custom and on receipt the Secretary, Ministry of Finance may consider the same keeping in view the observations of this Tribunal as contained above, Board's instructions, the powers vested with the Chief Commissioner and if they so desire, the measure of austerity as advised in the order dated 23-11-2005 as extracted in one of the paragraphs above and communicate the decision to the Chief Commissioner of Excise and Customs, Cochin within a period of four weeks from the date receipt of the representation. Till such time, respondents shall allow the applicants to the OAs to function in their respective places of posting as they stood before passing of the impugned order.

No costs.

sd/-
N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

sd/-
K B S RAJAN
JUDICIAL MEMBER

cvr.

CERTIFIED TRUE COPY
Date .....

Deputy Registrar