

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 344 of 2010

THURSDAY, this the 22nd day of July, 2010

CORAM:

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

M. Murugesan, Income Tax Officer,
Salary Ward 2(3), Vasantham Towers,
Peroorkada, Trivandrum-695005.

... Applicant.

(By Advocate Mr. C.S.G. Nair)

v e r s u s

1. The Chief Commissioner of Income Tax,
Central Revenue Buildings, I.S. Press Road,
Cochin-682018.
2. The Commissioner of Income Tax, Trivandrum.
3. The Joint Commissioner of Income Tax,
Range#2, Peroorkada, Trivandrum-695005.
4. The Chairman, Central Board of Direct Taxes,
North Block, New Delhi-110001.
5. Union of India, Represented by its Secretary,
Department of Revenue, North Block,
New Delhi-110001. ... Respondents.

(By Advocate Ms. Sheeja for Mr. Sunil Jacob Jose, SCGSC)

The Original Application having been heard on 16.07.10, this Tribunal on
22-07-10 delivered the following :

O R D E R

HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Aggrieved by his transfer from Trivandrum to Cochin the applicant has
filed this Original Application with a prayer to quash the transfer of the applicant

and to direct the first respondent to retain him at Trivandrum in any post of Income Tax Officer.

2. The applicant is presently working as Income Tax Officer. He has put in 40 years of service out of which he has spent 33 years in Trivandrum. For the last 7 years till the date of relieving on 21.4.2010 he was in Trivandrum. Upon the rejection of his request for cancellation of his transfer, OA No. 339 of 2010 was filed with this Tribunal which was disposed of with a direction to the first respondent to consider the representation of the applicant and to take a decision. His representation was considered and his request to cancel the transfer was rejected and he was relieved on 21.4.2010. Hence, the OA.

3. The applicant submits that he will be retiring from service within 19 months from now. Guidelines on transfer stipulates that those who have got less than 2 years of service should not be disturbed. His transfer therefore is in violation of the guidelines. The transfer of the applicant is neither in the interest of administration nor the applicant. The applicant and his wife are suffering from various illnesses. It is stated that the transfer of the applicant is on administrative ground but the administrative ground is not clearly stated. The applicant's confidential records are very good. Therefore, he should not be transferred from Trivandrum.

4. The respondents contested the OA. The representation of the applicant has been disposed of with the observation that his case would be considered in the Annual General Transfer, 2011 provided his performance and conduct are found to be good. Subsequent to the vigilance clearance cited by the applicant the situation has changed warranting his transfer. The Income Tax Officers who

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have been retained even after completion of more than 5 years continuously, cited by the applicant are more deserving than the applicant, their cases being cases of Brain Tuberculoma and Cancer. The applicant is involved in various illegal activities and various instances of omissions and commissions have been brought to the notice of the administration. The applicant stands transferred on administrative reasons and as per provisions contained in the transfer policy. The applicant who does not adhere to office procedure and other prescribed procedures in his official work cannot be allowed to continue in the particular post held by him at present. Transfer of a government servant is an incidence of service. As per a catena of decisions of the Apex Court unless transfer is shown to be clearly arbitrary or malafide or against any prescribed norms or principles governing the transfer, Court should not interfere with transfer orders. The feasibility of accommodating the applicant at Trivandrum on some other post was considered but it was not found possible to accommodate him there.

5. In the rejoinder the applicant submitted that just as two Income Tax Officers were retained on medical grounds at Trivandrum he also should have been retained.

6. Arguments were heard documents perused. The respondents have considered the representation of the applicant in compliance with the direction given by this Tribunal in OA No. 339 of 2010 and passed Annexure A-9 order which is reproduced below:-

"F.No. 12/Estd./5/CC-CHN/2010-11 Date : 21st April, 2010

Shri M. Murugesan,
Income Tax Officer,
Ward-2(3), Thiruvananthapuram.

[Through Head of
Office]



Re.: Your representation dated 1st April, 2010 against your transfer in AGT, 2010.

With reference to your representation above, I am directed to inform you that the Placement Committee has considered your case for retention in Thiruvananthapuram. Since a reference has come from the Assistant Director, National Commission for Scheduled Castes, Thiruvananthapuram, a Commissioner of Income Tax from the SC/St category was co-opted to the Placement Committee while considering your case in view of the fact the Liaison Officer for SC/ST, Shri V.K. Prasanth, in the CCIT(CCA) Region, was absent on leave.

2. The Placement Committee went through all the documents and reported in your case. As you are aware that while the department considers compassionate cases, at the same time, does transfer officials on administrative grounds/needs. These are in accordance with the transfer policy.

3. The Placement Committee decided, in view of the records placed before the members, some which are confidential in nature, to watch your conduct for one year, i.e. up to AGT 2011 and consider your case for transfer back to Thiruvananthapuram, provided your performance and conduct are found to be good. It is also clarified that your transfer to Kochi was on administrative grounds to a non-sensitive/non-assessment charge outside Thiruvananthapuram, keeping in view the need to maintain the image of the department and the overall availability of posts & requests from other officers for posting and not on any other grounds.

Sd/-
(K.G. Ramachandran)
Deputy Commissioner of Income Tax (Hqrs.)(Admn./Vig.),
for Chief Commissioner of Income Tax (CCA), Kochi."

It is clearly stated that the applicant was transferred to Cochin on administrative ground to a non-sensitive charge outside Trivandrum keeping in view the need to maintain the image of the department and the overall availability of the posts and requests from other offices for posting. He is under watch for one year and will be considered for transfer back to Trivandrum in 2011.

7. It is well settled law that Courts should not interfere with order of transfer unless it is vitiated by malafide or arbitrariness or illegality. The applicant claims that his transfer is in violation of transfer guidelines. Transfer guidelines are only



guidelines and are not mandatory. They do not confer any right on the government employee. The Respondents had considered retaining the applicant in Trivandrum considering his representation but it was not possible to accommodate him in Trivandrum. The respondents have also made it clear that he was transferred because of the need to transfer him to a non-sensitive post out side Trivandrum. Subsequent to the vigilance certificate produced by the applicant situation has changed warranting his transfer out of Trivandrum. Good CRs or vigilance certificate perse do not come in the way of an employee getting transferred as transfer is an incidence of service. It is seen that out of 40 years, for 33 years the applicant could stay at Trivandrum itself on different posts. For the last 7 years he was at Trivandrum. In the facts and circumstances of this case it cannot be said that the transfer of the applicant is malafide, arbitrary or illegal. We do not find any reason therefore to interfere with applicant's transfer from Trivandrum to Cochin.

8. The only grounds in favour of the applicant are that he will be retiring shortly and that he and his wife are under treatment for various diseases. The respondents have already communicated in Annexure A-9 order rejecting his representation against his present transfer that they will consider his case for transfer back to Trivandrum in 2011 provided his performance is satisfactory. The Joint Commissioner of Income Tax, Range-2, Trivandrum, has stated in his letter dated 06.04.2010 at Annexure A-11 that the health grounds pointed out by the applicant are very genuine. He also recommended that he may be retained at Trivandrum in any post or in the alternative at the nearest point from Trivandrum. Non-interference by this Tribunal in the matter of the applicant's transfer from the present post should not preclude a sympathetic consideration of the applicant for a posting nearest to Trivandrum, considering his

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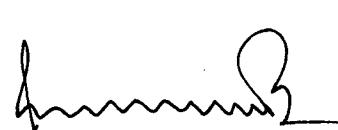
approaching retirement and health problems.

8. With the above observation, the Original Application is dismissed with no order as to costs.

(Dated, the 22nd July, 2010)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(GEORGE PARECKEN)
JUDICIAL MEMBER

SA.