

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 348 of 2007

Friday, this the 24th August, 2007

C O R A M :

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

A.M. George, Driver,
Office of the Commissioner of Customs (Preventive),
Central Revenue Buildings,
I.S. Press Road, Cochin : 682 018

... Applicant.

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

V E R S U S

1. The Deputy Commissioner of Customs,
Office of the Commissioner of Customs (Preventive),
Central Revenue Building, I.S. Press Road,
Cochin : 682 018
2. The Commissioner of Customs (Preventive),
Central Revenue Building, I.S. Press Road,
Cochin : 682 018
3. The Chief Commissioner of Central Excise,
Central Revenue Building, I.S. Press Road,
Cochin : 682 018
4. Union of India represented by
The Secretary, Department of Revenue,
Ministry of Finance, North Block,
New Delhi : 110 001

... Respondents.

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant, an Ex-serviceman, employed as a driver in the Customs and Central Excise Department has been aggrieved by the impugned order of transfer, vide Annexure A-6, whereby he stood transferred from UB Trivandrum to CPU Alleppey.

2. The grievance of the applicant is on the ground that he was transferred from UB Trivandrum to Cochin vide Annexure A-4 order in obedience to which he had joined the Cochin office, vide joining report at Annexure A-5 and within a few days, through the impugned order the applicant stands transferred to Alleppey.

3. The applicant further contends that he has been frequently subjected to transfer both outstations and within the station, as many as 12 times as itemized in page 2 of his OA. Never has he agitated against the same and he had been faithfully obeying such orders. However, this time, violation of guidelines for transfer are writ large in the action on the part of the respondents.

4. Further, the applicant's grievance is that there are many drivers who have been stationed in the same station for more than a decade plus and the applicant alone has been singled out as he had questioned the misuse of the government vehicles by some senior officers.

5. It has further been submitted that the curious part is that there is no vehicle at the place where the applicant has now been posted i.e. Alleppey and the applicant being a driver has to sit idle all through the day, whereas apart from the availability of vehicle at Cochin, vacancy also is available. The applicant has also submitted that if his move out of Cochin is inevitable, at least he may be posted to Chavakkadu where admittedly, vacancy exists.

6. Respondents have contested the OA. According to them, the posting of the applicant to Commissionerate, Preventive at Cochin is with an advice to the Commissionerate to issue individual posting orders and the impugned order is



only such a posting order. Hence it cannot be said that the applicant has been transferred within a few days from Cochin to Alleppey. His posting at Cochin should be treated as posting (on Waiting) for the purpose of further posting, which has now been crystallized when the applicant has been posted to Alleppey.

7. Applicant has filed his rejoinder and took in support of his case the decision of the Apex Court in the case of B. Varadha Rao vs State of Karnataka, (1986) 4 SCC 131, and the respondents have filed the additional rejoinder.

8. Counsel for the applicant has argued that the transfer of the applicant is totally illegal and is violative of the general norms. When others with longer station seniority are available, transferring the applicant who had just recently been posted is illegal.

9. Counsel for the respondents invited the attention of the Tribunal to para 6 and 7 of the additional reply.

10. Arguments were heard and documents perused. Though the applicant has itemized 12 transfers, in so far as intra-station transfer is concerned, the same cannot be considered as transfer at all. Thus, the effective outstation transfer is as under:-

1995-1998: Cochin
 1998-1999: Calicut
 1999-2000: Kollam
 2000-2005: Cochin
 2005-2006: Thodupuzha
 2006-2007: Trivandrum.
 2007 - Cochin

 11. Thus, during the past 12 years the applicant has been shifted 7 times and

save at Cochin, in all the other places, the duration is approximately a year only. Of course, of the above, one transfer is at the request of the applicant.

12. The prerogative of the employer to effect the transfer is unquestionable. True, 'who has to be transferred and where' is the question to be decided only by the employer. At the same time, when duly analyzed, if it is found that only a few are targeted and others are left, then, notwithstanding the existence of such a prerogative, judicial intervention would be fully justified on grounds of discrimination. Frequent transfers, as held by the Apex Court in the case of B. Varadha Rao (*supra*), certainly comes into play. If the service exigencies warranted such a frequent transfer of all the drivers, then there cannot be any judicial intervention. It has been specifically averred in para 4 of the rejoinder that there are as many as 16 drivers in the Central Excise Department, posted at Ernakulam and many of them have completed more than 6 to 20 years and only the applicant was transferred a number of time during his service. This contention has not been met with in the Additional Reply statement. If uniformly the norms are followed for effecting transfer then there is absolutely no arbitrariness; otherwise, arbitrariness would be writ large on the face of the action of the respondents. Though under the transfer policy, Drivers' category may be exempted, yet, when it comes to the question of shifting one among many out of a particular station, logically, it would be the longest stayee that should be shifted and not the shortest stayee.

13. When no vehicle is available at Alleppey, posting of any driver there itself is of little use and would serve no useful purpose. And shifting the applicant when others with longer station seniority are retained, then the action of the respondents is shifting the applicant outside Cochin is not at all justified.



14. Technically the respondents may be right in stating that the impugned order is only a posting order. When the applicant, on completion of his tenure has been shifted from UB Trivandrum to Cochin Commissionerate, and the applicant may have to be issued due posting order within the Commissionerate, at this time it is for the respondents to follow the general norms and act accordingly. If the applicant is in excess of the sanctioned strength here at Cochin, which means that his services may not be availed of as a Driver, then, posting to Alleppey where no vehicle is available would mean that his services as driver there too cannot be availed of. At least at Cochin, in the absence of one or two drivers on leave, the applicant's services could well be utilized.

15. In view of the above, the OA succeeds. The impugned order is quashed and set aside. The respondents shall not shift the applicant for the time being till first of all arrangements of vehicle are made available at the station where the applicant shall be posted. Here again, in a rational way, equal opportunity for a reasonable duration of stay at one station should be made available to all. Option within the Commissionerate may be called for, from other drivers for their move to outstation. Or else, the applicant's request for posting to Chavakkadu, vide Annexure A-7 representation be considered and a judicious decision taken.

16. No costs.

(Dated, the 24th August, 2007)



Dr. K B S RAJAN
JUDICIAL MEMBER

cvt.