

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 362 of 2007

Tuesday, this the 11th day of September, 2007

C O R A M :

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

**P.P. Panicker,
Superintendent of Central Excise,
Customs Preventive Unit,
Ernakulam, Cochin : 682 017**

... Applicant.

(By Advocate Mr. C S G Nair)

v e r s u s

1. **The Commissioner of Customs (Preventive),
Central Revenue Buildings,
I.S. Press Road, Cochin : 18**
2. **The Chief Commissioner of Central Excise
& Customs, Central Revenue Buildings,
I.S. Press Road, Cochin : 18**
3. **Union of India,
Represented by the Secretary,
Department of Revenue,
Ministry of Finance, North Block,
New Delhi : 110 001**
4. **The Chief Commissioner of Customs,
Central Revenue Buildings,
Queen's Road, Bangalore : 2**

... Respondents.

(By Advocate Mr. T.P.M. Ibrahim Khan, SCGSC)

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

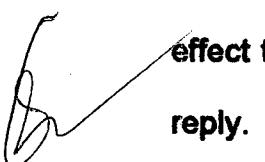
Transfer is the challenge in this case on twin grounds viz. that the said transfer of the applicant is violative of the guidelines and that discrimination has been meted to the applicant as persons similarly situated have not been transferred. The question is whether the transfer order could be legally sustained.



2. **Brief Facts:** The applicant, originally recruited as inspector in Bombay Division had got an inter commissionate transfer to Cochin Central Excise Commissionate in 1985. There are three Central Excise Commissionates – Kochi, Calicut and Trivandrum and one Customs Preventive Commissionate, Kochi and the Chief Commissioner is the Cadre Controlling Authority. Persons placed in the Customs Preventive Commissionate are liable to be posted anywhere in Kerala State, Lakshadweep and Mahe Commune.

3. According to the applicant, he had been posted at Ernakulam in October, 2004 and the period of tenure in a station is of 4 to 6 years duration and last year he was transferred though he did not complete even two years by then and on his challenging the same, the OA was allowed and the authorities did not transfer the applicant last year; however, due to vindictiveness, that he had moved the Tribunal, the respondents have now transferred the applicant from Ernakulam to Kannur, which is against the above stated transfer norms.

4. Respondents have resisted the O.A. According to them, the applicant has been in and around Ernakulam since 1987 and his outstation postings have been minimum and further the applicant has been posted to Customs Preventive Unit since 2004 and as per the prescribed policy Customs Preventive Branch is characterized as 'sensitive' and posting thereunder would be for a period of about two years and since the applicant has completed the tenure of two years therein, he has been rightly transferred. Of course, a number of decisions to the effect that transfer order cannot be easily interfered with have been cited in their reply.



5. The applicant has filed his rejoinder stating that the post he is holding is not sensitive and that there are many who have more station seniority than the applicants, but they have not been touched. Thus, the applicant has been discriminated.

6. Additional reply has been filed by the respondents.

7. Counsel for the applicant argued that even assuming without accepting that the applicant's present posting is in a sensitive post, he having not been completed four years of tenure in Ernakulam and there being vacancies at Ernakulam could easily be accommodated in any of such vacancies.

8. Counsel for the respondents submitted that the applicant has been given the posting of his choice in the past and as he has been in and around the same place since 1987; save for a short spell when he was posted at Trivandrum and Karipur, all the other postings are only in and around Ernakulam. Thus, the transfer order be not interfered with.

9. Arguments were heard and documents perused. First it is to be held that the contention of the applicant that not all the posts coming under Preventive Unit become sensitive should be outrightly rejected as characterizing a particular post as sensitive or otherwise is left purely to the discretion of the authority competent to make such classification as the same is a policy matter and as long as such classification does not affect the Fundamental Rights of any individual, there is no question of interfering with such classification. As regards the treatment meted to the applicant in matters of transfer, Annexure R-3 contains the details of the posting of the applicant and as per the same, the

applicant has been in Ernakulam Division since 2001. This has not been controverted by the applicant. Posting in a station would mean geographical station and posting at Kalamasseery or Aroor etc., should be treated only as posting at Ernakulam as these are within the contiguous areas. The period of three months spent from July 2004 to October, 2004 can hardly be treated as a transfer. Thus, the applicant cannot claim that his station seniority is only from October, 2004. If the period of station seniority is taken from 2001, the details provided by the applicant at the time of hearing about the station seniority of others, he has the longest stay at Ernakulam Division and thus, there cannot be any claim of discrimination. I do not find any act of victimization by the respondents as alleged. Nor could the guidelines be stated to have been violated in this case.

10. No other significant ground has been spelt out challenging the transfer. The health ground of his wife is not supported by any documentary evidences.

11. The applicant thus, could not make out a case in his favour. The only avenue available is to see whether the applicant could be allowed to continue in Ernakulam against the recently available vacancies as contended by him. This aspect has not been considered by the competent authority so far. If there are vacancies at Emakulam as contended by the applicant, it is purely the discretion of the respondents i.e. the Chief Commissioner to accommodate the applicant in any of the available vacancies at Ernakulam if such a request is made by the applicant within one week from today. For this purpose, the interim order granted is extended for a period of one month from the date of pronouncement of this order. The competent authority could well communicate his decision before the



expiry of the said one month. If the competent authority declines to accept the applicant's request, the relieving order shall be re-validated and due joining time shall be made available to enable the applicant to prepare for his move from the present place of posting.

12. No costs.

(Dated, the 11th September, 2007)



DR. K B S RAJAN
JUDICIAL MEMBER

cvr.