

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 365 of 2007

Tuesday, this the 11th day of September, 2007

C O R A M :

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

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

... 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

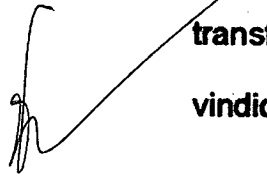
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

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, had joined the service as Inspector in Excise Department in 1987 and at the time of his joining the service, the entire state of Kerala was under one Commissionerate. However, in 1999 the Commissionerate was bifurcated as Cochin I and Cochin II (since renamed as Calicut Commissionerate) Commissionerate. At present, however, there are three Central Excise Commissionerates – Kochi, Calicut and Trivandrum and one Customs Preventive Commissionerate, Kochi and the Chief Commissioner is the Cadre Controlling Authority. Persons placed in the Customs Preventive Commissionerate are liable to be posted anywhere in Kerala State, Lakshadweep and Mahe Commune.

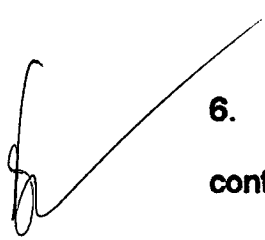
3. According to the applicant, he had been posted at CPU Thodupuzha in January, 2004 and in 2006 he was transferred to CPU, Kannur, which was challenged by filing OA No. 387/2006. As there were a number of O.As, assailing the general transfer effected in 2006, certain orders were passed for reconsideration of all such transfers and the applicant was retained at Thodupuzha itself by order dated 4-09-2006 passed by the respondents. Hence, the said OA No. 387/06 was rendered infructuous. vide Annexure A-5. During early 2007, as per the practice, options for transfer of those who are due for rotational transfer was asked and according to the applicant, notwithstanding his tenure not being complete, in order to avoid any undue harassment, he had opted for Palai/Vaikom/Muvattupuzha Central Excise Formations, vide Annexure A-7. However, as per the impugned transfer order, the applicant stands transferred to Kannur which, according to the applicant is accentuated by vindictiveness. He had, therefore, filed a representation vide Annexure A-9



followed by another vide Annexure A-10. As the same did not result in any favourable response, this O.A. has been filed inter-alia on the ground that 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 Thodupuzha to Kannur, which is against the above stated transfer norms. And even if such transfer out of Thodupuzha is inevitable, according to the applicant the option called for and given should be duly considered as otherwise such a drill is an exercise in futility.

4. Respondents have resisted the O.A. According to them, the applicant has been holding a sensitive post and as per the prescribed policy posting thereunder would be for a period of about two years and since the applicant has completed three years therein, he has rightly been transferred. As regards the option given, the contention of the respondents is that the same was with reference to intra-commissionerate transfer, while the one under challenge is inter commissionerate and has no bearing. 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 had it been sensitive, the logistic arrangements (provision of jeep) would not have been withdrawn from Thodupuzha.



6. Additional reply has been filed by the respondents reiterating their contention that the applicant had been posted in a sensitive post and the tenure

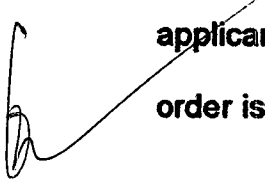
thereof is only two years, while the applicant has put in three years service there.

7. Counsel for the applicant argued that the post at Thodupuzha is not a sensitive post and hence he could well be retained for a period of four years. He reiterated that his transfer is one of vindictive nature.

8. Counsel for the respondents submitted that which post is sensitive and which non-sensitive is a matter of policy decision. The applicant having put in more than three years of service by now, 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. Thus, what is to be seen is whether the tenure as for a sensitive post has been complete in the case of the applicant. The answer is in affirmative. No other valid ground has been shown to assail the transfer. That the spouse of the applicant is self employed could hardly be a reason to allow the O.A.

10. The applicant has thus not made out any case of substantial nature. Hence, the OA is dismissed. However, a period of one month be given to the applicant to prepare himself for the move from Thodupuzha to Kannur. Relieving order issued should therefore, be suitably modified.



11. No costs.

(Dated, the 11th September, 2007)



DR. K B S RAJAN
JUDICIAL MEMBER

CVT.