

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 392 / 2010

Monday, this the 28th day of June, 2010.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE MR K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

T.Rajappan,
Head Havildar,
Central Excise,
Alappuzha II Range Office,
Alappuzha-11.Applicant

(By Advocate Babu Cherukara)

1. Commissioner of Central Excise,
Customs and Service Tax,
Central Revenue Building,
I.S.Press Road, Cochin-18.
2. Addl. Commissioner (P&V),
Customs and Service Tax,
Central Revenue Building,
I.S.Press Road, Cochin-18.
3. K.K.Mohanan,
Head Havildar,
Office of the Commissioner of Central Excise,
Customs and Service Tax,
Central Revenue Building,
I.S.Press Road, Cochin-18.
4. Union of India represented by the
Secretary,
Central Board of Excise Customs & Service Tax,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi-110 001.Respondents

(By Advocate Mrs Deepthi Mari Varghese.)

This application having been finally heard on 28.6.2010, the Tribunal on delivered the following:



ORDER**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

The applicant is aggrieved by the Annexure A1 order No. 48/2010 dated 13.05.2010 to the extent that he has been transferred from Alappuzha Range -II to Ernakulam - II Division. His contention is that he has already rendered 30 years of service and he is due for retirement on 31.07.2010 i.e. after an year from now. He has also stated that he is a permanent resident of Alappuzha District and it is his first and last chance to work in his home district. He has further submitted that as per Clause 25 (xiii) of Annexure A5 of the minutes of the "Special Joint Consultative Machinery Meeting dated 12.12.2007 at the Headquarters of Cochin Commissionerate Office", officers due for retirement within two years time has to be given their choice place of posting.

2. Because of the impending aforesaid transfer the applicant represented for his retention at his present place of posting by his A3 representation dated 8.2.2010 addressed to the Commissioner of Central Excise Customs & Service Tax Commissioner, I.S. Press Road, Kochi. According to the applicant, the respondents have issued the impugned transfer order without considering his aforesaid representation and he has not been informed about the decision taken in this regard so far. He has, therefore, filed this O.A. seeking a direction to set aside the Annexure A-1 transfer-cum- posting to the extent that it affects him.

3. When this O.A. was considered by this Tribunal on 20.05.2010, the applicant was directed to furnish any material to show that if he is transferred to Ernakulam, he will be prejudiced and it will affect his family life. Thereafter, he has filed MA 93/2010 enclosing therewith a photocopy of the medical records according to which he is suffering from Asthma and Esophagus problems. He



has also produced a medical certificate from Lakeshore Hospital that he is suffering from Chronic Bronchitis. Thereafter, on 26.05.2010, the respondents have sought further two week's time to file reply in this O.A. Accordingly, the matter was listed on 21.06.2010 again. A request was made on that day for further adjournment and the case was adjourned for today. Today also, the learned counsel for the respondents has sought further time for filing reply.


4. The learned counsel for the applicant submitted that in case the matter is not decided, it will become infructuous as the aforesaid impugned order of transfer will come into effect from 30.06.2010.

5. We have gone through the averments made by the applicant in this O.A. We have also heard the learned counsel for the parties. It is well a established law that the applicant has a right to make representation in the matter of transfer. Accordingly, the applicant has made Annexure A3 representation to the respondents to retain him in present position. However, they have neither rejected his representation nor allowed it. In view of the above position, we dispose of this Original Application with the directions to the 1st respondent to consider the aforesaid Annexure A-3 representation of the applicant and to pass a speaking order. Till such time the impugned order dated 13.5.2010 shall remain stayed to the extent it affects the applicant.

6. There shall be no order as to costs.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER