

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O.A. No.  
~~KAXXNKK~~

415/90

1990

DATE OF DECISION 31.7.90

C.A. Abraham Applicant (s)

M/s K.Ramakumar &  
V.R.Ramachandran Nair Advocate for the Applicant (s)

Versus

Union of India rep. by Respondent (s)  
Secretary, Ministry of Food &  
Civil Supplies and 3 others.

Mr.K.Prabhakaran (for R-1&2) Advocate for the Respondent (s)  
Mr. M.R.Rajendran Nair (for R-3)  
Mr. Sebastian Paul (for R-4)

CORAM:

The Hon'ble Mr.S.P.Mukerji, Vice Chairman

The Hon'ble Mr.A.V.Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. To be circulated to all Benches of the Tribunal? Yes

JUDGEMENT

(Shri S.P.Mukerji, Vice Chairman)

In this application dated 29.5.90 filed under section 19 of the Administrative Tribunals Act, the applicant who is working as Demonstrator in the office of the Assistant Technical Advisor, Ernakulam, has challenged the impugned order of transfer at Annexure-C dated 23.5.90 by which he has been transferred from Mobile Extension Unit at Ernakulam where he is working to Mobile Extension Unit at Trivandrum and respondent 3 Smt. Santha Kumari has been transferred from Trivandrum to Ernakulam. Respondent 4 has been transferred from the

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Headquarters at Ernakulam to the Mobile Extension Unit at Ernakulam itself in the place vacated by the applicant so that respondent 3 can be accommodated at the Headquarters office at Ernakulam. The applicant has prayed that he should be allowed to continue as Demonstrator/ Technical Assistant at Ernakulam itself. The brief facts of the case are as follows.

2. The applicant is admittedly a physically handicapped person with 40% disability for which he has been granted conveyance allowance of Rs 100 per month.

These facts are proved by the Office Order dated 23.5.90 at Annexure-B. The applicant was initially appointed as Field Investigator at Trivandrum on 27.5.76 and later as Technical Assistant there. Because of his domestic problems he represented for a posting at Ernakulam against the then existing vacancy. At that time

respondent 3, Smt. Santha Kumari, was working as a Laboratory Assistant at <sup>Ernakulam</sup> Trivandrum. <sup>Er</sup> ~~Instead of posting~~

<sup>Er</sup> ~~respondent 3 from Trivandrum to Ernakulam~~ The applicant was posted as Technical Assistant at Ernakulam and he has been working there since October, 1984. Respondent 3 was promoted as Technical Assistant at Trivandrum itself in the vacancy caused by the transfer of the applicant. The 3rd respondent at that time expressed her unwillingness to go to the Mobile Unit at Ernakulam because of ill-health and other family circumstances. In July 1987

Corrected vide  
our order dated 4.X.1990.  
in RA 99 of 1990.  
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respondent 3 represented (Annexure-R1A) that since her husband was working at Ernakulam and her children are with the husband and since she is an asthmatic patient she may be transferred to Ernakulam. Considering that the applicant had already spent more than 5 years at Ernakulam after his transfer in 1984 and keeping in view the representation submitted by respondent 3 and ~~Respondent 3~~ <sup>62</sup> the guidelines for keeping husband and wife together at the same station, respondents 1 and 2 passed the impugned order transferring the applicant from Ernakulam to Trivandrum and respondent 3 from Trivandrum to Ernakulam. The contention of the applicant is that the transfer order is malafide as respondents 1 and 2 wanted to favour the 3rd respondent. Since the impugned order itself indicates that respondent 3 was transferred at her own request, it cannot be said to be in public interest. It is unfair that the request of respondent 3 is accommodated at the applicant's cost without giving him any opportunity to ventilate his grievance. He has also stated that by transferring him inspite of his disability he has been discriminated against. It was further revealed that respondent 4 who was impleaded later had put in much longer period of service at Ernakulam than the applicant (respondent-4) and yet she <sup>62</sup> was not transferred to Trivandrum, while the applicant was transferred. The applicant has also alleged that the haste with which the impugned order was passed keeping the Headquarters in Delhi in touch on telephone has

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revealed in the impugned order shows that undue favouritism has been shown to respondent 3.

3. Respondent 1 and 2 have stated that the post of Demonstrator/Technical Assistant held by the applicant is a transferable post and the applicant is liable to serve anywhere in the Southern Region. In 1984, to help the applicant, he was posted at Ernakulam even though respondent 3 on promotion would normally have been transferred from Trivandrum to Ernakulam at that time. The applicant had been transferred to Ernakulam not because of his physical disability but at his request on domestic reasons. Respondent 3 is a chronic asthmatic patient and suffering from heart ailments and had frequently been hospitalised in very serious conditions. They have denied that respondent 3 was transferred to Ernakulam on extraneous consideration. They have argued that the applicant even at Ernakulam is holding a field post and his transfer to Trivandrum to a similar post should not make any difference to him. They have however clarified that the guidelines of 1982 for transfer referred to by respondent 3 have been revised in 1990.

4. Respondent 3 has stated that respondent 4 has been working at Ernakulam for the last 15 years and she can be moved out of Ernakulam in case the applicant is not to be moved. She has stated that <sup>she</sup> ~~that~~ (respondent 3) and her husband are both Scheduled Caste and her husband is working as a Pay & Accounts Officer in Cochin. The applicant has already

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been in Ernakulam for about six years and is travelling to Ernakulam from his house at Kottayam every day.

In accordance with the guidelines dated 10th December, 1982 (Annexure-R3B) a request transfer <sup>like hers</sup> can be accommodated by transferring a person who has completed six years or more. According to her, her transfer satisfies all the conditions of the guidelines. Her husband cannot be transferred to Triyandrum, hence, she has to be posted at Ernakulam.

5. Respondent 4 who was impleaded later has stated that her husband got a posting at Ernakulam under the directions of this Tribunal in OAK 469/88 and therefore she also has to be here. She has stated that the 1982 guidelines which provided that a request transfer should be accommodated by transferring one with the longest period of stay have been superseded by the 1990 guidelines which do not have any such provision.

6. We have heard the learned counsel for all the parties and gone through the documents carefully. The guidelines dated 10th December 1982 at Annexure-R3B provided for accommodating a request transfer when there is no vacancy in following terms:

"A request for transfer may not be declined on the ground that there is no vacancy at the place sought, when a vacancy can be created without damaging public interest, by moving out a person who has already spent six years or more at that place. In doing so, the person who has stayed the longest should be the first to be moved."

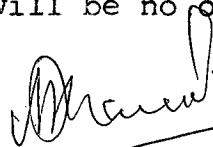
The above has been relied upon by the applicant indicating that since he has not completed 6 years of service at

Ernakulam after he was transferred in October 1984 his moving out in order to accommodated respondent 3 is against the aforesaid guidelines. Respondent 3 has however relied upon the guidelines stating that since the applicant has already completed more than five years of service at Ernakulam he can be moved and if he cannot be moved, then respondent 4 who had been there for 15 years should be moved out of Ernakulam. Respondent 4 however has stated that the guidelines of 1982 have been superseded by the guidelines issued on 30.4.1990 a copy of which has been appended at Annexure-R1C. The OM of 30.4.90 enclosing the guidelines indicates that the 1982 guidelines had been rationalised and the revised guidelines were enclosed. Thus, after 30th April 1990, the guidelines of 1982 would not strictly be applicable. Since the impugned order was passed on 23.5.90, only the revised guidelines will apply. Since the husband of respondent 4 had been allowed to stay at Ernakulam under the orders of the Tribunal, in order to keep the husband and wife together, we do not wish to interfere with the posting of respondent 4 so as to frustrate the effect of that order of the Tribunal. We are, therefore, faced with the competing claims of the applicant and the respondent 3. Even assuming that the applicant is 40% physically handicapped, the fact remains that he is working in the field unit and admittedly staying at

Kottayam from where he comes daily to Ernakulam for work. These facts indicate that his physical handicap may not be so disabling as to justify his continued stay at Ernakulam. He has already spent more than 5 years at Ernakulam and would be completing six years some time in October 1990. As against this, respondent 3 and her husband belong to Scheduled Caste and she has been living away from the family for considerable period, and her husband is working and staying with the children at Ernakulam. She is a patient of asthma and has heart problems and had been hospitalised at Trivandrum on a number of occasions. Both on medical grounds as also ~~the~~ on ~~ground~~ of keeping husband and wife together and also keeping in view that respondent and her husband are Scheduled Caste, we feel that respondent 3 has a better claim to come over to Ernakulam than the applicant. It is true that in 1984 she had refused to be posted at Ernakulam but that was because she was being posted to the Mobile Unit and she had some health problems. Her husband had wanted to be transferred to Trivandrum to be near his wife, but the same had been rejected by his superiors in 1987 (Annexure-R1A). We cannot, however, be totally oblivious of the fact that when the applicant was transferred to Ernakulam in 1984 under the guidelines of 1982, he was under a reasonable impression that in accordance with those guidelines he will not be disturbed at least for six years. In equity therefore, it will be desirable that he is not disturbed before

October, 1990.

6. In the conspectus of facts and circumstances, we allow this application in part only to the extent of modifying the impugned order dated 23.5.90 at Annexure-C with the direction that the order will be given effect to from 1st October, 1990. Respondent-3, if she had come to Ernakulam, will be given T.A. for coming to Ernakulam and going back to Trivandrum and the period of absence from her post at Trivandrum will be treated as on duty. There will be no order as to costs.

  
31.7.90  
(A.V. Haridasan)  
Judicial Member

  
31.7.90  
(S.P. Mukerji)  
Vice Chairman



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM  
RA No. 99/90 in  
O.A. No. 415/90  
~~XXXXXX~~

1990

DATE OF DECISION 4-10-1990

CA Abraham Review Applicant (x)

M/s K Ramakumar &  
VR Ramachandran Nair Advocate for the Applicant (s)

Versus  
Union of India & 3 others Respondent (s)

1. Mr K Prabhakaran, ACGSC
2. Mr MR Rajendran Nair Advocate for the Respondent (s)
3. Mr Sebastial Paul

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman  
&

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? N
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. To be circulated to all Benches of the Tribunal? N

JUDGEMENT

( Mr SP Mukerji, Vice Chairman )

We have heard the learned counsel for the parties on the review application. It has been stated that the observation made in para-2 of the judgement of this Tribunal dated 31.7.1990 in OA-415/90 contains a factual error. The factual error is that respondent No.3 Smt TK Santha Kumari was not working as Laboratory Assistant at Trivandrum in 1984 but was actually working at Ernakulam itself. She however, preferred to be posted at Trivandrum in order to avoid a field posting at Ernakulam. Be that as it may, we are satisfied that the factual error by which respondent No.3 was shown to be working

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at Trivandrum instead of Ernakulam <sup>does</sup> ~~will~~ not in any manner affect the analysis and conclusion in the judgement. In view of the need to correct the factual error, we allow the review application by condoning the delay and dispose of the same with the direction that the word "Trivandrum" figuring in the 9th line from the bottom of page 2 of the judgement should be corrected as "Ernakulam". We further direct that the words "Instead of posting respondent 3 from Trivandrum to Ernakulam," occurring in the 9th and 8th line from the bottom on page 2 of the judgement shall stand deleted and the sentence is <sup>to</sup> start with the words "The applicant" occurring in the 8th line from the bottom on page 2. In so far as the merits of the case raised by the learned counsel for the review applicant are concerned, the same cannot be reopened through a review application. We however, make it clear that ~~we direct that~~ <sup>we</sup> the observations made in the para 5 of the judgement that "In equity therefore, it will be desirable that he is not disturbed before October, 1990." will not preclude respondents 1 and 2 from accommodating the applicant till the end of the current academic session in case the applicant makes a representation to that effect. The review application is disposed of on the above lines. A copy of this order along with the corrected copy of the judgement may be sent to all concerned.

2. The interim order dated 30.5.1990 stands vacated.

  
( AV HARIDASAN )  
JUDICIAL MEMBER

  
( SP MUKERJI )  
VICE CHAIRMAN

4-10-1990

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