

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No.424/94

Dated this the 15th day of June, 1994.

CORAM:

HON'BLE MR.JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR.P.V.VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

P.K.Kurian,
Senior Accounts Officer,
Naval Local Audit Office(B),
Naval Base, Cochin.Applicant

(By Advocate Mr.M.R.Rajendran Nair)

vs.

1. The Controller of Defence Accounts,
Madras-18.
2. The Controller of Defence Accounts,
Southern Command, Pune-1.
3. The Controller General of Defence Accounts,
R.K.Puram, New Delhi-110 066.
4. Union of India represented by Secretary to
Government, Ministry of Defence(Finance),
New Delhi.Respondents

(By Advocate Mr.K.Lakshminarayan, ACGSC)

ORDER

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN:

Applicant who was transferred from Pune to Trichur and then from Trichur to Kottayam, complains that transfer grant and packing allowance payable under the rules have not been paid. It is also submitted that admissible joining time has not been granted.

2. Annexure Al dated 24.1.90 is the order transferring applicant from Pune to Trichur. On 12.2.90 he moved out of Pune and joined at Trichur on 14.2.90. Annexure-II is the "Arrival Report". After working at Trichur for a day or two, applicant was relieved on transfer to Kottayam. Annexure-III is the "Arrival Report" for Kottayam, indicating that he joined at Kottayam.

3. Applicant claimed transfer grant and packing allowance. That was rejected, stating that:

"...Officer's station of transfer from Trichur to Kottayam only was changed during the joining time and no fresh transfer order was issued."

[Emphasis supplied]

4. Counsel for applicant submits that two transfers are involved, as evident from two "Arrival Reports". He submits further that there was no varying of the order of transfer during the joining time. Annexure I order of transfer to Trichur was on 24.1.1990, while movement from Trichur to Kottayam was ordered on 14.2.1990, after 21 days. It is difficult to treat the change of station ordered after 21 days, as an order during "joining time".

5. The facts do not leave any doubt as to the nature of the event. There was a transfer from Pune to Trichur. Applicant was allowed to join at Trichur and the "Arrival Report" (Annexure II) proves this. Again, he was transferred (whatever be the phraseology used) from Trichur to Kottayam. There is a relieving order, and there is a report showing assumption of charge at Kottayam (Annexure III). These indicate the incidents of transfer; use of expressions like "temporary duty station" (para 3 of reply), cannot alter the character of the event. Under SR 116, a Government servant is entitled to a lumpsum transfer grant and packing allowances. This is payable on every transfer irrespective of the distance between the stations, or the span of time between transfers. Applicant is entitled to receive such payment for two transfers. Referring to the proviso to SR 116B Standing Counsel tried to read a limitation into the rule. The proviso refers to Traveling Allowance for the family members of the transferred official. This is a different matter.

6. We also noticed the manner in which respondents tried to justify their action. It is said that it was variation of the transfer order 'in the course of joining time'. As we noticed the order of transfer, Annexure I, was on 24.1.1990, and the movement from Trichur to Kottayam was ordered on 14.2.1990. There is a gap of 21 days. It

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is not possible to treat this as 'joining time' or as an event in the course of joining time. Another explanation is that it was realised that there was no vacancy at Trichur and that applicant should not have been posted to Trichur. This does not redound to the credit of the Department to say that they posted an employee to a place where there was no vacancy. It will be unjust if the employee is denied his legitimate allowances, on account of a quixotic exercise by his official superiors. Again, the contention that there was no vacancy at Trichur cannot be accepted, as he was allowed to join at Trichur--not that this is relevant for our present purpose. This plea only shows inconsistencies in the stand of respondents.

7. It is clearly admitted in the reply statement that posting of applicant to Trichur was a result of

"inadvertant administrative aberration".

It will be unjust to deprive applicant of an entitlement which SR 116 confers on him, because of an 'administrative aberration', for which he was in no manner responsible.

8. It emerges from the facts that:

- (a) applicant was transferred from Pune to Trichur;
- (b) he assumed charge at Trichur;
- (c) there was another order of transfer from Trichur to Kottayam and that it was carried out; and
- (d) for every transfer, a lumpsum amount and packing allowances are admissible, proviso to SR 116 B, being restricted to travel of members of the family of an employee.

9. When the matter came up for admission, we granted an opportunity to respondents to correct their errors. Instead of doing this, and putting things right, they contested the matter hotly thus leading to unnecessary spending of Government funds and wasting of judicial time. Such conduct must be viewed seriously in the light of

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the decision in Central Cooperative Consumer's Stores Ltd., through its General Manager vs. Labour Court, HP [(1993) 3 SCC 214]. The facts of this case may not squarely attract the decision, but the principles highlighted therein govern the case on hand. Instead of transferring applicant to Kottayam from Pune, he was transferred from Pune to Trichur and then, from Trichur to Kottayam, necessitating two sets of payments of Rs.4200.00 (3000 + 1200). This was due to an "administrative aberration". Respondents did not ascertain whether there was a vacancy at Trichur. Then, the respondents tried to cover up their mistake by describing two transfers as one transfer, glibly, at once trying to deprive applicant of the allowances admissible to him under SR 116. Otherwise put, the attempt was to make applicant pay for the mistakes of respondents. We cannot assent to such enterprises. Neither the public exchequer nor applicant should pay for this folly.

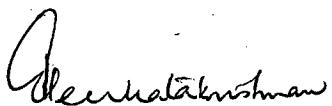
10. We direct respondents to pay applicant Rs.3000.00 (Rupees Three Thousand Only) plus Rs.1200.00 (Rupees One Thousand and Two Hundred Only) for transfer from Pune to Trichur; and Rs.3000.00 (Rupees Three Thousand Only) plus Rs.1200.00 (Rupees One Thousand and Two Hundred Only) for transfer from Trichur to Kottayam. The payment will be made within three weeks from today, failing which interest at the rate of 18% will be payable on this amount from the day after three weeks of today, till the date of payment. Respondents will also pay Rs.1500.00 (Rupees One Thousand and Five Hundred Only) as costs to applicant.

11. Government will recover one set of allowances, namely Rs.3000.00 plus Rs.1200.00 from those who have been responsible for the administrative aberration and the costs from those who advised that the aberration was justified in the light of the principles laid down in the Central Cooperative Consumer's Stores Ltd, through its General Manager vs. Labour Court, HP. (1993) 3 SCC 214. On the question of

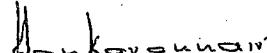
joining time, we are not called upon to give a decision since the rules are clear.

12. Application is allowed as aforesaid with costs.

Dated the 15th June, 1994.


PV VENKATAKRISHNAN

ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR (J)

VICE CHAIRMAN

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