

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O. A. No.  
~~XXXXXX~~

457/90

199

DATE OF DECISION 31.8.90

P.V.Chandrasekharan

Applicant (s)

Mr. T.G.Rajendran

Advocate for the Applicant (s)

Versus

The Chief Engineer, Headquarters,  
Southern Naval Command, Pune.

Respondent (s)

Mr.S.V. Balakrishna Iyer, ACGSC

Advocate for the Respondent (s)

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? 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

**(Shri S.P.Mukerji, Vice Chairman)**

In this application dated 7.6.90 the applicant who has been working as an Upper Division Clerk (UDC) in the office of the Garrison Engineer, under the Chief Engineer, Southern Naval Command, Cochin has prayed that the impugned movement order dated 7th May, 1990 at **Annexure-II** transferring him from Cochin to Vasco should be set aside. The brief facts of the case are as follows:

2. After working in Bombay for 18 years from 1961 to 1979 the applicant was transferred to Cochin in 1979 at his request and he served there upto 1983. In 1983 he was transferred to Port Blair to complete his tenure postings at difficult places. On completion of his tenure service, he was posted to Cochin and he took over there on 18.7.85. When the applicant was ordered to be posted at Vasco

by the letter dated 15.2.90 which was not given to him, he filed a representation against the posting on 14.3.90, but instead of replying to his representation, the impugned movement order dated 7.5.90 was passed. The applicant has argued that in accordance with the guidelines at **Annexure-III**, since he is 'reaching the age of 55 years,' he should not have been transferred from Cochin which was the station of his choice. His date of birth being 30th April 1936, he entered into the 55th year in April 1990. The posting order was passed on 15.2.90. He has also pointed out his domestic problems about his suffering from ~~Herma~~ <sup>h</sup> and Peptic ulcer and his brother being a patient of Cancer and the education of his children liable to suffer at Vasco. He has indicated that one V.Sudarsanan, Supervisor Grade I, has been allowed to remain in Cochin even though his stay at Cochin has been since 1983. He has also stated the cases of 2 UDCs, Shri Hameed and Smt. Job, who have not been moved even though their <sup>h</sup> posting orders were issued in May 1988. He has argued that by his transfer to Vasco he is being discriminated. His emoluments also would fall on his posting to Vasco. He has stated that his posting to Vasco is not due to exigencies of service as in his post of UDC special skill is not necessary. He has invoked compassion for his posting at Cochin.

3. According to the respondents, the applicant <sup>h</sup> completed only 54 years of age on 29th April 1990 and thus he cannot claim exemption from posting on the plea of reaching 55 years. Since he had completed more than 4 years of service in Cochin which was his choice station, he cannot challenge his transfer to Vasco now. They have clarified that on posting to Cochin from various <sup>(difficult)</sup> tenure <sup>h</sup> stations 18 UDCs became surplus and 14 UDCs out of 18 who had stayed for maximum period were ordered to be posted out of Cochin. The applicant figures at No.6 in the list of such 14 UDCs thus posted. 7 persons who had served for lesser periods in Cochin have also <sup>been</sup> moved out and accordingly the applicant cannot claim exemption. His representation of March 1990 was considered and rejected. They have stressed that the applicant was posted at Vasco because of administrative exigencies as other UDCs who are returning <sup>to Cochin</sup> from tenure <sup>h</sup>

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stations had to be accommodated. Regarding Shri Sudarsanan, they have stated that he had completed 54 years on 21.3.90 and was running 55 years at the time of the impugned order. Shri Hameed stands posted at Vizag. He represented but the Chief Engineer has intimated that he has to be moved and orders have been issued to move him immediately. Regarding Smt. Job, she had been allowed to stay because of the education of her children till 31st May 1990 and she is also to be moved shortly.

4. In the rejoinder, the applicant has stated that both Shri Sudarsanan and he were running 55th year in April 1990, but Shri Sudarsanan has been retained at Cochin even though he was posted here on 17.1.83, whereas the applicant came to Cochin on 18.7.85. Regarding Shri Hameed and Smt. Job, he has stated that inspite of orders of transfer, they are still working at Cochin.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. So far as the guidelines are concerned, it is stated that "persons reaching the age of 55 years or over should not be transferred except at their own request....." In OAK 317/87, by the order dated 21.12.87 to which one of us was a party, it was held that only after one has reached the age of 55 years one can avail of the benefit of the afore-said guidelines. Since the applicant's date of birth is 30.4.1936, he can avail of this benefit only after 30.4.1991 and not earlier. However, the applicant is quite justified in alleging discrimination on the ground that Shri Sudarsanan who is also running 55th year like him when the movement order was passed, cannot be retained in Cochin and the applicant transferred when Shri Sudarsanan had been posted at Cochin more than two years earlier on 17.1.83 than the applicant's joining at Cochin on 18.7.85. We feel that once two candidates are found to be equally liable to be transferred as in this case, the one with longer period of stay has to go first. The difference in age between the two of less than 2 months cannot, to our mind, give an advantage to Shri Sudarsanan who has been at Cochin for a period

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exceeding that of the applicant's stay by more than 2 years. There is some dithering in transferring Shri Hameed and Smt. Job also in whose cases, according to the respondents themselves, decision to transfer them have already been taken but they have been allowed to stay at Cochin. However, since neither Shri Sudarsanan nor Shri Hameed or Smt. Job has been impleaded as respondents, no direction can be given in this case by which they are likely to be affected. As, however, the impugned order of applicant's transfer to Vasco suffers from obvious discrimination, we close this application with the direction that the impugned movement order should be kept in abeyance so long as Shri Sudarsanan, Shri Hameed and Smt. Job remain posted at Cochin.

There will be no order as to costs.

  
(A.V. Haridasan)  
Judicial Member

31.8.90

  
(S.P. Mukerji)  
Vice Chairman