

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
O.A.No.47/2007**

Friday, this the 9th day of November, 2007.

CORAM :

HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER

Resmi V.A.
LDC, MES 187081,
Office of the Chief Engineer (NW),
Kataribagh, Naval Base P.O., Kochi ... Applicant

By Advocate Mr.R.K.Muralidharan

V/s.

- 1 The Head Quarters,
Chief Engineer.,
Southern Command, Pune
- 2 The Chief Engineer (NW) Kochi,
Kataribagh, Naval Base P.O., Kochi
- 3 Union of India
represented by its Secretary,
Ministry of Defence,
New Delhi Respondents

By Advocate Mr.Thomas Mathew Nellimoottil

The application having been heard on 10.10.2007 the Tribunal delivered the following on 7/11/2007.

(ORDER)

Hon'ble Mr.George Paracken, Judicial Member

- 1 The applicant's grievance in this OA is against her transfer to CE(SZ) Chennai, GL (DSSC) Wellington made vide Annexure A-1 order dated 18/6/2005. On receipt of the aforesaid order, the applicant submitted a representation on 17/7/2005 requesting for a change of posting/deferment of move because of her compelling circumstances. Her superior officer, namely, the Zonal Chief Engineer has also not

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immediately relieved her because of staff shortage. Meanwhile, the applicant became pregnant and she made another representation vide Annexure A-2 letter dated 28/2/2006 duly recommended by her superior officer, namely, the Chief Engineer(NW) Kochi to the respondent No.1, namely, The Head Quarters, Chief Engineer., Southern Command, Pune with a request for a change of posting to Coimbatore where her husband could also get a similar job and stay with her or as an alternative to defer her posting till 31/7/2006 in case her request for posting at Coimbatore was not acceptable for any reason. The respondent did not accede to both her requests and issued the Annexure A-3 movement order dated 5/4/2006. The applicant did not comply with the same and submitted an application for Earned Leave on 8/5/2006 but the respondents vide Annexure A-4 letter dated 17/5/2006 informed her that her request for Earned Leave was not granted and directed her again to move to the new place of posting immediately. They have also warned her that her pay and allowance for the month of June, 2006 onwards will not be claimed from her last place of posting. The applicant without complying with that order also, sent another application for 90 days Earned Leave on medical grounds in continuation of her earlier application dated 18/3/2006, enclosing there with a medical certificate. Aggrieved by the insistence of the Respondents for the Applicant to move to the new place of posting immediately and by their refusal to grant leave, she approached this Tribunal vide OA 339/06. Vide an interim order dated 30/8/2006, this Tribunal observed that "the applicant was at an advanced stage of pregnancy and directed the respondents to consider sanctioning her leave." By a subsequent order dated 26/10/2006 in the same OA, this Tribunal observed that a "balance

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has to be struck between the exigencies of service and the pressing needs of the applicant." Therefore, the applicant was given an opportunity "to file a fresh representation for due consideration and judicious decision in the matter by the respondents." Accordingly, the applicant filed Annexure A-7 representation dated 1/11/2006 stating that she had delivered a child on 12/9/2006 and was advised to avoid Wellington as far as possible which has got extreme climate. She has, therefore, again requested the respondents to post her against any one of the six vacancies which has occurred in the meanwhile at Sulur, Coimbatore and Agrani, on promotion of LDCs to UDCs as per respondents order dated 29/9/2006. Finally, the aforesaid OA was disposed of vide order dated 7/12/2006 with the direction to the respondents to consider her aforesaid representation and dispose of it within one month. The respondents, once again, vide the impugned order dated 3/1/2007 (Annexure A9) rejected her request for posting at Coimbatore stating that there is no vacancy at Coimbatore Complex and posting of surplus staff would bring audit objection. They have also stated that Wellington is having huge deficiency of staff, and the problems there have to be addressed in the organisational interest.

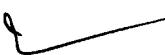
2 In the reply statement also, the respondents have submitted that the Coimbatore Complex which includes Coimbatore, Agrani and Sulur has been declared as a surplus station and, therefore, no subordinates can be posted in that complex. They have also submitted that Kochi is also a surplus station and the applicant was posted to Wellington, being a deficient station. Further, they have submitted that in view of the restrictions on recruitment imposed by Central Government, they were unable to provide 100% category wise man-power to all the Stations/Units

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as per authorisation and consequently they have distributed the deficiency equally to all the stations/units and thereby they could manage to provide 67% of authorisation of LDC category to deficient stations. They have also pointed out that the percentage of staff holding at Wellington is only 35% of authorisation while Coimbatore has more than 100%.

3 In the rejoinder, the applicant has refuted the contention of the respondents that Coimbatore is a surplus station by filing Annexure A-14 order dated 8/1/2007 by which one Shri Jayachandra Kumar. D was appointed there as a LDC under the DCRA Scheme, Annexure A-15 letter dated 8/2/2007 by which one Shri C.Venugopal, UDC in the Coimbatore office serving as Cashier was retained even after the expiry of his normal term of two years on 21/5/2007 and the Annexure A-16 letter dated 5/1/2007 by which eleven persons posted to Coimbatore Station had not reported till January, 2007. She has also produced Annexure A-17, letter dated 15/5/2005 issued by the Office of the Engineer-in-Chief's Branch, New Delhi, to counter the contention of the respondents that Ex Service man posted in Coimbatore was in accordance with the policy of giving choice station to the Ex-Service men. Again she has produced the Annexure A-18 letter issued by the first respondent for liquidation of surplus holdings of OSs, UDCs and LDCs in various stations but Coimbatore was not included there as a surplus station. The applicant has also pointed out that one Smt.M.Komalavally, LDC who was at serial no.10 of the Annexure A-1 transfer order first got deferment of her posting at Wellington up to 31/3/2007 and then got the change of station to Coimbatore as per Annexure A-19 order dated 26/3/2007.

4 I have heard Advocate Mr.R.K.Muralidharan for the applicant



and Advocate Mr.Varghese John for Mr.Thomas Mathew Nellimoottil for the respondents respectively.

5 There is no dispute that the applicant is liable to be transferred to any of the units under the respondents and there is hardly any scope for the Courts/Tribunals have in interfering with such transfers/posting orders issued by the executive in the exigencies of service. However, the right of an employee to make representations against the transfers on genuine grounds and the duty of the Respondents to consider them in accordance with the existing rules/guidelines, if any, cannot be ignored. As already observed by this Tribunal in the earlier OA-339/06 filed by the applicant, it is necessary that the respondents should take a balanced view considering the administrative exigencies and the personal difficulties expressed by the employees. No doubt, it is the administrative exigencies which cannot be avoided or postponed should have the precedence over any personal inconvenience of an employee. When the Annexure A-1 order was issued on 18/6/2005 transferring the applicant from CE (Navac) Kochi to CE(SZ) Chennai, GL (DSSC) Wellington, her request was to either to change her station of posting to Coimbatore or, if it is not possible, to consider deferment of her posting till 31/7/2006 for compelling reasons. However, during this period, circumstances changed. The Applicant became pregnant and had to remain on leave. She delivered a child on 12/9/2006. In the changed circumstances, she has again requested the respondents to post her at Coimbatore pointing out certain vacancies occurred there, on the main ground that Wellington has an extremely cold climate and with her new born child, she cannot stay there. Considering the above facts, this Tribunal permitted her to make a fresh representation

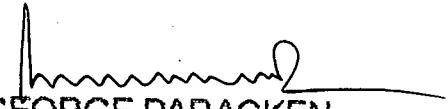
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to the respondents with a direction to them to consider the same and dispose of it, with a speaking order. However, by the impugned Annexure A-20 order dated 4/7/2007, the respondents once again rejected her request repeating the same old reason that there were no vacancies at Coimbatore Complex and it was already running with surplus staff but Wellington has got a huge deficiency problem and the same has to be addressed in the interest of the organisation, I do not consider the Respondents have considered the representation of the Applicant in its right perspective. The respondents have a large establishment with several units and large number of employees working under them. The applicant, is an LDC and her main request is not to post her at Wellington where the climate is extremely cold as she has to carry her new born child also with her. She preferred a posting at Coimbatore where her husband also could secure similar job that he is doing at present. The respondents main contention is that Coimbatore is a surplus station and Wellington is a deficient station and, therefore, her request cannot be acceded to. But I have seen from the record that another LDC, Smt.M.Komalavally, who was transferred alongwith the applicant to Wellington has been posted at Coimbatore for the reason that her superior officer had recommended for her posting at Coimbatore. The contention of the respondents is that the applicant's superior has not recommended her case for a posting at Coimbatore. This is not true. It is very much on record that the applicant's superior officer, Shri S.Srivastava Col. Commander Works Engineer has strongly recommended for change of station to Coimbatore Complex on her medical grounds. He has also pointed out that the applicant's husband is working against a non-transferable post in a private firm at



Ernakulam. The Respondents are applying separate rules and procedure to similar employees which is nothing but arbitrariness and discrimination. In my considered opinion, the applicant has got a genuine grievance against her posting to Wellington in view of the fact the climate there is very cold and she cannot stay there with the new born child. In this view of the matter, I direct the respondent to re-consider the request of the Applicant to post her at Coimbatore as her first and the best preference, if there are any vacancies which have occurred there during the pendency of this OA or in case it is not possible to any other nearby station, other than Wellington. With this direction, this OA is disposed of. There shall be no orders as to costs.

Dated the 9th November, 2007.



GEORGE PARACKEN
JUDICIAL MEMBER

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