

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

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DATE: 30-7-92

K. A. Madhavan	Applicant in O.A. 483/92
V. A. Uttaman	Applicant in O.A. 484/92
Saidu Mohammed K.P.	Applicant in O.A. 580/92
Vs.	
The Director, CIFNET, Cochin and others	Respondents in all the three cases
Mr. M. C. Cherian	Counsel for applicants in all the three cases
Mr. N.N. Sugunapalan, SCGSC	Counsel for respondents in O.A. 483/92 and 484/92
Mr. S.V. Balakrishna Iyer, ACGSC	Counsel for respondents in O.A. 580/92

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MR. P. S. HABEEB MOHAMED, ADMINISTRATIVE MEMBER

&

MR. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reportes of local papers may be allowed to see the judgment? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the judgment? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGMENT

Mr. N. Dharmadan, Judicial Member

These cases are heard together on the basis of consent of parties. In all the cases, the order of the Director, Central Institute of Fisheries Nautical & Engineering Training, the first respondent, dated 6.3.1992 is under challenge. All the applicants are aggrieved by the order by which they were transferred to Visakhapatnam along with their posts, until further orders.

2. The applicants in O.A. 483/92 and 580/92 are members belonging to S.T. community and the applicant in O.A. 484/92 is a member belong to SC community. They are aggrieved

by their transfer from Cochin to Visakhapatnam without following the normal procedure of transfer. The applicant in O.A. 484/92 and O.A. 580/92 were originally working in another Ship. They were transferred to the fishery training vessel 'M.V. Prashikshani' on the understanding that they will be included in the fishing operation for "Tuna long lining" under a tour programme to Visakhapatnam upto 25.3.92. They were included at Sl. Nos. 5, 8 & 11 in Annexure A-1 proceedings passed by the Director incorporating the decision to deploy the vessel 'M.V. Prashikshani' to Visakhapatnam. The decision of the Director is as follows:

" It has been decided to deploy the fishery training vessel "M.V. PRASHIKSHANI" for carrying out "Tuna long lining" off Visakhapatnam Coast for the benefit of the private entrepreneurs in response to a specific request received from them.

The vessel will leave Kochi on 10.2.92 and arrive at Visakhapatnam on 16.2.92. On completion of the training programme, the vessel will leave Visakhapatnam on 25.3.92 and arrive Kochin on 1.4.92."

3. There was a delay in starting from Cochin. However, vessel reached at Visakhapatnam by the end of February, 1992. The first respondent issued the impugned order dated 6.3.92 by which the applicants have been transferred to Visakhapatnam. Both the applicants in O.A. 483/92 and 484/92 are holding the post of Deckhand and applicant in O.A. 580/92 is holding the post of Bosun. The decision of the Director to transfer the applicants along with others as stated in Annexure A-2 reads as follows:

"Consequent on the transfer of the fishery training vessel 'M.V. Prashikshani' to CIFNET Unit, Visakhapatnam the following officers and staff along with the posts mentioned against each are transferred to Visakhapatnam with effect from 9.3.92, until further orders."

4. The applicants allege malafies against the impugned order of transfer. They have contended that this transfer has been issued adopting an unusual procedure only to victimise the applicants who have participated in an agitation based on some demands of the employees along with

others while working at Cochin. By the aforesaid transfer, they are deprived of the facility to make arrangements for the settlement of their families and education of children and of the transfer facilities such as TA/DA, etc. for self and family members. Since they belong to SC/ST community they are entitled to certain privileges of having the facility of working in the native place to the extent possible. By transferring them to Visakhapatnam, the first respondent has purposefully denied the aforesaid benefits. The applicants as well. ^{as well.} raised ~~xx~~ some personal problems. The applicant in O.A. 483/92 has alleged that he was originally working as Sr. Deckhand in the fishing vessel 'Skipper' but was transferred w.e.f. January, 1992 to 'Prashikshani' and thereafter, he was deployed for fishing activities upto 25.3.92. His family consists of his old sick mother, wife and three daughters who are of marriagable age and there is no male member to look after the affairs at home. If he is not allowed to come back to Cochin after completion of the fishing operation as per the original schedule, there will be dislocation of his family.

Similarly, the applicant in O.A. 484/92 ~~xxx~~ has also alleged that his family consists of his wife and three children, two of whom are school going and the other is a mentally retarded child. There is no other member in the family to look after the affairs at home. He is ~~xxxx~~ worried due to family condition.

Similar allegation was made by the applicant in O.A. 580/92 also. He was also originally working in another ship but was transferred to 'Prashikshani' on 30.1.92. He got a transfer to Cochin only in 1989. He brought down his wife and children from his native place of L & D Island to Ernakulam and settled there. The applicant's wife knows only Malayalam and it is not possible for her to go outside Kerala and reside

for a long period because of the language problems. The transfer of the applicants seriously affects the family life and the education of the children.

5. At the time when these applications have been admitted, respondents have brought to our notice that applicants have submitted representations against the transfer and the Director will consider the same if the Tribunal gives such permission. Accordingly, in all these cases, we have granted permission to pass orders on the representations. We have made clear that the pendency of the applications would not stand in the way of the respondents from disposing of the representations.

6. When these cases came for argument on 22.7.92, learned counsel for respondents submitted that representations submitted by the applicants have since been disposed of and the applicants have not challenged the orders passed by the Director on 14.5.92 disposing of the representations. The orders are more or less similarly worded. One of the order is extracted below:

"With reference to his representation dated 16.3.92 for transfer to CIFNET, Cochin Shri V.A. Uthaman, Sr. Deckhand is informed that out of 19 years service in Govt. he was away from Cochin only for about 3 years. Therefore his request for transfer cannot be acceded due to official exigencies. However, his case can be considered along with other similar requests for transfer as and when a suitable vacancy arises at Cochin."

The learned counsel for applicants stated that there is no application of mind and this order is liable to be challenged. Accordingly, he sought time for filing amended application and requested for permission to amend the same. We granted permission and the applicants filed amended application in all these cases. We accepted the amended applications and heard together. Since the respondents do not want to file any addl. counter affidavit, we have heard the cases and taken for orders.

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7. We are not very much impressed by the argument of learned counsel for respondents that the transfer has been effected in the public interest. The original decision of the Director as contained in the proceedings dated 28.1.92 fixing a time schedule for the "Tuna long lining operation" has not been reviewed and re-scheduled fixing another time limit so that the applicants could be sure about the programme and make arrangements accordingly. Respondents have not produced any such order. The impugned order on the other hand indicates that the transfer of 'M.V. PRASHIKSHANI' to Visakhapatnam with the crew will be retained at Visakhapatnam until further indefinitely. orders. The learned counsel for the applicants submitted that the very purpose of retaining the vessel at Visakhapatnam is only to vitimise the applicants and retain them there without any advantage to any person. In support of his arguments he has produced Annexure A-4, performance report from January 1992 to May, 1992 and Annexure A-5 documents to establish the better performance of the vessel at Cochin. From Annexure A-4 it is clear that total catch during January at Cochin was 1143 Kgs at the same time in February and March, the total catch were shown as 78 Kgs. and 54 kgs. respectively. There was no catch during the months of April & May. Hence, the applicants contended that the maintenance of ship at Visakhapatnam is uneconomical and will be a loss to the CIFNET. Respondents on the other hand produced a letter to show that the vessel was deployed for the training needs of public as of private entrepreneurs and for continuing the schedule for training facilities. Even from the perusal of the documents, we feel that so far as the catch point of view is concerned, the continuance of the vessel at Visakhapatnam prima facie appears to be uneconomical. But it may be necessary for continuing the vessel at Visakhapatnam for other administrative purposes which is a matter to be decided by the administrative authorities.

8. Regarding transfer of applicants from Cochin to Visakhapatnam under the circumstances stated above, prima facie it appears that the applicants' case that they are entitled to protection of Govt. orders dealing with transfer of SC/ST employees^{and they} were denied the benefit of Govt. decision to post employees belonging to SC/ST community as far as possible nearer to their native place within the region subject to administrative constraints. The respondents have not considered the application of the policy decision taken by the Government in this behalf while disposing of their representations, pending the original applications. In the reply filed by them in the cases, they have not taken a consistent stand. In O.A. 484/92 which was filed by the applicant who belongs to the S.C. community, they have taken the stand that O.M. dated 20.6.89 applies only to ST for consideration of posting to their native places or nearer places subject to administrative constraints. But in the case of O.A. 580/92 a case filed by an employee belonging to S.T. community, respondents did not apply the policy/principle contained in the O.M. dated 20.6.89. They have explained the contention of the applicant by stating that the applicant belongs to Laksha Dweep Island and there is no possibility of posting him to his native place. He belongs to Visakhapatnam Unit. However, taking into account his request ~~xx~~ transfer had been given to Madras Unit and posted at Cochin Headquarters in May, 1989. But they have not given any explanation why he cannot be retained at Cochin considering the fact that Laksha Dweep is very close to Cochin and that he is settled there.

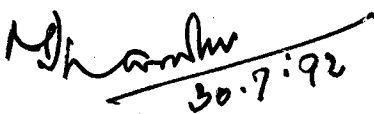
9. During the pendency of these applications, we gave freedom to the respondents to consider the grievances of the applicants, ~~xxx~~ applying Govt.'s instructions and orders contained in the O.M. issued in this behalf giving benefits to SC/ST communities in the matter of transfer,

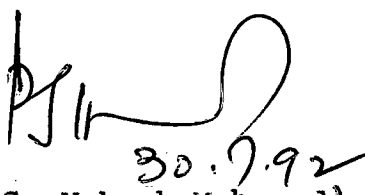
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and apply mind to the facts and details narrated by the applicants and pass considered orders. Since the Director has not passed the orders in the manner indicated above, we have no other alternative but to set aside the orders dated 14.5.92 disposing of the representations filed by the applicants challenging the transfers on the basis of the proceedings dated 6.3.92 and remit the matter to him so as to consider the grievance of the applicants in the light of relevant O.Ms and other guidelines governing transfer of employees ^{belonging to SC/ST} working in the establishment. This shall be done within a period of one month from the date of receipt of a copy of the judgment. Till such a decision is taken on the representations submitted by the applicants, the applicants shall be treated as if they are on/tour programme from 9.3.1992 notwithstanding the order of transfer dated 6.3.92. ^{continued} It goes without saying that if ^{applicants} they are aggrieved by the final disposal of the representations as directed above, they are at liberty to approach appropriate forum, if so advised, for redressal of their grievances.

10. The applications are accordingly disposed of with the aforesaid directions.

11. There will be no order as to costs.


(N. Dharmadan)
Judicial Member


(P.S. Habeeb Mohamed)
Administrative Member

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