

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXX6X~~

485

1991

DATE OF DECISION 7.10.1991

M. M. Thampi

Applicant (s)

Mr. M. R. Rajendran Nair

Advocate for the Applicant (s)

Versus

UOI rep. by Secy. to Govt., Respondent (s)
Min. of Defence, New Delhi & 2 others

Mr. NN Sugunapalan, SCGSC

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. A. V. Haridasan

Judicial Member

The Hon'ble Mr.

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

JUDGEMENT

The challenge in this application is directed against an order of transfer. The applicant, Shri M. M. Thampi, Draftsman in the Directorate of Naval Installation Training, Naval Base, Cochin came by transfer to the present post while he was working at Naval Headquarters, Bombay in the year 1986 on his request on compassionate ground. Now that there is reduction of the posts in the cadre of Senior Draftsman as a result of the process of abolition of Directorate of Naval Installation Training in Cochin, Seven Draftsmen have become surplus. By the impugned order at Annexure-II three Senior

Draftsmen having the longest stay among the Senior Draftsmen have been transferred and adjusted against the vacancies in different places. In that process the applicant being third in seniority in regard to stay in the station is transferred and posted at Naval Headquarters, Bombay. Anticipating a transfer the applicant had even before the order was received by him made a representation on 13.3.1991 to the Chief of Naval Staff, Naval Headquarters, Delhi, stating that he was transferred to Cochin on compassionate grounds, that his wife being employed in a non-transferable post in Cochin Port Trust, and that as per the guidelines contained in the letter of the Ministry of Defence A.52011/1/86/D (Est.1)/Gp-1 dated 15.6.1986 reproducing the guide lines issued by the Department of Personnel it has been directed that employed spouses should be accommodated as far as practicable in one station and requesting that making adjustment regarding vacancies he may be retained in Cochin. On receipt of the impugned order of transfer, as he apprehended immediate relief and compulsion to give effect to the order of transfer the applicant filed this application praying that the impugned order at Annexure-II in so far as it relates to his transfer may be quashed, and that the respondents may be directed to retain

him in Cochin or to consider and dispose of his representation at Annexure-III.

2. It has been averred in the application that, as the transfers have become necessary on account of surplusage the respondents should have transferred the juniors first and that there are several persons among the Draftsmen who are juniors of the applicant who should have been transferred. It has also been averred that while ordering his transfer the respondents did not give consideration to the guide lines regarding the transfer of employed spouses.

3. The respondents in their reply statement have sought to justify the impugned order on the ground that the transfer has become unavoidable owing to and the reduction of posts, / that the claim of the applicant that when there is a surplusage it is the junior who should be transferred has no force, since according to the guide lines the reverse order of seniority in the case of surplusage applies only when there is retrenchment and for the purpose of transfer the relevant consideration is the longest stay in a station. It has also been contended that the representation at Annexure-III has been considered by the competent authority and the applicant has been informed that, in the circumstances of surplusage it was not possible to accede to

his demand.

4. The applicant has filed a rejoinder in which he has contended that the Annexure-V order dated 10.4.1991 issued in reply to the Annexure-III representation shows complete lack of application of mind in regard to the circumstances explained in his representation.

5. We have heard the counsel on either side and have also carefully gone through the documents produced. Time and again Supreme Court and various High Courts have been repeatedly saying that, transfer being an incident of service an employee has no right to claim a posting to a particular place or a particular post unless he has been appointed to a non-transferable post. In a plethora of ruling the Supreme Court has categorically stated that the guide lines do not clothe the Government servant with a right to impugn the order of transfer but are issued only to afford a guiding principles to the authorities ordering transfer. Viewed in this conspectus I feel that the applicant cannot successfully maintain this ^{application} ~~as~~, no malafide is alleged ~~as~~ against the authority who has issued the order of transfer, though there is a passing remark that the order is arbitrary and discriminatory. In the

reply statement the respondents have made it clear that the transfer has become necessary in the exigencies of service on account of reduction of posts, that seven out of the eight Draftsmen working in Cochin were persons transferred to this place on compassionate grounds, and that among those who are retained in Cochin there is nobody who has got a longer stay than the applicant. So, arbitrariness also is not there. But Annexure-V order given to the applicant in reply to his representation at Annexure-III is so cryptic that it does not disclose as to why an adjustment regarding the post is not possible. Further, this order refers to individuals who have applied for transfer by alphabets A, B, C and not even by names. Though the authorities when disposing of representations regarding transfer are not expected to write detailed judgements, fairness demands that the person who had made the request should be informed for what reason and on what ground his request cannot be acceded to. This basic demand of fairness does not appear to have been met in the order at Annexure-V. But since the impugned order of transfer is not vitiated by arbitrariness or malafides, I am not inclined to interfere with the same. As the representation at Annexure-III has not been disposed of with a speaking

order, I feel that it is necessary to give a direction to the second respondent to reconsider the Annexure-III representation and to give the applicant an appropriate reply giving reasons, if it is not possible to accede to his request. If by any chance it becomes possible in the changed circumstances to accommodate the applicant in Cochin the second respondent may do so also.

6. In the result the application is disposed of with the following direction:

- i) The applicant should without further delay report at the Naval Headquarters, Bombay in obedience to the transfer on being relieved.
- ii) The second respondent is directed to reconsider his decision on the Annexure-III representation, give a fair and detailed consideration to the circumstances therein and to give the applicant a speaking order within a period of three months from the date of communication of this order, and if found administratively feasible to accommodate the applicant at Cochin to give him a re-transfer to Cochin.

There is no order as to costs.



(A.V. HARIDASAN)
JUDICIAL MEMBER
7.10.1991