CENTRAL ADMINISTRSATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NOS. 492/06 & 494/06

WEDNESDAY, THIS THE 11th DAY OF OCTOBER, 2006.

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HON'BLE MRS. SATHI NAIR,VICE CHAIRMAN

O.A. 492/2006

R. Rajamma W/o Anandan, Peon
O/o Garrison Engineer (Independent)(NW)
Kochi- 682004
residing at Dawson Vihar,Qr.No. Type-I(C)-14
Thykoodam, Vyttila
Kochi-19 Applicant

By Advocate Mr. R. Sreeraj

Vs.

1 Union of India represented by its Secretary
to the government of Indian Ministry of Defence
New Delhi.

2 The Chief Engineer,
Military Engineer Services
Headquarters, Southern Command
Pune.

3 The Garrison Engineer (Independent)(NW),
Kochi-682004 Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC

O.A.No. 494/2006

Annie Joseph W/o CJ Joseph, Daftry
O/o Garrison Engineer (Independent)(NW)
Kochi-682 004
residing at Chemmayathu House,
Ochanthuruthu PO
Puthuvype. Applicant

By Advocate R. Sreeraj

Vs.

1 Union of India represented by its Secretary
to the government of Indian Ministry of Defence
New Delhi.

2 The Chief Engineer,
Military Engineer Services
Headquarters, Southern Command
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3 The Garrison Engineer (Independent)(NW),
Kochi-682004

Respondents

By Advocate Mr TPM Ibrahim Khan, SCGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The cause of action and the grounds in these two OAs being identical, they were heard together and are being disposed of by this common order.

2 The two applicants herein are female employees of MES aggrieved by the CE SC Pune PO NO. 132402/2006/PO/38/EIB(S) (A2) dated 26th April, 2006 by which they were transferred to the office of Chief Engineer (Navac), Ezhlimala, a hard tenure station 386 Kms away from Kochi where they are presently working, in gross violation of Para 26 of norms on "Posting/Transfer Policy- Group-C and D personnel of the MES dated 31.8.1994.

3 Both the applicants are working as Duftry and Peon respectively and belong to Group-D service. They are aged 50 and 53 years and had been working in the present office for more than twenty years. Both the applicants have submitted that their transfer to

Ezhimala is in gross violation of the norms governing the Posting/Transfer of Group-C and D personnel of the MES. As per Para 26 of the norms, female employees are exempted from posting to tenure stations. It was ignoring this exemption that the applicants are now been transferred to Ezhimala a tenure station. Para 26 of the norms further stipulate that female employees are not to be posted to long distance stations even in the case of their peace to peace station transfers unless they give their choice of a station at a distant place. That being the position even in the case of peace to peace station transfers, the present transfer of the applicants to Ezhimala tenure station is not at all justified. The respondents cannot justify their action on the ground of adjustments of surplus/deficiency either. There is no surplus in the category of Peon/Duftry in the office of the third respondent. Against the authorised strength of in the category of Peon in the office of the third respondent only 5 are working. Thus actually there is a deficiency of three in the category of Peon in the office of the third respondent. Even if the station strength is reckoned, there is a deficiency of one in the category of Peon. These aspects were pointed out by the All India MES Clerical Cadre and Group-D Employees Association in their representation dated 4.5.2006 to the 2nd respondent. The Association also is yet to receive any rely from the 2nd respondents. The relevant provisions in Annexure A-3 "Posting/Transfer Policy-Group-C & D Personnel of the MES are identical to the provisions in E-in-C's Br. Posting Guidelines dated 16.4.2003 referred to in both

Annexure A-1 posting order and in Annexure A1(A) letter. Para 26 of Annexure A-3 guidelines corresponds to Para 60 of E-in-C's Br. Posting Guidelines dated 16.4.2003.

4 In their representations the applicants have highlighted the transfer policy guidelines according to which women employees are exempted from posting in tenure stations.

> "Female Employees
>
> 26 The female employees will also be covered by the above policy subject to the undermentioned concessions:-
>
> (a) Women employees are exempted from posting to the tenure stations
>
> (b)They are not to be posted to long distance stations even in the case of their peace to peace station transfers unless female employees gives her choice of a station at a distant place.
>
> © They will be transferred from one peace station to the other on tenure basis on the analogy of tenure system adopted for the male employees for their postings from tenure station to the other. This tenure will be for a minimum period of three years and these employees would have the privilege of exercising three choice for their posting on return from the tenure stations including the home stations.
>
> (d) Widow employees on compassionate grounds would be exempted from the provisions at (c)aboves.

5 A reply statement has been 7filed by the respondents submitting that the posting order in respect of the applicants have been issued based on Para 57 of Engineer-in-Chief's Branch posting

guidelines dated 16.4.2006 under which it is clearly stated that "in the exigencies of services, situation may arise when office/unit are asked to move enblock to other location. In such cases the personnel can be selected based on their length of service in the station/complexes i.e. The longest stayee will move by making local adjustment." Para 26 of the posting policy dated 31.8.1994 has been reviewed by the Engineer-in Chief's Branch vide their letter No.B/20148/PP/EIC(I) dated 23.1.2004 and letter No. B/20148/PP/EIC(I) dated 28.5.2004 under which the provisions for posting out the female employees have been enumerated. It is therefore submitted that the applicants have been posted on enblock shifting of the office of CE(NAVAC) Ezhimala from Kochi to Ezhimala under the above provisions of para 57 of the guidelines. All the six offices at Ezhimala are functioning since 1.1.1998 with sufficient staff of Group-C employees and in the case of Group-D employees these offices are having huge deficiency. The Kochi complex is holding seven Duftries against the CML authorisation of four which works out to three and accordingly the applicant and two other Duftries were posted out from Kochi being surplus and station senior in the Kochi complex. Therefore, it has been contended that the transfer orders are correct and as per the existing policy governing transfers.

6 The applicants in the rejoinder have contended that the amendment made to Para 26 of the A-3 guidelines with regard to movement of female employees is not applicable to them and the

applicants are claiming exemption under para 60(a) which is a corresponding provision para 26-a overriding exemption granted to women employees from posting to tenure stations. The respondents cannot justify the transfer orders on the ground of shifting describing it as a transfer enbloc as out of the 22 Group-D employees ordered to be transferred all except 5 were already adjusted in their original place of posting and all the existing staff of Group-C cadre are adjusted against various formations in Kochi itself and only the five Group-D employees have been subjected to movement to another station. They have also contended that the averments of the respondents regarding surplus staff are obvious misrepresentation of facts as borne out by the letter addressed by the office of the C&W, Cochin to the second respondent stating that there is deficiency of categories of Peon and Duftries in Cochin Complex as per Command Manning Level. They have also enclosed Annexure A-9 list of tenure stations issued by the Southern Command.

7 I have heard the learned counsel Shri R. Sreeraj for the applicants and Shri T.P.M. Ibrahim Khan, SCGSC appearing for the respondents. The learned counsel for the applicants vehemently argued that the respondents have not come out with the true facts in the reply statement and the argument regarding surplussage and shifting of the staff enblock have to be put to strict proof and they have also not clarified the matter regarding treating Ezhimala as a tenure station. The transfer guidelines have also been

misinterpreted and misrepresented. The counsel for the respondents reiterated the contentions in the reply statement.

8 A perusal of the reply statement reveals many inconsistencies in the stand of the respondents. On one hand they have stated that the transfers have been ordered on account of the shifting of the office of CE(NAVAC) Ezhimala from Kochi to Ezhimala. In para 5 of their reply statement it is mentioned that all six offices at Ezhimala are functioning since 1.1.1998 with deficiency of Group-D employees and that there are sufficient number of Group-C staff. From this it is clear that there is no wholesale shifting of the offices to Ezhimala from Cochin and that Ezhimala office has been functioning for some time, it is now proposed to fill up certain deficiencies in the Group-D category. This is also borne out by the statement made by the applicant that the whole staff of Group-C cadre have been adjusted in Cochin itself and only five out of the Group-D employees have been transfered to Ezhimala which has not been denied by the respondents. Hence the respondents trying to justify the transfers as per para 57 of the guidelines for tackling surplussage, is not tenable. If the respondents are faced with the exigency of removing deficiencies efficiency of the Ezhimala office, they have to follow the principles/procedures laid down in the policy guidelines viz. Paras 6 and 12 governing the postings to tenure stations. In this context we had specifically asked the respondents to clarify whether Ezhimala is a tenure station or not. They have significantly maintained silence

in this connection. But by virtue of Annexure A-9 produced by the applicants, it is evident that Ezhimala is included at Sl. No. 7 in the list of tenure stations. Hence, Ezhimala being a tenure station, the above mentioned provisions of the guidelines would have to be applied in transfer matters. Sub para (g) of para 12 of the guidelines provides that the normal age fixed for posting at a tenure station is 50 years. Both the applicants are over 50 years of age and more importantly as far as the female employees are concerned, all the above policy guidelines are subject to the further concessions granted in para 26 of the policy guidelines which has been extracted in para 4 above and it is evident from para 26(a) that there is a total overriding exemption granted to women employees from posting to tenure stations. The respondents have taken shelter in the argument that para 26 has been modified by Annexures R-1 and R-2, dated 23.1.2004 and 28.5.2004 respectively. I have rejected this argument at the stage of admission itself as it is clear from these orders that they sought to modify only para 60(b) of the guidelines (26(b) in the amended guidelines) relating to transfers to long distance stations and that there has been no change as far as the exemptions in para 26(a) by these clarifications given in Annexures R-1 and R-2. As already stated the exemption in para 26(b) is a total and overriding provision in respect of women employees exempting them from posting to tenure stations. Hence there is no justification for the respondents to transfer the two applicants who are above 50 years and female employees to a tenure station,

Ezhimala and that action is clearly in violation of the transfer policy in vogue.

9 Accordingly, Annexure A-1 order dated 26.4.2006 in so far as it relates to applicants is quashed. The respondents are directed to permit the applicants to continue at the station in Cochin where they have been working before the impugned transfer order was issued. The OAs are allowed. No costs.

Dated 11.10.2006

Sathi Nair

SATHI NAIR
VICE CHAIRMAN

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