CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 503/2000 and O.A.No.501/2000

Wednesday, this the 28th day of June, 2000.

CORAM

HON.BLE MR A.M. SIVADAS, JUDICIAL MEMBER

(1) O.A.No. 503/2000

Santha Manohar, W/o P.G. Manoharan,
LDC, Office of the Deputy Regional Director,
National Savings Organisation,
Ernakulam, residing at B-15, Block-8,
3rd Floor, CPWD Quarters,
Kunnumpuram, Kakkanad, Kochi.

Applicant

By Advocate Mr M.R. Rajendran Nair.

Vs.

1. The Regional Director,
National Savings (GOI), Kerala,
C.G.O. Complex, Poonkulam,
Vellayani, Thiruvananthapuram-695 522.

2. The Deputy Regional Director,
National Savings, Civil Station,
4th Floor, Kakkanad P.O., Ernakulam.

3. The Commissioner,
Office of the National Savings Commissioner,
A-Block, CGO Complex, 4th floor,
Seminary Hills, Nagpur-440 006.

4. Union of India rep. by the
Secretary to Government of India,
Ministry of Finance, New Delhi.

5. Prenjan Raj Kalitha,
Deputy Regional Director,
National Savings, Ernakulam.

6. Raju Babu, Regional Director,
National Savings (GOI),
Thiruvananthapuram.

7. N.T. Skaria, LDC,
National Savings Organisation,
Government of India, Kottayam.
Now working as LDC, National
Savings Organisation, Govt. of India,
Civil Lines, Kakkanad.

Respondents

By Advocae Mr Govindh K. Bharathan, Sr.CGSC for R 1-4 and6
Mr Prenjan Raj Kalitha -R5 (In person).
By Advocate Mr P.N.Santhosh -R7

(2) O.A.No.501/2000

N. Parameswaran Pillai, S/o V.P. Narayana Pillai,
Driver, National Savings Organisation,
Civil Station, 4th Floor, Kakkanad P.O.,
Residing at Thundil House, Thakazhi P.O.,
Alleppey-688 562.

Applicant

By Advocate Mr M.R. Rajendran Naair,

Vs.

1. The Regional Director, National Savings (GOI),
Kerala, C.G.O Comnplex, Poonkulam,
Vellayani, Thiruvananthapuram-695 522.

2. The Deputy Regional Director,
National Savings, Civil Station,
4th Floor, Kakkanad P.O., Ernakulam.

3. The Commissioner, O/o National Savings Commissioner,
A-Block, CGO Complex, 4th Floor, Seminary Hills,
Nagpur-440 006.

4. Union of India rep. by the
Secretary to the Government of India,
Ministry of Finance, New Delhi.

5. Prenjan Raj Kalitha, Deputy Regional Director,
National Savings, Ernakulam.

6. Raju Babu, Regional Director,
National Savings (GOI),
Thiruvananthapuram.

Respondents

By Advocate Mr R. Madanan Pillai, ACGSC for R 1-4
Mr Prenjan Raj Kalitha R-5 (In person)

The applications having been heard on 28.6.2000,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

Since both these O.As are connected, were heard together and are disposed of by a common order.

2. Applicant in O.A.503/2000 says that she is transferred from Ernakulam to Kottayam as per A1 dated 1.5.2000 and stands relieved with effect from 4.5.2000 as per A2 dated 4.5.2000. No public interest is involved in this transfer. A1 transfer order is vitiated by mala fides. There were a lot of unacceptable

behaviour on the side of the 5th respondent. Memos were served one after another on the applicants for no reason. The 5th respondent could prevail on the 6th respondent and managed to obtain a minor punishment on the applicant. On the day the appellate order was served on her, she had to suffer a fresh round of abuses, and had to leave the office for some time as the torture was unbearable. Again, the 5th respondent and Balaprasenan, DSO started uttering vulgar language. Aggrieved by this, she moved the District Collector by a complaint dated 2.3.2000. Police have registered a case as Crime No.43/2000 of Trikkakkara Police Station. During the investigation, one N.P. Pillai who is the applicant in O.A.501/2000 and one Jose, Driver and Peon respectively gave statement against the 5th respondent and Balaprasenan. Both Pillai and Jose are also transferred along with the applicant. The order of transfer is the cumulative effect of her representations made against the 5th respondent, and also in retaliation to the police complaint.

3. In the reply statement filed by respondents 1 to 6 jointly it is contended that the transfer is purely in administrative interest, and that it has got nothing to do with sexual harassment. In November, 1999 itself, i.e., soon after awarding punishment on the applicant it was decided to shift her from Ernakulam but was postponed till April in view of the general policy of the department to effect transfers during April/May every year. The applicant was evidently trying to take revenge for the punishment imposed on her when she filed the false complaint before the District Collector. No copy of the complaint filed before the District Collector is produced. Transfer of Peon and Driver has nothing to do with the complaint as both the transfers were made in the exigencies of service.

4. The 7th respondent has filed a statement stating that the applicant was relieved on 4.5.2000 and the 7th respondent reported for duty and joined at Ernakulam Office on 8.5.2000.

5. In the rejoinder it is stated by the applicant that true copy of the photocopy of the complaint dated 21.12.1998 submitted by P.R. Ajitha to the District Collector, Ernakulam and the true translation thereof are produced and marked as A12 and A12(a) respectively. A true copy of the photocopy of the complaint made by Vice President, Indian Youth Congress(I) to the Hon'ble Minister for Finance dated 22.12.1999 is produced and marked as A13.

6. In the reply statement filed by the 5th respondent it is contended that the averment regarding mala fides on the part of the 5th respondent is a manipulation of the applicant without any basis. To take vengeance on account of the punishment awarded to her by the 1st respondent, she made allegations with false and fabricated stories on 2.3.2000, the day on which she was handed over the closed cover containing the rejection order of her appeal against the punishment awarded by the disciplinary authority.

7. In the additional reply statement filed by respondents 1 to 4 it is submitted that all the averments made in the rejoinder are denied. It is further submitted therein that how and for what purpose N.P. Pillai, Driver, has been transferred.

8. The facts in O.A. 501/2000 are that the applicant has been transferred from Ernakulam to Kannur as per A1 dated 1.5.2000 and he stands relieved as per A2 dated 4.5.2000 with effect from 4.5.2000 (AN). He has only 1 1/2 years to retire.

He is a heart patient. His wife's health also requires constant attention as she is suffering from Arthritis. His children are married and settled elsewhere. In this background, a transfer to Kannur would be detrimental to his interest. The impugned orders are vitiated by mala fides. There were many complaints from a woman colleague of the applicant submitted to the 1st respondent regarding sexual harassment. At one instance, he happened to witness use of vulgar abusive language on his colleague by name one Balaprasenan. He was questioned by the Police Officers who investigated the case on the basis of the complaint lodged by one Santha Manohar.

9. Respondents 1 to 4 content that public interest is involved in the transfer of the applicant who is a driver. In Kerala Region, there are 3 Drivers with the primary pay scale of Rs.3050-75-3950-80-4590 and there are 2 Driver cum Operators in the primary scale of Rs.4500-125-7000. The post of Driver cum Operator is superior to that of the Driver. The Driver cum Operator is competent and qualified to screen the publicity films in the publicity work connected to the department. The applicant is a Driver whereas the incumbent posted in place of the applicant is a Driver cum Operator. Ernakulam Office caters to the needs of both Ernakulam and Trissur Districts which are found to be more potential for mobilising more savings requiring the need of screening publicity films. It was decided in January itself when new publicity policy was received to transfer the Driver cum Operator from Kannur to Ernakulam where there is a publicity vehicle available and the applicant from Ernakulam to Kannur. Respondents have no mala fides against the applicant. He was never discriminated. The transfer is made in public interest.

10. 5th respondent has filed a reply statement denying the allegation of mala fides against him.

11. Applicant in O.A. 503/2000 has put forward two grounds to quash the impugned orders A1 and A2. The first one is that her husband is not in good state of health since he met with two accidents, one in 1998 and the other in 1999, that she has got two school going children and further that she is under treatment for bronchitis. The second ground is that these orders are vitiated by mala fides.

12. As far as the first ground is concerned, it is purely domestic and the personal problem of the applicant. In such a case, it is for the department to consider and not for the Tribunal to interfere.

13. It is pertinent to see R1(F). R1(F) dated 12.1.2000 was submitted by the applicant to the 1st respondent a few months prior to the issuance of the impugned orders by which she requested for a transfer to Trivandrum. It is not known how the applicant has got all the domestic problems only after the issuance of the impugned orders. She was happy to go to Trivandrum whereas she finds it difficult to go on transfer to Kottayam.

14. The main ground pressed into service is mala fides. It appears from a reading of the O.A. that mala fide is alleged against the 5th respondent. A1, the impugned transfer order is not issued by the 5th respondent/2nd respondent, but by the 1st respondent who is brought in the party array by name as the 6th respondent.

15. According to the applicant the transfer order is cumulative effect of her representation made against the 6th respondent to the higher-ups and is also a retaliation to the Police complaint. Though the applicant says that representations were made against the 6th respondent, copies of those representations are not produced.

16. In the O.A. it is stated that on the date the appellate order was served on the applicant, she had to suffer fresh round of abuses and had to leave the office for some time since the torture was unbearable and again the 5th respondent and Balaprasenan, DSO, started uttering vulgar language. Aggrieved by the same, she preferred a complaint before the District Collector and on the basis of her complaint a crime has been registered as per No.43/2000 of Trikkakkara Police Station. Though the applicant says that she moved a complaint before the District Collector and that has resulted in registering an FIR, no copy of the complaint is produced. So, it is not known what are the contents in the complaint, what is the nature of the complaint and other particulars. From the pleadings what is available is that the 5th respondent and Balaprasenan, DSO, started uttering vulgar language. Arguments were advanced on behalf of the applicant on the basis that she had to face sexual harassment in the office from the hands of the 5th respondent. There is no plea in the O.A. to the effect that there was any incident or experience of sexual harassment in the office. In this context it is to be seen whether uttering of vulgar language will amount to sexual harassment.

17. In Vishaka and others Vs. State of Rajasthan and others (1997) 6 SCC 241, the Apex Court has defined what is sexual harassment. It has been defined thus:

"Sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

(a) physical contact and advances;
(b) a demand or request for sexual favours;
(c) sexually-coloured remarks;
(d) showing pornography;
(e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature."

18. In the light of the above definition uttering vulgar language cannot be construed as sexual harassment.

19. AS already stated, though the applicant says that a complaint was preferred before the District Collector and on the basis of which a crime has been registered at Trikkakkara Police Station, no copy of the complaint is produced. It was also not submitted across the bar under what section the FIR has been registered by the Police. No copy of the FIR is also made available. If the copy of FIR is made available that would show the section under which the crime has been registered. That will give an idea as to the nature of the offence alleged. If the applicant faced sexual harassment in the office, she could have very well produced copy of the complaint containing averments to that effect and also a copy of the FIR, which will give a clear indication as to the nature of the alleged offence.

20. In Kedar Nath Bahl Vs. The State of Punjab and others (1978) 4 SCC 336 it has been clearly stated that allegations should not be vague and indefinite that detailed

particulars should be given, and that the onus to prove charge of bad faith to invalidate an order lies on the person seeking to invalidate.

21. In S. Pratab Singh Vs. State of Punjab (AIR 1964 SC 72) it has been held that it is for the person seeking to invalidate an order to establish the charge of bad faith.

22. It is to be remembered that a charge of mala fides may be made easily or without a sense of responsibility and that is why it is necessary to examine it in detail with care and caution. The applicant in this O.A. has made only very vague and indefinite allegation. There is no specific plea as to any sexual harassment and detailed particulars as to the mala fide action are not given. She has to prove malus animus.

23. In State of U.P and another Vs. Dr.V.N. Prasad [1995 Supp (2) SCC 151 it has been held that to establish mala fides there should be strong and convincing evidence and that the presumption is in favour of the bona fides of the order unless contradicted by acceptable material.

24 It cannot be said that there is strong and convincing evidence to establish mala fides alleged by the applicant.

25. The applicant in O.A.501/2000 alleges that the order of transfer is vitiated by mala fides on the ground that his statement has been recorded by the Police in connection with the complaint filed by the applicant in O .A.503/2000. This aspect I have already discussed. Respondents have given the reason for transferring the applicant. The reason stated is that the applicant is only a Driver whereas the person posted in place of

the applicant is a Driver cum Operator who is competent and qualified to screen the publicity films in the publicity work of the department and as the infrastructure for screening publicity films is available at Ernakulam and no such infrastructure is available at Kannur, the applicant is transferred to Kannur and the Driver cum Operator is transferred from Kannur to Ernakulam. There is no rejoinder filed denying the stand of the respondents. The reason stated by the respondents in transferring the applicant seems to be well justified and it could only be said to be in public interest and in the exigencies of service.

26. Accordingly, I do not find any merit in both these O.As and both these O.As are dismissed. No costs.

Dated the 28th of June, 2000.

A.M. SIVADAS
JUDICIAL MEMBER

P/2962000

LIST OF ANNEXURES REFERRED TO IN THIS ORDER

O.A.No.503/2000

A-1, True copy of the order No.3582-85/2-8/HRD/98 dated 1.5.2000 issued by the 1st respondent.

A-2, True copy of the order No.330-32/SMP, dated 4.5.2000 issued by the 2nd respondent.

A-12, True copy of the complaint dated 21.12.1998 submitted by PR Ajitha to the Collector, Ernakulam.

A-12(a)True copy of English Translation of the Annexure A12 document.

A-13, True cop6b of the complaint dated 22.12.1999 by Mr Sivadasan to the Minister of Finance, Union of India.

A-R1F, Photocopy of the application dated 12.1.2000 issued by the applicant.

(2) O.A.No. 501/2000

A-1, True copy of the order No.3586-89/2-8/HRD/98 DATED 1.5.2000 issued by the 1st respondenjt.

A-2, True copy of the Order No.333-35/NPP/P, dated 4.5.2000 issued by the 2nd respondent.