

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 521 of 2004

Thursday, this the 20th day of January, 2005

CORAM

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

1. P.K. Usha Dilip,
Senior Auditor, A/c No.8317132,
Area Accounts Office (Navy),
Pay Section I,
Perumanoor PO, Thevara, Cochin-15 ...Applicant

[By Advocate Shri V. Ajith Narayanan]

Versus

1. Union of India represented by its
Secretary, Ministry of Defence,
New Delhi.

2. The Controller General of Defence Accounts,
R.K. Puram, New Delhi.

3. The Principal Controller of Defence Accounts
(Navy), Cooperage Road, Mumbai-39

4. The Joint Controller of Defence Accounts,
Area Accounts Office (Navy),
Perumanoor PO, Thevara, Cochin-15

5. The Senior Accounts Officer
(Administration Section),
Area Accounts Office (Navy),
Perumanoor PO, Thevara, Cochin-15 ...Respondents

[By Advocate Shri T.P.M. Ibrahim Khan, SCGSC]

O R D E R

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant, who is working as Senior Auditor in Area Accounts Office (Navy), Pay Section-I, Cochin, has married to Shri K.P.Dilip, Senior Auditor, Office of the Assistant Accounts Officer Garrison Engineer (independent) Research & Development, Kakkanad. Both of them are in Cochin at present and working under the 1st and 2nd respondents. The husband of the applicant was working in Chennai upto 17-7-2001 and he got a permanent transfer to Cochin. The applicant and her husband

could enjoy service and stay at the same station in the home State only from 17-7-2001. The service jurisprudence declares that the husband and wife should be permitted to work in the same station as far as possible. Both the applicant and her husband are aged 53 years. The applicant had served in different places, like Kannur, Cochin, Bangalore, Trichur. Her husband also had worked in different places. Applicant and her husband were not permitted to continue in the same station together for the same period. The applicant's husband's aged and unmarried uncle (85 years) and Aunt (83 years) are residing with them at Cochin. They are old aged and totally depending upon the applicant and her husband for their livelihood. The applicant was transferred and posted to Pay & Accounts Office (Other Ranks) Artillery, Nasik, Maharashtra State (Annexure A1). The applicant made a representation dated 20-4-2004 (Annexure A2) contending that she was neither senior nor junior in the station at Cochin and other Auditors and Senior Auditors, who are senior to the applicant, are not disturbed and still serving at Cochin in the same office. She never applied for transfer to Nasik. Vide Annexure A3, a reply to the representation was given stating that her request for retention at Cochin was considered and rejected and decided to transfer her to Nasik. Her husband could come back to his choice station in the home State, i.e. Cochin, from Chennai only on 17-7-2001.

2. The applicant averred that more than twenty Auditors and Senior Auditors, who are having station seniority than the applicant, were not transferred and they were permitted to continue in Cochin itself. Therefore, the transfer is nothing but a punishment and discriminative action. The opportunity to stay along with her family in her home State is totally denied. Nasik is 1700 Kms away from Cochin. There are number of



vacancies in the very same cadre in different offices coming under the Controller General of Defence Accounts (2nd respondent) in Cochin itself. The applicant is entitled to be accommodated in any of the offices at Cochin. Aggrieved by the inaction, the applicant has filed this OA seeking the following reliefs:-

- "i) to set aside Annexure A1 and A3 and all other actions pursuant to them;
- ii) to direct the respondents to retain the applicant as Senior Auditor in the Area Accounts Office, Pay Section I, Thevara, Cochin-15; and
- iii) to issue such other reliefs as this Hon'ble Tribunal may deem fit and proper."

3. Respondents have filed a detailed reply statement contending that "as far as possible and within the constraints of administrative convenience husband and wife are accommodated and posted to serve in the same station". The applicant cannot have a legal entitlement to serve in the same station. The applicant's transfer to Nasik has been done on State Seniority basis without any malafide intention and the applicant's husband has also been transferred to Nasik keeping in mind the spirit of the principles of posting husband and wife in the same station. There are more than 50 individuals at the level of Senior Auditor/Auditor/Clerks serving outside Cochin or outside Kerala including tenure/hard stations for number of years desirous of transfer to Cochin or Kerala stations. To consider their cases for transfer back to their choice stations on their turn, it becomes mandatory to shift individuals who are serving in Kerala for some time and fall within the cut off date fixed for the purpose to stations where shortages are there. The applicant was serving in Kerala State since July 1993. She became station senior and considering her representation for retention at Cochin as a special case, it



was decided to accommodate both husband and wife at the same station viz. Nasik. As such, there is nothing irregular in her transfer. Since the applicant has got all India transfer liability, she cannot say, Nasik being far of place, she be accommodated in Cochin itself. The alert message for transfer was issued in advance. There were requests from other candidates and the 2nd respondent has not considered such requests for want of adequate vacancies at Cochin. To facilitate repatriation of some of the eligible volunteers to the station of their choice, to the extent possible, it has been decided by the 2nd respondent to transfer Senior Auditor/Auditor/Clerks from Cochin on Kerala State seniority upto 31-12-1993. The cut off date was fixed as 31-12-1993. Therefore, the applicant's name figured in the list. In the normal station seniority list, the applicant figured at Sl.No.9. The transfer was ordered purely on the basis of the applicant's station seniority at Kerala stations. The contention of the applicant that there are more than twenty individuals senior to her at Kerala station who have not been transferred, may not be correct. Those deployed on EDP related project/work being trained in EDP were not transferred out from their present office due to the nature of work handled by them and as per the advice given by EDP cell of Headquarters Office. At any point of time, there are more than fifty individuals at the level of Senior Auditor/Auditor/Clerks serving outside Cochin or outside Kerala including at tenure/hard stations for number of years, desirous of transfer to Cochin or Kerala stations. Since the applicant and her husband were decided to be accommodated in the same station viz. Nasik, no prejudice will be caused to the applicant and therefore the OA is not merited.



4. The applicant has filed a rejoinder contending that the names of 19 candidates shown in it are having station and state seniority at Cochin than the applicant, who were permitted to continue at Cochin. It is also disputed that in the names mentioned in paragraphs 11 and 13 of the reply statement many of them do not deserve the exemption, since they are neither handicapped nor widows or EDP hands. Purposeful suppression about their retention at Cochin station was done in the reply statement by the respondents. The contention that the criteria for transfer is State seniority and not station seniority is against the spirit of clause 370 of the Defence Accounts Department Office Manual Part-I and without any administrative or legal backing. The department has never prepared or kept any state seniority list than station seniority list for transferring candidates. There are number of vacancies of Senior Auditors (more than 50) in 8 offices coming under the 2nd respondent in Cochin station itself remain unfilled for the last more than three years. Number of candidates were absorbed from other Ministries due to shortage of staff in the Defence Accounts Department offices. Even contract labourers are also engaged for doing office work. Therefore, the version that candidates are waiting to be transferred to Cochin station is nothing but an exaggeration and against real facts. From the admission by the respondents to the effect that "apart from the above eight individuals who were serving at Cochin prior to the applicant, there were sixteen individuals as listed below who were allowed exemption from transfer as per the policy followed by the Department and for the reason indicated against each", it is clear that the applicant comes as junior to the said 16 candidates other than the earlier stated 8 candidates in Cochin station and according to them she is not the 9th person in the said seniority list for Kerala station, but she is the 25th candidate in Cochin station itself.



5. Respondents have filed an additional reply statement reiterating their contentions in the reply statement and further adding that transfers are effected generally on the basis of seniority of stay, barring compassionate cases and where retention of an individual is essential in the interest of work. They admitted that Smt.K.Leela, SA (Sl.No.8 in para 13 of the reply) who has been allowed exemption from transfer is a widow. But, Smt.Beenam N.Nair, SA (Sl.No.9 in para 13 of the reply) has been mentioned as widow, which is a mistake and that she was allowed exemption from transfer on the ground that she is suffering from Cancer.

6. The applicant again filed an additional rejoinder reiterating her contentions earlier.

7. I have heard Shri V.Ajith Narayanan, learned counsel for the applicant and Shri T.P.M.Ibrahim Khan, learned SCGSC appeared for the respondents.

8. Learned counsel for the applicant has submitted that as far as possible husband and wife should be accommodated in the same station. Both the applicant and her husband are approaching 54 years and once they are 54 years they cannot be transferred. Only to deprive the legitimate right of the applicant and her husband, the respondents are now trying to put both of them at Nasik, a distant place from where they may not be able to cope up at the fag end of their service at this age. They have been serving other than Kerala and only in the split of periods they were together in their employment. Therefore, the impugned orders are arbitrary, discriminatory and violation of transfer rules.

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9. Learned counsel for the respondents, on the other hand, persuasively argued that it is in the interest of the department that the applicant was transferred to Nasik followed by her husband's proposed transfer to the same station viz. Nasik so that husband and wife could be put together.

10. I have given due consideration to the pleadings, evidence and material placed on record. By virtue of the interim order of this Tribunal dated 12-7-2004, the impugned order of transfer of the applicant to Nasik has been stayed and she is continuing at Cochin. Admittedly, the applicant and her husband (inter-caste marriage) are working in the Accounts Department of the respondent Institution as Senior Auditors. From the records, it is found that there are different departments coming under the Controller General of Defence Accounts (2nd respondent) in Cochin itself, such as (i) Office of the Assistant Accounts Officer, Garrison Engineer (Independent), Kakkanad; (ii) Office of the Assistant Accounts Officer, NPOL, Kakkanad; (iii) Office of the Assistant Accounts Officer, Garrison Engineer (Independent) North, Cochin-4; (iv) Office of the Assistant Accounts Officer, Garrison Engineer (Independent) South, Cochin-4; (v) Office of the Unit Accountant, Barrack Store, Cochin-4; (vi) Office of the Assistant Accounts Officer, Garrison Engineer (Independent), Fort Kochi; (vii) Office of the Defence Pension Disbursing Officer, Ernakulam; and (viii) Office of Army Defence Estate, Cochin. The applicant is entitled for a transfer to any of the offices mentioned above inter-se. The contention of the respondents is that the applicant is senior in Kerala and not in Cochin and as such she could be posted out along with other Kerala seniors. It is pertinent to note that the case of the applicant is that she is not senior or junior in the station at



Cochin. Auditors/Senior Auditors who are senior to the applicant in station seniority are still serving in various offices in Cochin and in the absence of any application for transfer to Nasik by the applicant, she cannot be disturbed. It is worth mentioning that the respondents were not able to produce any state seniority list than station seniority list for transferring candidates. According to the respondents, a cut off date viz. 31-12-1993 is taken. All candidates who came to the Kerala State before the said date and continuing, are liable to be transferred and if that contention is genuine her husband cannot be transferred to Nasik since he reached at Cochin station from Chennai only on 17-7-2001, after more than 5 long years of service at Chennai. Absolutely there is no request for transfer to Nasik either by the applicant or by her husband at any point of time. The applicant has made a representation to the respondents contending that her aged and unmarried uncle and aunt are totally depending on them for their day to day existence. This fact is not being considered by the respondents to the extent it requires attention. Moreover, the respondents had enlisted 16 candidates, in paragraph 13 of their reply statement, who are allowed exemption from transfer as per the policy followed in the department. The applicant has disputed the names of Smt.K.Leela and Smt.Beenam N Nair for exemption thereof. Later on the applicant came with a correction that Smt.Beenam N Nair (Sl.No.9 in para 13 of the reply) was not a widow but she was exempted from transfer on the ground that she is suffering from cancer. Therefore, that contention of the applicant is not much material. But the contention is that transfers are guided by clauses 373 to 376 of the Defence Accounts Department Office Manual Part-I, which are exemption clauses from transfer. Clause 373 denotes that candidates of 54 years and above should not be transferred and they may be repatriated to their home

station or choice station to the extent administratively feasible. Since the applicant and her husband are having only a few months more to complete 54 years, the applicant should have been retained at Cochin itself on humanitarian grounds. Clause 373 prescribes that husband and wife who are serving in the very same department should be retained at their home/choice station as far as possible. The applicant's husband was working at Chennai for more than five years, i.e. till 17-7-2001, and he could come back to his home/choice station at Cochin only on 17-7-2001. In that aspect also, the applicant may not be disturbed. According to the applicant, there are 50 vacancies of Senior Auditors in 8 offices within Cochin station itself and therefore, the applicant and her husband could be accommodated in Cochin itself. The transfer order of the applicant's husband is not yet communicated. Therefore, instead of permitting the applicant's husband to continue in Cochin, he is now proposed to be shifted to Nasik only for the purpose of displacement of the applicant which in any way amounts to harassment and against all transfer guidelines. Apart from that, exemption clause 375 of the Defence Accounts Department Office Manual Part-I says that in case where an employee or a member of his family is suffering from serious ailments such as cancer, polio, blindness, mental disease, paralysis etc. he/she may also be exempted from transfer. The unmarried and old aged (above 80) uncle and aunt of the husband of the applicant, who are suffering from blindness and other old age diseases, are totally depending upon the applicant and her husband and any transfer of the applicant or her husband will be fatal to them. Therefore, they are also entitled for such exemption. Nowhere it is mentioned that widows, handicapped and EDP trained persons are coming under exempted category. All of them having all India transfer liability and having station seniority and state



seniority than the applicant, cannot be considered as the exempted category in preference to applicant's category. The contention of the applicant that Shri. C.S. Venkataraman, Shri. G.D. Raphei, Shri. Arvindakshan, Smt. Lalithambika, Shri. N. Rajindra Babu, Shri. C.K. Girijashankaran, Shri. N. Gopalakrishnan, Shri C. Kuttappan, and Shri V. Krishnankutty, who are having station seniority than the applicant, will not come within the 19 candidates as per the station seniority list which has not been mentioned in the reply statement. They are neither handicapped nor widows or EDP trained hands. The contention of the applicant is that there is distortion and suppression of facts.

11. Another claim of the applicant is that the applicant is also an EDP trained hand and the 8 names mentioned above have been exempted by the respondents from transfer liability, which is against the rules. None of the exemption clauses stipulate that an EDP trained person to be retained in the choice station. In case it is to be so, then the applicant also should have been exempted along with others in the EDP trained category.

12. This Court has directed the respondents to find out the vacancy position. The applicant has filed MA.No.815/2004 for verification and reporting by the respondents about the vacancy position of the posts of Senior Auditor in 9 offices mentioned therein in Cochin station. Respondents have filed a reply to the MA contending that:

"Regarding the averments contained in Paragraph 3 of the above Miscellaneous Application, it is respectfully submitted that the vacancy position produced as Annexure R-3 in the Additional Reply statement includes Senior Auditors/Auditors/Clerks. The C.D.A.Chennai has confirmed the vacancy position as per their Fax No. AN/1/7/5/J/JEN/Corr/W dated 28/09/2004. A True copy of the letter No. AN/1/7/5/J/JEN/Corr/W dated 28/09/2004



issued by the Controller of Defence Accounts, Chennai, is produced herewith and marked as ANNEXURE R-4. The authorised and posted strength of Senior Auditor/Auditor/Clerks in P.C.D.A (N) Organisation at Kochi as on 23/11/2004 stands at 65 and 61 respectively. Timely action was taken to ascertain the vacancy position and incorporate as Annexure R-3 produced in the Additional Reply Statement. So the averments and allegations of the Applicant in the Miscellaneous Application that the Annexure R-3 Letter is totally vague and not dependable, is not correct."

In the reply to the MA, the respondents further stated that:

".. if the said relief is granted by this Honourable Tribunal, it will adversely affect the interest of the Staff who are waiting outside Kochi for long period for posting back to Kochi/Kerala and also it will be a denial of natural justice. . ."

13. Admittedly, without assessing the other alleged 15 vacancies claimed by the applicant, it is borne out from the pleadings that there are 4 vacancies available at Cochin, i.e. $65 - 61 = 4$. The case of the respondents is that these vacancies are to be earmarked to the "individuals at the level of Senior Auditor/Auditor/Clerks serving outside Kochi or outside Kerala including at tenure/hard stations for number of years desirous of transfer to Kochi or Kerala Stations" and these vacancies are earmarked for them. In order to accommodate such persons, the applicant along with few others who are serving in Kerala State for some time and fall within the cut off date fixed for the purpose to stations where shortages are there, are being sought to be transferred. Nothing is brought on record by the respondents as to the details of such anticipatory claims of those working outside the State. Respondents were not able to furnish any material/details as to such request/claims. I am of the view that such anticipatory contingency cannot be a reason for the transfer of the applicant.



14. The Hon'ble Supreme Court in a catena of decisions as also in the case of National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan & Another [2002 (1) SLJ 86] has laid down the dictum that Court cannot interfere in transfer matters unless it is irregular and against the rules/guidelines. So also, the Hon'ble High Court of Kerala in the case of P.Pushpakaran vs. Chairman, Coir Board, Cochin and Another [1979 (1) SLR 309] has laid down the following dictum on transfer:

"... The right to transfer an employee is a powerful weapon in the hands of the employer. Sometimes it is more dangerous than other punishments. Recent history bears testimony to this. It may, at times, bear the mask of innocuousness. What is ostensible in a transfer order may not be the real object. Behind the mask of innocence may hide sweet revenge, a desire to get rid of an inconvenient employee or to keep at bay an activist or a stormy petral. When the Court is alerted, the Court has necessarily to tear the veil of deceptive innocuousness and see what exactly motivated the transfer. ..."

15. In the present case, I find that the impugned transfer of the applicant is ordered at the fag end of her career which will put her in great hardship and it amounts to be a punishment. The action on the part of the respondents in that respect is punitive. Thus, this Court is justified in interfering with the transfer especially when, admittedly, there are vacancies where the applicant could be accommodated.

16. The applicant's husband who has been transferred to Kerala joined his wife after five years' outstation service is entitled to have protection under Clause 374 of the Defence Accounts Department Office Manual Part-I and for that purpose the applicant cannot be disturbed. In order to implement the applicant's transfer, the attempt on the part of the respondents to transfer the applicant's husband also to Nasik is prejudicial, thereby again causing much hardship to the

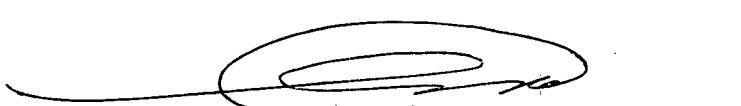


applicant. In fact, instead of doing so, the applicant should have been adjusted in Cochin itself particularly when she is nearing to complete 54 years of age. Considering the fact that both the applicant and her husband are approaching 54 years and also the fact that vacancies are available at Cochin and further finding that no State seniority list is prepared by the respondents in effecting the alleged transfer and the cut off date 31-12-1993 has been fixed without any rationale, I am of the considered view that the impugned orders Annexure A1 and A3 have been issued not in the true spirit of the guidelines or on the facts and the legal position. There is discrimination as far as the applicant's case is concerned and therefore, I have no hesitation in setting aside the impugned orders Annexure A1 and A3.

17. In the light of what is stated above, the impugned orders Annexure A1 and A3 are set aside. Respondents are directed to retain the applicant at Cochin itself as prayed for either in her own post or any other available vacancy at Cochin.

18. The Original Application is allowed as aforesaid. In the circumstances, there is no order as to costs.

Thursday, this the 20th day of January, 2005



K.V. SACHIDANANDAN
JUDICIAL MEMBER

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