

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.531/2002

Thursday, this the 10th day of January, 2003.

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

P.A.Gokul,
Junior Technician(General),
Department of Light Houses & Light Ships,
Kochi.
- Applicant

By Advocate Mr TC Govindaswamy

Vs

1. Union of India represented by
the Secretary to Government of India,
Ministry of Transport,
New Delhi.
2. Director General,
Department of Light Houses &
Lightships,
A-13, Sector-24,
Gautam Budha Nagar,
NOIDA, U.P.
PIN: 201301.
3. Director(Regional),
Department of Light Houses &
Lightships,
Deep Bhavan,
Kadavanthra.P.O.
Kochi-20.

- Respondents

By Advocate Mr TC Krishna, ACGSC

The application having been heard on 29.10.2002 the Tribunal
on 10.1.2003 delivered the following:

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant, a Junior Technician(General) in the
Department of Light Houses and Light Ships, Cochin is on 4th
round of litigation before the Tribunal. When the applicant

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had been transferred to Mumbai along with the post of Junior Technician(General) he was holding, vide A-1 order dated 9.11.2000, the applicant filed O.A.1226/2000 against such transfer. The said O.A. was disposed of by this Tribunal by order dated 22.11.2000 permitting the applicant to submit a representation to the 2nd respondent and directing the latter to consider and pass appropriate orders. The representation so made by the applicant was rejected. Thereafter the applicant filed O.A.No.1355/2000. The applicant's plea that the post of Junior Technician being a regional cadre post, the inter-cadre transfer was unsustainable was not entertained, but his submission to the effect that the mid academic year transfer would affect his children's education was favourably considered by this Tribunal. The O.A. was disposed of by order dated 31.1.2002(A-2) with the direction to keep the impugned order of transfer in abeyance till the end of the relevant academic session. During the pendency of O.A.1355/2000, however, the applicant was promoted as Technician(General) and was transferred on posting to Mumbai. On receiving the Tribunal's order in O.A.1355/2000, the applicant filed an O.P.No.11030/2002 against the order of the Tribunal in O.A.1355/2000 before the Hon'ble High Court of Kerala. The Hon'ble High Court considered the factual submission made by the standing counsel during the course of the hearing that a vacancy in the promotional post of Technician(General) existed at Cochin, and directed the respondents to consider the applicant's representation for retention at Cochin as Technician(General) and to pass appropriate orders. The Hon'ble High Court further observed that the directions in the order of the Tribunal in

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O.A.No.1355/2000 need not stand in the way of the matter being considered as directed by the Court. By A-8 order dated 7.5.2002, applicant's representation was rejected on the ground that the applicant was liable to serve anywhere in India as per service conditions, that personal problems were common to all employees and that the vacant post of Technician(General) was being converted to Technician(Electronics) with the intention of transferring that post to another District. The applicant challenged A-8 order by filing O.A.No.340/2002. When that O.A. was taken up, the applicant sought permission to make a representation to the respondent-department seeking retention in Cochin as Junior Technician declining promotion as Technician(General) granted to him. Respondents' counsel who admitted that the post of a Junior Technician(General) was available at Cochin agreed that the O.A. could be disposed of directing the respondents to consider the applicant's representation. Accordingly, that O.A. was disposed of by order dated 3.6.2002 with a direction to the respondents to consider the applicant's representation seeking permission to decline promotion to the post of Technician(General) and to continue as Junior Technician under the 3rd respondent therein and give an appropriate reply to the applicant within a reasonable time. The applicant made a representation dated 27.6.2002 in pursuance of this Tribunal's direction in O.A.340/2002 dated 3.6.2002. The third respondent, by A-13 letter dated 19.7.2002 communicated A-12 order of the 2nd respondent to the effect that the applicant should be relieved to proceed on transfer to Mumbai District by 2nd August, 2002. Being aggrieved by A-3 order transferring the applicant to Mumbai on promotion as Technician(General) and A-12 and A-13 orders

whereby his representation for retention as Junior Technician at Cochin in the light of this Tribunal's order dated 3.6.2002 in O.A.340/2002 has been rejected, the applicant has come up with this O.A. praying for the following reliefs;

a) Call for the records leading to the issue of A-3, A-12 and A-13 and quash the same.

b) Direct the respondents to revert the applicant as Junior Technician(General) and allow him to continue in his parent cadre and in his parent unit under the 3rd respondent duly allowing him to decline his promotion.

2. The respondents have filed a reply statement opposing the O.A. According to the respondents, R-1 appointment order contained a stipulation regarding the liability to serve in any part of India. The applicant had been transferred to Mumbai District as Junior Technician(General) where the services of Junior Technician(General) were required. Interchange of discipline from General to Electronics is permitted and the requirement of the organisation made the respondents take steps to convert the post of Technician (General) into Technician(Electronics). The applicant's transfer was strictly in accordance with the transfer policy and the guidelines issued thereunder(R-2). He has been continuing in Cochin for the last 23 years from 1973 onwards except for a few months when he was posted in Mumbai on promotion. The reasons stated in the representation of the

applicant for the cancellation of transfer are purely personal and it was not administratively feasible to accede to them. No interference from the Tribunal was therefore called for in this case, according to the respondents.

3. The applicant filed a rejoinder reiterating his earlier averments and maintaining that the vacancy position and work load at Cochin did not warrant his transfer in the light of the respondents' own admission before the Hon'ble High Court and this Tribunal.

4. We have heard Shri T.C.Govindaswamy, learned counsel for the applicant and Shri T.C.Krishna, ACGSC for respondents.

5. According to the learned counsel for the applicant, in view of the respondents' own statement before the Hon'ble High Court to the effect that there was a vacancy of Technician(General)'s post at Cochin and the High Court's consequent direction to the respondents to consider the applicant's representation to retain him as Technician(General) at Cochin untrammelled by the earlier directions of the Tribunal in O.A.1355/2000 dated 31.1.2002, the respondents were duty bound to consider the same judiciously. The respondents changed their stand and maintained that there was no scope for accommodating the applicant as Technician(General) at Cochin on the ground of alleged initiation of steps to convert the post of Technician(General) to Technician(Electronics). No steps for such conversion had been taken and it was not possible to make



such a conversion until the post of Technician(General) was surrendered and a new post of Technician(General) created, learned counsel would urge. The learned counsel would maintain that O.A.340/2002 challenging A-8 order was disposed of in the light of the respondents' admission that while there was no requirement of Technician(General) at Cochin, there was a vacant post of Junior Technician(General) at Cochin. The impugned order A-12 rejecting the applicant's ^{representation} seeking permission to decline promotion as Technician(General) and retention in the lower post of Junior Technician(General) at Cochin would reflect the respondents' biased and unhelpful attitude contradicting their own submissions before this Tribunal, it is urged by the learned counsel for the applicant. Shri T.C.Krishna, learned counsel for the respondents, on the other hand, would maintain that the applicant's original transfer as Junior Technician(General) was itself in order since he had already spent a very long period of time in Cochin, that his transfer to Mumbai on promotion as Technician(General) during the interregnum cannot be faulted in any case and that since the services of a Junior Technician and Technician (General) were required more in Mumbai than in Cochin and that being a matter of administrative prerogative, there would be no justification for the Tribunal to interfere.

6. We have perused the records and have considered the facts emerging from the pleadings on record and the contentions putforward by the learned counsel. It is quite clear from the records that while the challenge against A-8 order was considered by this Tribunal in O.A.340/2002, the

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respondents had stated before the Tribunal that though there was no requirement of Technician(General) at Cochin the post of Junior Technician was available. It was on the specific understanding that the applicant's request seeking permission to decline promotion as Technician(General) granted to him that the said O.A.340/2002 was disposed of by this Tribunal with the direction to the respondents to consider the applicant's representation and pass appropriate orders. Though it is well settled that Courts and Tribunals should be wary of interfering with orders of transfer which are dictated by administrative considerations, the orders which are patently tainted with perverse state of mind or bias would warrant judicial interference. From the facts of the case, we are convinced that the case on hand is one such. When it was pointed out to the Hon'ble Court that a vacancy of a Technician(General) existed in Cochin and the Hon'ble High Court ordered that the representation of the applicant for accommodation in the same post should be considered uninfluenced by the directions of the Tribunal in O.A.No.1355/2000, it was expected that the respondents would consider the facts fairly and judiciously. Instead of examining and considering the matter with proper application of mind, the respondents are seen to have strenuously endeavoured to find a way out by stating that there was no requirement of the post of Technician(General) at Cochin and that post was being contemplated for conversion into Technician(Electronics). We find that there is no substance in this statement. No evidence has been adduced to show that any effective steps have been taken to make a matching surrender in order to create a new post of

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Technician(Electronics) at Cochin. However, when A-8 order was challenged, the applicant took the alternative plea seeking permission to decline promotion and to continue in Cochin as Junior Technician. The respondents stated before the Tribunal that there was a vacancy of Junior Technician(General) at Cochin though the services of Technician(General) were not required. The Tribunal took note of this admission and remitted the matter to the respondents to consider the applicant's request and pass appropriate orders. The respondents ought to have considered the applicant's request with the judicious application of mind it merited in view of this Tribunal's direction based on the respondents' own admission. We find that the respondents have effected a volte-face by stating that Cochin District does not require the services of the applicant as Junior Technician either. According to us, the Hon'ble High Court as well as this Tribunal had been given the impression that the applicant's case for accommodation at Cochin as Technician(General) or Junior Technician, as the case may be would be considered fairly and judiciously. The impugned order dated 17.7.2002(A-12) offers no reasonable explanation as to how the admitted vacancy of Junior Technician has disappeared or has become redundant. The impugned orders betray lack of objective application of mind and hence the impugned orders are liable to be set aside.

7. In the light of the above discussion, we proceed to dispose of the application in the following manner:

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The impugned orders A-3, A-12 and A-13 are set aside. The respondents are directed to issue fresh orders retaining the applicant as Technician (General), a post which the respondents had admitted before the Hon'ble High Court as vacant, or, if such a post is not vacant at present, to allow the applicant to continue at Cochin as Junior Technician(General) in accordance with the existing rules, regulations, orders and instructions in regard to promotions, transfers and postings of employees of the category to which the applicant belongs. The above direction shall be carried out within a period of two months from the date of receipt of copy of this order. There is no order as to costs.

Dated, the 10th January, 2003.



T.N.T.NAYAR
ADMINISTRATIVE MEMBER



A.V.HARIDASAN
VICE CHAIRMAN

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APPENDIX

Applicant's Annexures

1. A-1: True copy of the order bearing No.22/2/88-Adm.I dated 9.11.2000 issued on behalf of the 2nd respondent.
2. A-2: True copy of the order in O.A.1355/2000 dt.31.1.2002.
3. A-3: True copy of the office order bearing No.1-3/93/78.Estt dt.24.1.2002 issued by the 3rd respondent.
4. A-4: True copy of the applicant submitted a representation dt.25.1.2002 addressed to the 2nd respondent.
5. A-5: True copy of the applicant submitted a representation dt.22.2.2002 addressed to the 2nd respondent.
6. A-6: True copy of the applicant submitted a representation dt.11.4.2002 addressed to the 2nd respondent.
7. A-7: True copy of the order of Hon'ble High Court of Kerala in O.P.No.11030/2002 dt.26.4.2002.
8. A-8: True copy of the Office order bearing No.24/21/2000 Adm.I dt.7.5.2002 issued by the 2nd respondent.
9. A-9: True copy of the letter No.1-1/86/2001 Adm. dt.15.3.2002 issued by the 3rd respondent.
10. A-10: True copy of the order in O.A.340/2002 dt.3.6.2002 of this Tribunal.
11. A-11: True copy of the representation dt.27.6.2002 submitted by the applicant to the 2nd respondent.
12. A-12: True copy of the Order bearing No.24/21/2000-Adm.I dt.17.7.2002 issued by the 2nd respondent.
13. A-13: True copy of the Letter bearing No.1-1/55/2002-Adm.I dt.19.7.2002 issued by the 3rd respondent.
14. A-14: True copy of the office order No.22/1/89-Admn. dt.14.11.2000 issued by the 2nd respondent.

Respondents' Annexures:

15. R-1: True copy of the offer of appointment issued to the applicant.
16. R-2: True copy of the office order No.16/1/99-Adm.I dt.16.7.2001 of the 2nd respondent.