

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A No. 531 / 2010

Friday, this the 12<sup>th</sup> day of November, 2010.

CORAM

HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

HON'BLE DR K.B.SURESH, JUDICIAL MEMBER

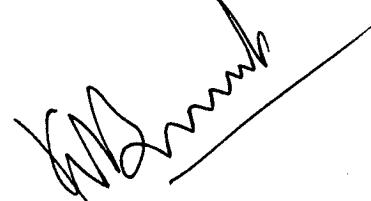
P.K.James,  
Assistant Accounts Officer,  
A/c No.8327709,  
O/o the Accounts Officer,  
Garrison Engineer (Naval Works),  
Naval Base.P.O. North Kochi,  
Kochi-4, Temporarily attached to  
Pay & Accounts Office (Other Ranks),  
Madras Regimental Centre,  
Wellington. ....Applicant

(By Advocate Mr P.K.Madhusoodanan )

v.

1. Union of India represented by  
its Secretary,  
Ministry of Defence, New Delhi.
2. The Controller General of Defence Accounts,  
Ulan Batar Road, Palam,  
Delhi Cantonment-10.
3. The Controller of Defence Accounts,  
618, Annasalai, Teynampet,  
Chennai-18.
4. Senior Accounts Officer (AN),  
Office of the Controller of Defence Accounts,  
618, Annasalai, Teynampet,  
Chennai-18.
5. The Deputy Controller of Defence Accounts in Charge,  
Pay & Accounts Office (Other Ranks),  
MRC Wellington.
6. The Accounts Officer,  
Garrison Engineer (Naval Works),  
Naval Base.P.O.,  
North Kochi, Kochi-4. ....Respondents

(By Advocate Mr Sunil Jacob Jose, SCGSC )



This application having been finally heard on 2.11.2010, the Tribunal on 12.11.2010 delivered the following:

**ORDER**

**HON'BLE DR K.B.SURESH, JUDICIAL MEMBER**

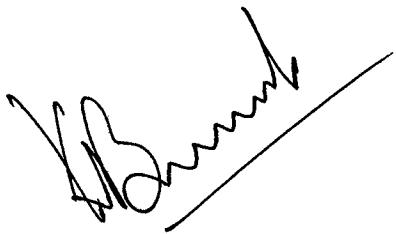
The applicant challenges his removal to M.R.C, Wellington on the ground that the services as required by him were found to be deficient for the reason that when the CDA fixed a conference at Cochin to assess the work level of officers on 5.2.2010 the applicant was absent and immediately thereupon an action was taken against him by temporarily attaching him vide letter No. nil dated 5.2.2010 itself to M.R.C, Wellington.

2. The applicant would aver in his rejoinder that for reasons of hospital emergency required for his brother, he was called back by the doctor at AIMS, Cochin which is a premier medical institution, as his brother was undergoing treatment there and he had no other go other than to attend to his brother. Even though the applicant had prepared a detailed presentation and as the same were available in the pen drive, he had caused through Shri Subramaniam to hand over the pen drive to the officials conducting the workshop. In addition, the applicant had informed of his inability to join the office through Smt A.K.Santha Devi to the Local Audit Officer and other team members. Therefore, he would contend that his absence on that day was beyond his control and which can happen to any other human being. He would lament that without giving him an opportunity of being heard, the 3<sup>rd</sup> respondent immediately and punitively removed him from Cochin and posted him even though temporarily to MRC Wellington in Tamil Nadu.

3. While so Annexure A-12 was also passed converting his temporary attachment in MRC Wellington to a permanent transfer vide order



No.AN/I/42/SOTR/LVI dated 15.6.2010. It is submitted that while so the applicant submitted Annexure A-11 representation through proper channel. Therefore, we have to assess what is the deficiency now which has resulted in effective measures against the applicant. The Controller of Defence Accounts as part of her duty had convened a workshop of AO GEs conducted on 4<sup>th</sup> and 5<sup>th</sup> February 2010 at the office of the Chief Engineer, Kochi and at that time on the 5<sup>th</sup> of February, the applicant seems to have absented whereas he was scheduled to give a power point presentation to the CDA, Chennai. It would appear that on 4<sup>th</sup>, the previous day, he had given a sketchy presentation on the status of work in the office and it was not appreciated by the CDA and it was felt by the CDA, Chennai that his participation and presence in the workshop was absolutely mandatory. Vide Annexure A-3, the ACDA Shri V Krishnamurthy seems to have commented that the absence of the applicant had adversely taken note of by the CDA and that he had kept the CDA and other officers waiting. Therefore, he was asked to give an explanation as to why disciplinary proceedings should not be taken against him. He seems to have explained vide Annexure A-4. The applicant would claim that his brother who was admitted in AIMS, Cochin due to serious kidney problems had a set back and the doctor had summoned him. He would claim that he did inform the matter with higher officers through his auditor and had also apparently handed over the pen drive containing the relevant information of power point presentation thereby indicating that, had they wished, they could have viewed the power point presentation by using the pen drive which contain the data. But it is submitted that even though the doubts and clarification necessary could be adequately answered only by the applicant and even though team of officers were there to help him, they could not be in a position to adequately present their case before the CDA. Therefore, the anger and hostile animus of the CDA at that time would be appear to be justified and if one of the Assistant Accounts Officers were not there to present

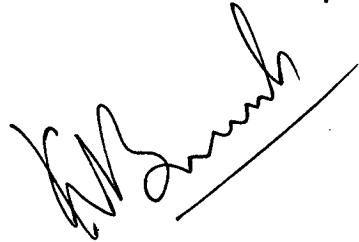


the status of working of his office, at least to that level the workshop would have been a failure.

4. The applicant had produced various documentation to prove the emergent situation in which he found himself absent and the reason for his failure.

5. The respondents have filed a detailed reply and would state that while all other AO GEs in Cochin were present and the CDA had not received any information relating to the applicant's brother's illness. Apparently, applicant did not personally speak to the 3<sup>rd</sup> respondent the circumstances of his absence even though the workshop continued till 5 PM on that day. The applicant would aver that he did not have the telephone numbers of neither CDA nor ACDA but had handed over the pen drive containing the relevant information. There is no data available as to what the pen drive contained and whether it was found suitable or not. Therefore, both the parties have not placed any reliance on the adequacy of the pen drive as an information field. Probably in the absence of applicant, his pen drive may not have been made use of and thereby the CDA may have lost an opportunity of critically analysing the shortfalls, if any, in his office at that time.

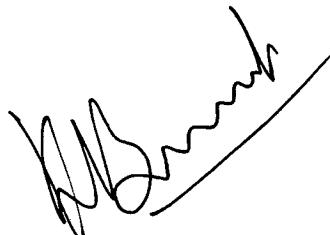
6. In paragraph 8 of the reply it is submitted that from Annexure A-4 they have concluded that the applicant himself admitted his lapse vide his reply dated 6.2.2010. Since the applicant had admitted his mistake and taking a sympathetic view of his plea that his brother was ill, the applicant was given a Recorded Warning when harsher options were available, according to them. This is mooted as a point indicative of the lenient view taken by the competent authority towards the applicant. The mere fact that harsher options are available does not mean that harsher options should be utilised. In Government service it

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cannot be the personal preference of the concerned officers to decide the merit of each issue before them. Sensitivity is a required hall mark of any higher official. The fact of his being moved immediately to MRC Willington whether on temporary duty or otherwise is indicative of the fact that the displeasure of the CDA was the point of concern in the said matter. The Hon'ble Apex Court had time and again held that arbitrariness and misuse of power is to be looked down upon. The power resident in an official cannot be used whimsically. It has to be necessarily regulated by not only statutory rules but also by notions of propriety. While the immediate anger of the 3<sup>rd</sup> respondent might be understandable but after receiving notice of his brother's illness and which had been accepted as a reason for imposing a punishment of recorded warning to him alone is very significant.

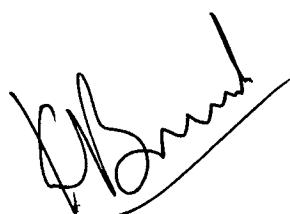
7. The respondents would say in their additional reply that during the period of temporary duty he had not raised any issue of repatriation to Cochin as he was financially compensated indicating whereby that his present objection is to his transfer alone and not to the posting on temporary duty at MRC Wellington. Vide Annexure A-4 dated 6.2.2010 the applicant had requested the CDA to cancel his transfer/posting to MRC Wellington. Therefore, this averment made by the respondents may not be very relevant and valid.

8. The respondents would say that the incident reported on 5.2.2010 and the consequences thereof and his transfer on 15.6.2010 are not connected. But the applicant's transfer was made keeping in view the public interest involved in implementing the CGDA's Prime Project – Monthly Pay System of PBORs so claim the respondents. It is also relied upon by the respondents that during his stay at Wellington, the applicant has done commendable work which has been appreciated by the Department. Therefore, they would say that the applicant

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had been given a crucial role and since temporary duty period of a government servant cannot be extended beyond 180 days, a purely temporary posting had to be converted into a permanent posting. They would say that posting him from MPS is based on discretion of the Head of Office but he is bound to serve wherever he is posted. This the applicant would point out that as taking away the functional requirement if he is to be retained at MRC Wellington. He would say the decision of the authorities in making his temporary attachment to the permanent nature of transfer as vitiated by malice and malafides. If his requirement and efficiency is in MPS, there is no reason to shift him to ledger.

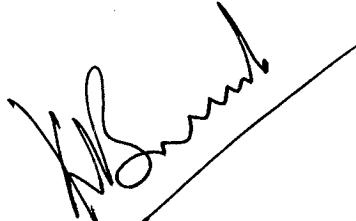
9. Having found this we are inclined to think that the 3<sup>rd</sup> respondent has acted on hostile animus in posting the applicant to MRC Wellington by an order on 5.2.2010 itself temporarily. But even after receipt of Annexure A-4 representation, the allegations of leniency were being made it can be seen in fact the prejudice continued. When power is vested with persons of high rank it has to be exercised sensibly and with sensitivity. A person merely becoming a Government servant does not become a slave. The salutary features of constitution effectively prevents such a premise. The Hon'ble Apex Court had held repeatedly that human values should pervade and permeate administrative decisions. If the public interest at MRC Wellington was so needed as to require the immediate presence of the applicant at MRC Wellington because of his special ability in MPS, then there would not have been any necessity for calling him to the workshop on 4<sup>th</sup> and 5<sup>th</sup> February. Because the MPS project had started earlier and if the applicant had any special recognizable merit in relation to that project, he would have been summoned to the MRC Wellington much more earlier. It does not require a great degree of intelligence to understand that the order of 5.2.2010 was based on hostile animus. Even if we are to think that immediate anger and prejudice may be, to at least a to point justifiable,

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subsequent event unfolded a lack of sensitivity which is not expected in a senior officer of high rank. Persons who are appointed to high posts must advice themselves of their ultimate requirement of upholding human values as well while dealing with the subordinate.

10. So far as it relates to the permanency of the temporary attachment for the reason of MPS being a crucial focus for the department, it is decided by the posting of the applicant from MPS to ledger, even though according to the respondents, he had performed well and his performance was appreciated by all. Therefore, the stand taken by the respondents are contradictory to each other. We do not have to even remove the veil to understand the level of prejudice existing in the competent authority. Therefore, we have found that there is no public interest either in the order dated 5.2.2010 temporarily attaching the applicant to MRC Wellington nor in the order dated 15.6.2010 permanently posting the applicant, to MRC Wellington. We can only come to a conclusion that both these orders are clouded with prejudice and hostile animus. We therefore, quash Annexure A-12 and direct that the applicant be transferred back to Cochin within four weeks from today to the post where he worked even if it requires transferring another individual who may be presently occupying that post. It is to be presumed that against a posting made on temporary basis, no permanent posting is to be made. The applicant will be entitled, for payment of 180 days of D.A as Annexure A-2 clearly shows that he is posted on temporary basis until further orders.

10. Going by the extent of animosity and insensitivity shown towards one of their officers, whose work at MRC Wellington has been appreciated by CGDA, we are inclined to levy a cost Rs.50,000/- on the 3<sup>rd</sup> respondent personally. An officer at his level is expected to lead by example, to support, encourage and

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develop team spirit in the task group or an officer assigned to do an essential item of work like computerization of accounts by positive strokes and not to demoralise him/them by punitive measures. We desist from doing so now, hoping that wisdom will prevail in future. The applicant too deserves to be awarded costs for the mental torture and monetary hardship he was subjected to. We refrain from doing that too, so that the atmosphere of cordiality and giving respect where it is due goes on, unaffected by skirmishes once in a while.

12. The O.A is allowed as aforesaid. No costs.



DR K.B.SURESH  
JUDICIAL MEMBER



K NOORJEHAN  
ADMINISTRATIVE MEMBER

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