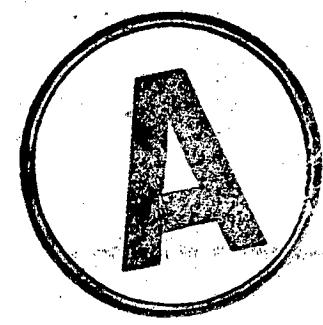


CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH



O.A. NO. 538/2006 & 539/2006

MONDAY THIS THE 30th DAY OF APRIL, 2007

CORAM

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

O. A. 538/2006

V.C. Chandran s/o late Shri Chathan
o/o Chief Engineer (Navac), Kochi
residing at Valiyathara, Valappu
Malippuram PO, Vypin.

Applicant

By Advocate Mr. R. Sreeraj

Vs.

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

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

3 The Chief Engineer (NAVAC)
Military Engineering Services,
Ezhimala

Respondents

By Advocate Mr. V.A. Shaji ACGSC

O.A. No. 539/2006

K. Raveendran S/o late Shri Krishnan
O/o Chief Engineer (NAVAC) Kochi
residing at Kochuparambil House.
Sanathanapuram PO Kalarcodu
Alappuzha-688 003

Applicant

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- 1 Union of India represented by
its Secretary to Government of India
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- 2 The Chief Engineer,
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- 3 The Chief Engineer (NAVAC)
Military Engineering Services,
Ezhimala

Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

Since the applicants in both the OAs are aggrieved by the same impugned orders and the grounds and the reliefs prayed for are identical, both the OAs were heard together and are disposed of by this common order.

2 The applicants in these OAs are Group-D employees working in the office of the CE(NAVAC), Kochi and are aggrieved by the order dated 26.4.2006 by which they have been transferred to Ezhimala, a hard tenure station 386 KMs away from Kochi where they are presently working and in alleged violation of the posting/transfer policy of Group C and D employees of the MES dated 16.4.2003 prescribing the norms of transfer.

3 The applicant in O.A. 538/2006 is a Daftry and the applicant in O.A. 539/2006 is a Peon working under the third respondent. Both are above the age of 50 years. They have assailed the transfer mainly on the following grounds:

- (i) The transfers have been ordered under provision of para 57 of the Guidelines dated 16.4.2003 which provided for such transfer in the event of enbloc shifting of the office. But there has been no general shifting as out of the 22 Group-D employees all except 5 have been adjusted in the present place of posting.
- (ii) In the Cochin Complex there is deficiency and no surplus in the category of Peons and Daftries. In Kochi there is deficiency of at least three in the category of Daftries.
- (iii) Group-D employees are not liable for posting at tenure stations as Ezhimala is a notified tenure station
- (iv) Annexure A-4 transfer norms do not envisage the relief of the transferred officer till his representation if any is rejected, while no order rejecting the representation of the applicant has been communicated to him.
- (v) The wife of the applicant in O.A. 538/2006 is working in the office of the GE(I)(NW) Kochi as a Mate in Industrial category and the policy is as far as possible the husband and wife should be posted in the same station

4 Common reliefs prayed for by the applicants are as under:

- (i) To quash Annexure A-1 insofar as it relates to the applicant and Annexure A-3
- (ii) To declare that the applicant is exempted from transfer to a tenure station and hence his transfer to Ezhimala a tenure station is against Annexure A-4 norms and therefore illegal.
- (iii) To direct the respondents to permit the applicant to continue to work as a Peon in the station where he is presently working.
- (iv) Such other relief as may be prayed for and this Tribunal may deem fit to grant
- (v) Grant the cost of this Original Application.

5 In the reply statements the respondents contended that the applicants have been posted out due to enbloc shifting of the CE (NAVAC) from Kochi to Ezhimala and that the offices at Ezhimala are functioning with huge deficiency in the case of Group-D employees. As per the provision enumerated in para 57 of the Guidelines applicable to enbloc shifting of the office, the exemption age limit is 57 years and therefore the applicant cannot claim relaxation on that account. They also contended that as per the Command Manning Level (CML) in the category of Daftry, the Kochi complex is holding 7 Daftries in excess of the CML authorisation of four (4) which works out to three surplus and accordingly the applicant in O.A. 538/06 and 2 other Daftries were posted out from Kochi being surplus and station seniors.

6 In the additional reply statement they have confirmed that Group-D employees are not liable to be posted at tenure stations but the applicants had not been posted to Ezhimala to complete their tenure liability and orders have been issued based on para 57 and in

such cases the "a person can be selected based on the length of service in the station/complex i.e. the longest stayee by making local adjustments."

7 In O.A. 538/06 the applicant filed a Miscellaneous Application enclosing the order at Annexure A-5 dated 26.4.2006 by which the respondents had accommodated 62 employees belonging to CE, NAVAC at Kochi which has been termed as sidestepping of staff of CE (NAVAC) at Ezhimala office at Kochi Complex.

8 The respondents have filed additional reply statement clarifying that the said order was issued due to organisational requirement of enbloc shifting of office of the CE (NAVAC) from Kochi to Ezhimala and that the orders have been issued only in the interest of the State and no maladife can be attributed. The respondents have also pointed out that the applicants have given an undertaking for posting in any place in India as per their service condition and they are bound for posting any where in India in the interest of the service.

9 I have heard learned counsel Shri R. Sreeraj for the applicant and Shri Shaji for the SCGSC appearing for the respondents.

10 The question of validity of the orders of the transfer of persons like the applicants working in CE (NAVAC) Kochi to CE(NAVAC), Ezhimala had come before this Bench in various Original Applications and the issues have been examined by us in detail in our order in O.A. 8/2006⁷. In our order in O.A. 492/2006 and 494/2006 filed by two women employees in the same office, the

orders of transfer had been quashed as it was found that there was a provision for exemption of women employees from transfer to tenure stations. The respondents have raised the very same contentions in these OAs also. It is also held in the earlier OAs that the contention of the respondents that there is an enbloc shifting of the CE (NAVAC) office from Kochi to Ezhimala is not entirely correct as six of the constituent offices of CE(NAVAC), Ezhimala had been functioning in Ezhimala from 1998 itself and it is only the 7th office of the CE (NAVAC) which had been functioning at Kochi had been shifted to Ezhimala under the guize of enbloc shifting of the entire CE (NAVAC) to Ezhimala. The respondents cannot resort to fill up all the deficiencies of the entire complex at Ezhimala by resorting to para 57 of the Guidelines. The respondents raised an additional contention that they have also adjusted the surplus and met the deficiency referred to in Command Manning Level. If the respondents are adopting the CML as the basis for the transfers, they have to resort to the procedure prescribed in paragraphs 35 to 39 and there appears to be an exemption for Group-D employees from posting at tenure stations under these provisions, which position the respondents have also confirmed in their reply statement. As pointed out in the earlier orders there are several inconsistencies in the stand taken by the respondents. For example at one end they state that there are deficiencies in the case of Group-D employees and there is surplus at the Cochin Complex. For example in the table given in para 6 of their additional reply

statement in O.A. 539/2006 reproduced below the figures furnished are quite contrary to the fact.

Sl. No.	Category	CML Authorisation	Holding
1	2	3	4
a)	Daftry	7	4
b)	Peons	35	3

The learned counsel for the respondents has claimed during the arguments that as regards Daftries entries in the columns 3 and CML authorisation in col. 4 holding "have to be reversed and it was a typing mistake. No such explanations are forthcoming for the entries under the category of Peon which shows only deficiency. In fact in the very next para 7 of the same reply the respondents have stated thus:

"Though the holding is below the CML authorisation in both the categories of Peon and Daftry, the postings have been issued keeping the organisation requirement of enbloc shifting of the Office of the Chief Engineer from Kochi to Ezhlimala as already brought out in Para 5 above."

The respondents are admitting in the above paragraph that the holding in both the categories of Group-D is below the CML authorisation. If that is so how they could resort to shifting of the applicants as falling under surplus category and such a contention has to be rejected outright.

11 Therefore I am inclined to reiterate our earlier view that the

respondents are trying to justify the transfer of the applicants by some means or other and these transfers have been made by mixing up various provisions of the Guidelines without proper application of mind and in violation of the provisions regarding age limit and procedures prescribing options, etc. The conduct of the respondents in ordering these transfers is not transparent and not in accordance with the spirit of the norms laid down in the transfer policy at Annexure A-3. The respondents should have in particular considered the age factor of the applicants as their own guidelines provide for taking into consideration the age factor while considering postings to at tenure stations.

11. In view of the facts and circumstances mentioned above and in line with our decisions in earlier OAs, the transfers of the applicants in Annexure A-1 order are quashed. The respondents are directed to permit the applicants to continue to work at the station in which they are presently working. The O.As are allowed. No costs.

Dated 30.4.2007

SATHI NAIR
VICE CHAIRMAN

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