

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.555/2006

Thursday this the 16th day of August, 2007

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HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

E.V.Francis,
S/o E.V.Varghese,
Technical Officer/C-Draughtsman,
(Assistant Additional Director)
Architecture, Office of the
Chief Engineer, Naval Works, Kataribagh,
Naval Base, Cochin.Applicant

(By Advocate Mr.T.C Govindaswamy)

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- 1 Union of India, represented by the Secretary to the Government of India, Ministry of Defence, New Delhi.
- 2 Engineer-in-Chief, Military Engineer Service, Army Headquarters,DHQ PO New Delhi.
- 3 The Chief Engineer (Naval Works) Cochin.
- 4 The Chief Engineer, Naval Academy (NAVAC) Ezhimala, Cochin.
- 5 Smt. Karuna R.Prabhu Chief Draughtsman, (Assistant Additional Director /Architecture) Office of the Chief Engineer, Naval Works, Cochin.
- 6 Directorate General (Personnel) Engineer-in-Chief's Branch,

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Army Headquarters, DHQ PO,
New Delhi.11.

7 Smt.Laly N.Joy,
Chief Draughtsman/Technical Officer,
Garrison Engineer/E/M
Naval Base, Kochi.4.

8 K.Gangadharan,
Chief Draughtsman/Technical Officer
Office of the Chief Engineer,
Naval Academy (NAVAC)
Ezhimala.Respondents

(By Advocate Mr.TPM Ibrahim Khan, SCGSC for R.1-4&6)
Advocate Mr.M.V.Amaresan for R8 (Not Present)

This application having been finally heard on 8.8.2007, the Tribunal on 16.8.2007 delivered the following:

ORDER

Hon'ble Mr. George Paracken, Judicial Member

The applicant belongs to the cadre of Technical Officer and presently working as Assistant Additional Director(Architecture) in the office of the Chief Engineer, Naval Works, Kochi. He has challenged (i) the Annexure.A1 order dated 28.11.2005 transferring him from the office of CE, NAVAC, Kochi to the office of GE(1) (SEA BIRD), Karwar and posting of the 5th respondent Smt. Karuna R.Prabhu in the office of CE(NW) Kochi as Assistant Additional Director (Architecture),(ii)Annexure.A2 Movement Order dated 26.7.2006 and (iii) Annexure.A8 order posting the respondents 7 and 8 in the office of CWE(AF) Trivandrum and GE(I) NW Fort Kochi respectively.

2 The brief facts of the case are that the applicant was



initially appointed as a Draughtsman Grade II on 14.10.1982 under the GE/MES/Coimbatore. During 1992, he was transferred to Port Blair, a hard station. During 1994, after the two years of his tenure, he was transferred to Cochin. Again in 1999, he was transferred to another hard station at Jam Nagar. In 2002, on his promotion as Draughtsman and on his request, he was transferred to the Office of the Chief Engineer, Naval Works, Kochi. Since then he has been working there. As part of the re-organization of the Department, the Office of Chief Engineer, (Naval Works) was downgraded and the staff of that office including the applicant were adjusted in the reorganized office of the Chief Engineer (NAVAC) vide Annexure.A3 Office Order dated 30.11.2004. However, vide Annexure.A4 order dated 12.8.2005, the office of the Chief Engineer (Naval Works) Cochin was restored on account of another reorganization. Applicant's submission is that the office of Chief Engineer, (Naval Works) and the office of Chief Engineer, Naval Academy (NAVAC) are two independent organizations headquartered at Cochin and on the second reorganization, the respondents ought to have transferred him back to the office of Chief Engineer (Naval Works) but he was only temporarily attached with that office vide Annexure.A5 order dated 13.9.2005. Thereafter, vide the Annexure.A1 order dated 28.11.2005, the applicant and other 26 officers were transferred and posted to different places. The applicant was posted to the office of GE(I), SEABIRD, Karwar. The reason given for such mass scale



transfer was that the office of CE (NAVAC) CWE(Kochi) and CWE (P) Ezhimala have been closed down and offices of CE(NAVAC) Ezhimala and CE(NW) Kochi have been raised. By Annexure.A2 movement order dated 26.7.2006, he was relieved from the present posting at Kochi to join at the Karwar Office. Aggrieved by the aforesaid transfer order, the applicant submitted Annexure A6 representation dated 10.12.2005 to the 6th respondent stating that many of his seniors are working at the same station for longer duration than him, his children are studying in 9th and 11th standards, his 91 years old mother is residing with him and that the transfer would cause him great injustice. Even though no reply has been received, he was informed that his A6 representation has been rejected and thereafter, the respondents have issued the movement order dated 17.8.2006. During the pendency of this O.A, the respondents have transferred the 7th respondent Smt. Lali N.Joy from the office of GE(I)(EW)(NW) Kochi to the office of CWE(AF) Trivandrum and the 8th respondent Mr.K.Gangadharan, Technical Officer from the office of CE(NAVAC) Ezhimala to the office of GE(I) NW Fort Kochi vide order dated 4.12.2006 which have also been challenged by the applicant by amending the OA. He submitted that the impugned Annexure.A1 order is arbitrary, discriminatory and violative of the guarantees enshrined in Articles 14 and 16 of the Constitution. He further contended that his transfer from Kochi to Karwar was to accommodate the 5th respondent, Smt.Karuna



R.Prabhu at her home station in Kochi in violation of the provisions contained in Paragraph 24 of the "Cadre Management of MES Civilian Officers Guidelines, July, 2003" which reads as under:

"24 With increasing number of lady officers joining arch cadre, there is a need to streamline their postings. Following guidelines shall be followed while planning posting of lady officers:-

- (a) Lady Officers who are serving at a particular station for more than five years and are approved for promotion in the DPC, will be posted out as per organizational requirements.*
- (b) Lady officers on first recruitment will generally be posted near to their home/choice stations and will be turned over after completing one tenure of at least three years in the organizational interest.*
- (iii)Lady officers after being approved for promotion to Sr.Arch, shall be posted only as per org requirement/existing vacancies and not as per choice station, as the vacancies are limited and stations are restricted.*
- (iv)Once a lady officer is posted out from her choice station, her posting back to her choice station shall only be considered after tenure of at least two to three years. Generally she will be given her choice station by posting out the senior most in that particular station.*
- (v)The guidelines issued vide Govt. of India OM No.280344/2/97-Estt(A) dated 12.Jun 1997 would also be taken care of."*

According to the applicant, by posting back the Respondent No.5 to her home station, the respondents should have transferred only the seniormost person, namely, the 7th respondent, Smt. Lali N.Joy who has the longest stay of 23 years in the same station. Next in the line is Shri Kurien Sebastian, who has been continuing at Cochin for the last 9 years. The applicant has not completed the tenure of 4 or 5 years as provided in Para 28(b) of the aforesaid guidelines which

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says "Staff tenure will generally be of three to four years for all cadres except Architecture cadre where the tenure can be of four to five years." He has further contended that if transfer was on account of reduction of posts also, the persons with longer service in the cadre should have been transferred first. The reasons for the rejection of his representation has never been communicated to him. He has also submitted that the Annexure.A8 order transferring the respondent No.7 Smt. Lali N.Joy and respondent No.8 Shri K.Gangadharan has been issued overlooking his claim to be retained in Kochi for the rest of his term. As he was a surplus staff, he should have been retained in Kochi instead of transferring Mr.Gangadharan from Ezhimala and posting him in Kochi. Moreover Mr.Gangadharan himself has not made any request for a transfer to Kochi. Hence he has sought to quash and set aside Annexure.A8 order also.

3 The respondents in their reply have submitted that the transfer and posting of the applicant along with other staff has been issued due to the closure of the offices of the CE(NAVAC), Kochi and CWE, Kochi . While the seniors have been transferred and posted outside Kochi, only the junior officers have been adjusted in the new raising of CE (NAVAC), Ezhimala and CE(NW). Since the authorized/sanctioned strength of the post held by the applicant in the office of the CE(NW) Kochi is only 1 and the applicant is the senior among the officers of his rank, he was transferred and posted in the office of GE-I(SEABIRD), Karwar. He also could not be

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adjusted in the office of CE(NW). They have denied the contention of the applicant regarding the posting of the 7th respondent, because she has not been posted to either of the offices of CE(NAVAC) or CE(NW). The respondents have also submitted that the applicant has completed more than 4 years in the station in Kochi. They have also relied upon the judgment of the Apex Court in *State of U P Vs. Siya Ram* in which it is held that "no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of a transferable post from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration."

4 The applicant has filed a rejoinder mainly reiterating his contentions in the O.A. He submitted that the contention of the respondents that the 7th respondent has not been posted against the post of the applicant is not correct because he was de-facto holding that post in the office of CE/NW earlier. He has also stated that the respondents have not been following any uniform policy in the matter of transfers and he has been picked up for transfer for irrelevant considerations and non-existing foundation.

5 The respondents have filed an additional reply statement reiterating their earlier contentions in the reply.

6 I have heard Mrs.Rejitha, learned counsel for the

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applicant and Mrs.Jisha appearing on behalf of SCGSC for the official respondents and gone through the pleadings carefully. Counsel for R.8 was not present. The reason for the transfer of the applicant and other officers vide the Annexure.A1 order from Kochi is undisputedly the closure of the offices of CE(NAVAC), Kochi, CWE (Kochi) and CWE(P) Ezhimala. One of the contentions of the applicant was that since he was working in the office of the Chief Engineer (Naval Works) Kochi before it was brought under the Chief Engineer (NAVAC), on the restoration of the office of the Chief Engineer (Naval Works), he should have been posted back to that office and was not to be retained in the office of CE (NAVAC) Kochi from where he was transferred to the office of GE(I)SEA BIRD, Karwar. I do not see any merit in this contention as both the aforesaid offices have since been closed down. His another allegation was that his transfer was in violation of the Annexure.A7 Cadre Management of MES Civilian Officers Guidelines, July, 2003. He has pointed out the names of at least 4 officers of his cadre who have the longer stay in Kochi ranging from 6 years to 23 years. I do not find any merit in this contention also as the respondents have submitted that the authorized strength of the post held by the applicant in Kochi was only one and even if there are other officials with longer stay are available, they cannot be transferred in place of the applicant. The respondents have also satisfactorily explained the reasons for the postings and transfer of respondents 5,7 and 8 in

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Kochi. Moreover, the applicant himself has admitted that he has been in Kochi since 2002 and completed more than 4 years stay there. I, therefore, dismiss this O.A. The interim order passed in this case on 3.8.2006 staying the Annexure A2 Movement Order is recalled and vacated. There shall be no order as to costs.

Dated this the 16th day of August, 2007


GEORGE PARACKEN
JUDICIAL MEMBER

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