

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 560/2011

Tuesday, this the 21st day of February, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

P.Santhosh, S/o N.P.Sharma,
Working as Assistant Superintending Officer
(Statistical Investigator Grade-II),
National Sample Survey Organisation (FOD),
(Field Operations Division),
Thiruvananthapuram-695 522. - Applicant

(By Advocate Mr N Unnikrishnan)

v.

1. Union of India rep. By the
Secretary to Government,
Ministry of Statistics & Programme Implementation,
SSS Division, Sardhar Patel Bhavan,
New Delhi-110 001.
2. The Director General,
National Sample Survey Organisation (FOD),
East Block-6, Level 6-7, R.K.Puram,
New Delhi-110 066.
3. The Additional Director General,
National Sample Survey Organisation (FOD),
East Block-6, Level 6-7, R.K.Puram,
New Delhi-110 066.
4. The Deputy Director General,
National Sample Survey Organisation (FOD),
CGO Complex, Vellayani P.O.
Thiruvananthapuram.
5. Shri M Sasikumar
Statistical Investigator Grade-I,
National Sample Survey Organisation (FOD),
Ministry of Statistics & Programme implementation,
Aiswarya Arcade, Opp: Mercy College,
Melamuri, Palakkad-678 006.
6. Shri Bobby Thomas Mathews,
Statistical Investigator Grade-I,
National Sample Survey Organisation (FOD),
Ministry of Statistics & Programme Implementation,



Aiswarya Arcade, Opp: Mercy College,
Melamuri, Palakkad-678 006.

7. Smt.I Sushama Lekha,
Statistical Investigator Grade-I,
National Sample Survey Organisation (FOD),
CGO Complex, Vellayani.P.O.
Thiruvananthapuram-695 522.
8. Shri K.N.Rajeev Kumar,
Statistical Investigator Grade-I,
National Sample Survey Organisation (FOD),
Ministry of Statistics & Programme Implementation,
Prem Nagar, Vendormukku, Vadakkevila.P.O.
Kollam-691 010.
9. Smt T.N.Shyni Mole,
Statistical Investigator Grade-I,
National Sample Survey Organisation (FOD),
Ministry of Statistics & Programme Implementation,
3rd Floor, Block C-I Wing,
Kendriya Bhavan, Cochin-37. ...Respondents

(By Advocate Mr George Joseph, ACGSC for R.1 to 4)

(By Advocate Mr P Ramakrishnan for R.8)

This application having been finally heard on 15.02.2012, the Tribunal on 21.02.2012 delivered the following:

ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

Alleging violation of the professed guidelines for transfer, the applicant, who, on promotion to the post of Statistical Investigator Grade I in the respondent's organization has filed this OA challenging the promotion and posting order at Annexure A-2, seeking the following reliefs:-

- (i) Call for the records leading to the issuance of Annexure A-2;
- (ii)To declare that Annexure A2 is bad in law in so far as transfer and posting of applicant is concerned;
- (iii)To declare that applicant is entitled to be accommodated within the Kerala State;
- (iv)Issue appropriate order quashing Annexure A-2 in respect of the transfer and posting of the applicant and contesting respondents is



concerned;

- (v) Issue appropriate order or direction to respondents to issue modified order posting the applicant in Kerala as S.I Grade-I within a reasonable time and render justice to the applicant;
- (vi) To grant such other reliefs

2. Minimum facts of the case, essential to have a hang of it would suffice and the same are as under:-

(a) The applicant joined the services of National Sample Survey Organization (FOD) as Statistical Investigator Grade II on 23-01-1995. Initial posting was at Coimbatore and immediately posted to Salem Sub Regional Office. From Salem, the applicant was transferred to Tirunelveli in April, 1997 and therefrom he was posted on request to Kollam Sub Regional Office on 03-03-2000. Therefrom the applicant was transferred to Trivandrum in May 2000 at his own request. And the applicant had since then been functioning at Trivandrum.

(b) The respondents publish the Transfer Guidelines and such guidelines do undergo certain minor changes at intervals and the Guidelines as for 2011 Batch are as under:-

- (i) As per precedence in case of transfer on ad hoc promotion, due to lack of vacancy at same station, senior will be considered for posting at same station and junior will move out.
- (ii) All female candidates posted in NSSO (FOD) and promoted on ad hoc basis will be allowed to continue at same stations against existing or future vacancy.
- (iii) Persons having less than one year of service will be

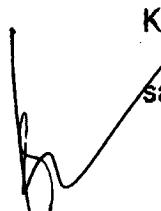
promoted/posted on in-situ basis at same station.

(iv) Keeping in view large number of vacancies in S.I. Grade II in NSSO(FOD) offices located in J & K, NE states and Andaman & Nicobar Islands, the incumbents will be promoted on in-situ basis and can continue at same station till they are promoted on regular basis.

(c) The applicant, who was in the verge of promotion, had in advance, on 01-04-2011 penned a detailed representation, explaining his domestic circumstances including the fact of his spouse being an employee in the Kerala Public Service Commission and referring to the instructions on transfer in respect of persons whose spouse is employed in the State Government Organizations, vide order dated 30th September, 2009, he had requested for accommodating him at Trivandrum or Kollam, keeping in view his seniority position.

(d) The respondents did not react to the above communication of the applicant and in their composite promotion cum posting order, they have promoted the applicant to the post of Statistical Investigator Grade I and posted him to Chennai.

(e) The applicant, on locating that many of the juniors have been retained within Kerala, whereas, though senior and though as per the guidelines, seniors are not to be disturbed from the place of posting, the applicant had been shifted to Tamil Nadu, had made a representation dated 23-05-2011 indicating the fact that he is the second senior most in Kerala and such seniors enjoy the protection of being posted within the same place, and further requesting that he be accommodated in any of

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the four vacancies at Kollam or Palghat. This was followed by another communication dated 13-06-2011. As there was no response, this OA has been filed challenging the action on the part of the respondents in posting him at Chennai.

3. Respondents have contested the O.A. They have maintained that the applicant has been transferred within the zone only, as Chennai also comes within the same Zone as any place at Kerala. The posting of the applicant out of Trivandrum was due to the fact that there is no vacancy, after catering for the female employees, as such female employees, as per the guidelines, should be accommodated. Thus, one Smt Sushma Lekha, a female official has been retained at FOD Trivandrum. All others have been accommodated in the same station as, as per the guidelines, there would be no shifting in case of ad hoc promotion. They have also stated that "Family circumstances, or professional engagement of spouse have not been taken into consideration while deciding posting." As regards the posting in the same station of the spouses, the respondents contended that the case of the applicant is not one of mere transfer but of Promotion cum Transfer. The respondents have further stated that only female candidates are accommodated against the future vacancies and in so far as the applicant is concerned, if he joins new place of posting his request for revised posting or transfer can be considered by the National Sample Survey Office (FOD) Headquarters, i.e. Respondent No. 3. It has also been stated that the applicant could well decline to accept the ad hoc promotion and continue in his present post at the same station, which may not cause any financial loss as he is already enjoying the Grade Pay of Rs 4600/- under MACP. Cases of such declining of ad hoc promotions are many and the applicant too could adopt the same.

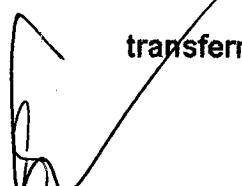
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4. Though the applicant had impleaded as many as five private respondents, who are all junior to the applicants and who have been retained in Kerala itself, it is only Respondent No. 8 that has filed his counter in which he has stated that it could be seen from Annexure A-2 the impugned promotion cum transfer order that 80% of the promotees have been retained in their respective officers and transfers are effected only where vacancies are not available.

5. In view of the fact that the other private respondents have not been represented though served, Respondents No. 5 to 7 and 9 have been set ex parte.

6. The applicant has filed his rejoinder to both the replies – (a) of official respondents and (b) private respondent No. 8. His contentions were only reiteration of his contentions made in the O.A.

7. Counsel for the applicant argued that the guidelines would go to show that seniority has to be respected in matters of promotion cum transfer. Whereas the applicant who is admittedly second senior most (the first also having challenged the promotion cum posting order through another OA) has been shifted, many of his juniors have been retained. He has further stated that out of all, the applicant has the least station seniority and some has even 36 years of station seniority. Thus, the guidelines have been given a complete go bye and the applicant has been shifted, which is thoroughly illegal. The counsel also argued that vide Annexure A-8 order dated 27-12-2011, many individuals who have been promoted in the subsequent batch have all been retained in their respective places. Thus, the applicant is the lone individual who stood transferred out of Kerala.



8. Counsel for the official respondents submitted that the policy guidelines provide for accommodating the females in existing or future vacancies. The next vacancy available at Trivandrum is as on 29-02-2012 against which one female (Sushma Lekha) is accommodated. Another vacancy would arise at Kozhikkode in October, 2012 and the applicant would be considered in the said vacancy, though many have been aspiring to be posted at that place. He has further stated that due to the preference being given to female employees, which is keeping in tune with the guidelines, there are as many as five individuals serving at Trivandrum over and above the existing sanctioned strength.

9. Counsel for the private respondents submitted that he has been retained in Kollam and his spouse is also employed in Kerala. Other domestic circumstances as available to the applicant are also present in his case. As the promotion is only on ad hoc basis, and as the practice is to accommodate all such ad hoc promotees in the same station, the applicant has been retained at Kollam.

10. Arguments were heard and documents perused. Judicial intervention in matters of transfer is the least, as repeatedly held by the Apex Court. (see *Shilpi Bose (Mrs) vs State of Bihar (1991) Supp (2) SCC 659*, *Union of India vs. S.L. Abbas, (1993) 4 SCC 357*, *Director of School Education vs O. Karuppa Thevan 1994 Supp (2) SCC 666*; *Abani Kanta Ray v. State of Orissa 1995 Supp (4) SCC 169*;; *State of U.P. Vs Gobardan Lal (2004) 11 SCC 402*, ; *N.K. Singh vs Union of India; State of U.P. Vs Siya Ram (2004) 7 SCC 405*; *Union of India v. Janardhan Debanath (2004) 4 SCC 245* *Airports Authority of India vs Rajeev Ratan Pandey and others; ; Kendriya Vidyalaya Sangathan vs Damodar Prasad Pandey (2004) 12 SCC 299*; *S.C. Saxena v. Union of India, (2006) 9 SCC 583* ; *Rajendra Singh vs State*

of U.P. (2009) 15 SCC 178).

11. The Bottomline of all the above decisions of the Apex Court is that **unless the order of transfer is visited by mala fide or is made in violation of operative guidelines, the court cannot interfere with it.**

12. Thus, it is to be seen whether any of the norms of transfer have been violated in this case. The 2011 Guidelines extracted clearly spells out the preference to be given to the senior most by stating, "**As per precedence in case of transfer on ad hoc promotion, due to lack of vacancy at same station, senior will be considered for posting at same station and junior will move out.**" It is only thereafter, that priority to female candidates has been given and in their case, a female individual could be retained in the station against the existing or future vacancy. The seventh respondent has been in Trivandrum for as many as 36 years and she has been accommodated against a future vacancy. Her retention is based on the second priority in retention as per the 2011 guidelines. The applicant on his part had made a request as early as on 01-04-2011 for his retention and as per his choice station, he had requested for Trivandrum, Nagarcoil or Kollam. Even this has not been considered, and in Kollam, the 8th respondent has been accommodated. Counsel for the respondents repeatedly submitted that females have been given priority as a policy and it is because of the guidelines for such priority that as many as 5 excess postings are there at Trivandrum. Counsel for respondent No. 8 submitted that his posting at Kollam itself is as a matter of policy to post individuals on promotion on ad hoc basis only in the same station.

13. Guidelines, if followed, should be followed in their entirety. Following the same for one set of persons and ignoring them in respect of another would be

arbitrary and whimsical. Here, what has happened is to ignore the claim of the applicant, whose case falls in the first priority with a view to following the second priority. It would be curious to note that the incumbent who is given the benefit of priority No. 2, i.e. the seventh respondent remained in station for a stupendous period of 36 years and her accommodation at this juncture has been not against an existing post but a future vacancy and this reservation of the future vacancy to the seventh respondent deprives the applicant of his posting at Trivandrum against the future vacancy. Thus, there is a clear violation of the operative guidelines which could be successfully challenged by the applicant with the support of the Apex Court decision in **Kendriya Vidyalaya Sangathan vs Demodar Prasad Pandey (2004) 12 SCC 299.**

14. Assuming that females are afforded priority in respect of retention and accordingly there is justification in retaining seventh respondent, the question arises for consideration is as to retention of many males in the same station, though as extracted above, the first of the guidelines states that retention of senior should be ensured by moving the junior out. There are many male juniors who have been retained in their respective station and the applicant with yet another senior alone have been shifted. Thus, the corollary question that springs up is whether this violation of the guidelines enables the applicant to challenge the transfer order. Answer to this question is to be in affirmative. The respondents ought to have considered the posting of the applicant either in Trivandrum and in the event of junior being accommodated, on the ground that the junior being a female comes in the next priority as per the guidelines, efforts should have been made to post the applicant to Kollam, one of the choice stations. Here it is the junior who has been accommodated.

15. What should have been followed by the respondents, to follow fully the

guidelines is that on the basis of seniority, the postings ought to have been given, after catering for female priority. In that event, the junior most among the promotees would have to move out of Kerala and the applicant could have been adjusted within Kerala, though his posting may not be one of the choice stations. If the junior most is reluctant to move, he could well decline promotion. Instead, asking the applicant to decline the promotion as contended in para 11 of the reply adds fuel to the fire.

16. In situ promotion is also followed as stated by the respondents in para 2 of their letter dated 19-01-2012 and also reflected in the counsel statement filed on 24-01-2012. In fact persons rank junior have all been accommodated within the same station as pointed out by the applicant by annexing promotion order dated 27-12-2011, vide Annexure A-8. When such accommodation could be possible with reference to the juniors, there is absolutely no reason as to why the same could not be followed with reference to the applicant. The applicant has thus been singled out from the rest of the persons and as his claim is based on the guidelines prepared by the respondents themselves, coupled with the DOPT instructions regarding posting of the spouse within the same station, transfer of the applicant out of Trivandrum is illegal. **Respondents should either undertake an exercise of posting out the junior most Kerala State in the impugned order and post him out of Kerala and accommodate the applicant against the vacancy so arising though it may not be the choice station or in the alternative, should treat the applicant as having been promoted the applicant on in-situ basis and retain him at Trivandrum till a regular vacancy arises.**

17. In view of the above the OA is allowed. The impugned order at Annexure A-2 in so far it relates to posting the applicant out of Kerala is quashed



and set aside. His promotion as Statistical Investigator Grade I is kept in tact and the respondents are directed to consider retaining the applicant at Trivandrum on in situ basis (which is adopted as admitted by them) or in the alternative, undertake the exercise of shifting the junior most out of Kerala and adjust the applicant against the post vacated by the junior most.

18. Under the above circumstances, there shall be no orders as to costs.



Dr K.B.S. RAJAN
JUDICIAL MEMBER

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