

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 566/2011

Friday, this the 28th day of October, 2011.

CORAM

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

Sujatha Radhakrishnan
Senior Auditor, A/c No.8332749,
Area Accounts Office(Navy),
Perumanoor.P.O., Kochi-15.Applicant

(By Advocate Mr A.X.Varghese)

v.

1. Union of India represented by its Secretary,
Ministry of Defence, New Delhi-110 001.
2. The Controller General of Defence Accounts,
Ulan Batar Road, Palam,
Delhi CANTT-110 010.
3. The Principal Controller of Defence Accounts(Navy),
No.1, Cooperage Road, Mumbai-39.
4. The Senior Accounts Officer (AM),
Area Accounts Office (Navy),
Perumanoor.P.O., Kochi-15.
5. The Joint Controller of Defence Accounts (Navy),
O/o the Joint Controller of Defence Accounts(Navy),
Perumanoor.P.O., Kochi-15.Respondents

(By Advocate Mr Sunil Jacob Jose, SCGSC)

This application having been finally heard on 10.10.2011, the Tribunal on 28.10.2011 delivered the following:

ORDER

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

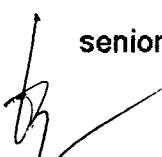
The applicant, who got inter departmental transfer from the Armed Forces Headquarters (Ministry of Defence) to the Pay and Accounts Office (ORS) DSC Office, Kannur in August 2000 by forgoing her 16 years of service and the higher promotional post of UDC, had, first been transferred to Cochin in 2006 and then



to Bangalore in 2008, and the latter transfer was challenged by her when she earlier filed OA No. 230/2008. The said OA was disposed of with a direction to the respondents to retain the applicant at Cochin in view of the children education upto April, 2009. When the applicant moved the matter before the High Court, the High Court observed:

"In our considered view, the Tribunal had very graciously taken into consideration the entire facts and has passed an order which the Department may even tend to criticize as going beyond the scope of judicial review. We are clear in our mind that the impugned order has done complete justice to the applicant and she has not ground to challenge it. There is no legal infirmity of jurisdictional error in the impugned order of the Tribunal."

2. The above judgment was passed in May 2010 till which period the applicant was retained in Cochin. The applicant had then moved a representation on 27-05-2010 for verification of the fact as to whether any other station senior has been retained in Cochin and in the meantime, the applicant has filed OA No. 474 of 2010 praying for a direction to the respondents to dispose of the pending representation. However, during the pendency of the same, the respondents had considered the said representation and in their reply dated 03-12-2010, the respondents, vide Annexure A-4 have reiterated that no one having higher seniority to the applicant in the grade of Sr. Auditors/auditors/Clerks was left out from transfer from Kochi, but only those who are eligible for exemption as per laid down guidelines in transfer policy. As regards State of Kerala being taken as a single unit, order dated 25-01-1991 of the Ernakulam Bench of the Tribunal is taken as a bench mark for determining seniority of all Sr. Auditors/Auditors/Clerks serving in Kerala State.



3. In view of the above situation, OA No. 474 of 2010 was permitted to be amended by including an additional prayer for quashing of the abovementioned order dated 03-12-2010. This OA was disposed of by order dated 04-05-2011 in the following terms -

"9. So, the scope for judicial review is very much limited in this case. However, during the argument, the learned counsel for the applicant brought to our notice that the significance of Annexure A-9 providing for grant of two years Child Care Leave till the children become major and other concessions like enhancement of maternity leave and instructions regarding posting of husband and wife together. The personal difficulties of a single parent and a daughter, who has to look after the aged parents have to be given sympathetic consideration. He also averred that a new unit is being set up at Mulavankad and she being the junior most Senior Auditor as per the Station seniority, can have a rightful claim towards posting in this new office. Hence, the ends of justice will be met by directing the respondents to consider her merit for retention in the new unit at Kochi take an appropriate decision and intimate her about it within four weeks from the date of receipt of this order. Ordered accordingly. No costs."

4. The respondents have again considered the representation of the applicant and rejected her representation through order dated 17.06.2011 stating as under:-

"7. As per the guidelines of the Hon'ble CAT Ernakulam vide their judgment dated 04.05.2011, the request of Smt Sujatha Radhakrishnan has been carefully considered point wise and the findings are:

i) That she is a single parent

The contention of the applicant that she is a single parent is not tenable as she herself had mentioned in the Miscellaneous Application No.964/2010 while praying for staying the impending transfer from Kochi station to any other station in O.A.No.474/2010, that her husband is also working at Ernakulam as Deputy Manager(Accounts) in the Times of India. Therefore, it is clearly established that she is not a single parent, as her husband is residing with her at Kochi.

ii) That she is the only daughter, who has to look after her aged parents

 As per Para 375 of Office Manual Part-I, exemption from transfer can be granted where an employee or a member of his/her

family, is suffering from serious ailments such as cancer, polio, blindness, mental disease, paralysis etc.

In this case, Hon'ble CAT has also observed in its judgment dated 05.05.2011 that applicant's request for retention at Kochi on medical grounds did not come under these guidelines. Moreover, the Hon'ble Tribunal as well as the Hon'ble High Court did not observe that the transfer order issued by the respondents was not illegal and with no malafide intentions.

Therefore, her request for deferment on the grounds, that she is the only daughter, who has to look after her aged parents, do not merit her retention at Kochi as the grounds mentioned are not covered in the Department's Transfer Policy.

(iii) That being the junior most Senior Auditor as per the Station seniority, she should have a rightful claim towards posting in the new office at Mulavankad (Kochi).

In this connection it is stated that the applicant is not the junior most Senior Auditor as contended by her. She was transferred from Kochi to Bangalore in 2008 on seniority basis along with other seniors of Kerala. In 2008 there were 21 seniors of Kerala and the applicant is at Sl.No.20 whereas Sl.No.21 who was junior to the applicant was also transferred out of Kerala. Hence the contention of the applicant that she is the junior most senior Auditor at Kochi is not correct.

As far as opening of a new office at Mulavankad(Kochi) is concerned, it is stated that staff to that office has already been posted from amongst Kerala station volunteers, who have been away from their home state for a considerable period. Posting the applicant to the new office at Mulavankad(Kochi) would tantamount to hr retention at the same station i.e. Kochi ignoring the legitimate claims of the Kerala station volunteers. This will not be correct but will also have a demoralising effect on station seniors who have been posted outside Kerala and awaiting their turn.

Therefore, it is administratively not feasible to accede to the request of the applicant for posting her to the new office at Mulavankad(Kochi).

8. AND WHEREAS, after careful consideration of the facts and circumstances of the case available on record the undersigned has come to the conclusion that it is administratively not feasible to accede to her request.

9. NOW, THEREFORE, the undersigned in pursuance of the directions of the Hon'ble CAT Ernakulam bench vide judgment dated 04.05.2011 and after careful examination of the request of the individual, is of the opinion that it is administratively not feasible to accede to the request of Smt Sujatha Radhakrishnan for posting her to the new office in Kochi or her retention at Kochi as requested by her."



5. The applicant has now challenged the said order dated 17-06-2011 on various grounds as contained in para 5 of the O.A. On notice being issued, respondents have filed their reply stating that the applicant stood relieved on 24-06-2011 and hence, the OA has become infructuous.

6. Counsel for the applicant argued that though the applicant did join the new duty station, the fact remains that she could still agitate against the order of transfer. According to the counsel for the applicant, the respondents have not considered the case of the applicant in proper perspective and thus, the representation of the applicant should be duly reconsidered. He has invited the attention to ground No. D of the OA in this regard.

7. Counsel for the respondents submitted that the applicant has no case and that she had already joined.

8. Arguments were heard and documents considered. That the individual having joined the new duty posting cannot be a ground for dismissal of the OA as having become infructuous. In this regard, the Apex Court in fact has stated in the case of S.C. Saxena vs Union of India (2006) 9 SCC 583 as under:-

"In the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems.

9. On rejection of the representation, one can seek legal remedies in accordance with law. Thus, the contention of the respondents that the OA has become infructuous as the applicant has already been relieved and she had joined duty at the new Duty station cannot be accepted. Of course, it is for the applicant to satisfy the court that the limited grounds justifying judicial



interference are available in this case. Admittedly, a transfer order issued in 2008 has been successfully deferred till recently. Initially the time granted was only for completion of children's education. Now the applicant contends that some of the points raised have not been considered properly. The grievance of the applicant is that many an individual from other states had all been accommodated and it could have been easily possible to accommodate the applicant against any such post in Cochin. The respondents' letter dated 17-06-2011 meets this point very convincingly when there have stated as under:-

"iii posting the applicant to the new office at Mulavarikad (Kochi) would tantamount to her retention at the same station i.e. Kochi, ignoring the legitimate claims of the Kerala Station volunteers. This will not be correct but will also have a demoralizing effect on station seniors who have been posted outside Kerala and awaiting their turn."

10. As an administrator, the respondents have take into account various factors, while the applicant is interested only in her domestic comforts. In so far as this case is concerned, no professed norms have been violated to warrant judicial interference. The OA lacks merits and is thus **dismissed**. No cost.



Dr K.B.S.RAJAN
JUDICIAL MEMBER

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