

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 600 OF 2011

Tuesday ,this the 10th day of April, 2012

CORAM:

HON'BLE Mrs.K.NOORJEHAN, ADMINISTRATIVE MEMBER

S Satheesh
S/o K.S Sarvothaman
Aged 46 years, Working as Assistant Superintending Officer
(Statistical Investigator Grade -II)
National Sample Survey Organisation (FOD)
S.S.S., Sub Regional Office, Kochi – 682 037

Applicant

(By Advocate – Mr.N Unnikrishnan)

Versus

1. Union of India, Rep: by the Secretary to the Government, Ministry of Statistics and 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
National Sample Survey
Organisation (FOD)
CGO Complex, Vellayani P.O
Thiruvananthapuram – 695 522
5. Smt.T.N Shyni Mole, Statistical Investigator Grade-I
N.S.S.O. (FOD), Ministry of Statistics & Programme Implementation, 3rd Floor, Block C-I Wing
Kendriya Bhavan, Cochin – 37.

Respondents

(By Advocate Mr.George Joseph, ACGSC)

The application having been heard on 28.03.2012, the Tribunal on 10.04.2012 delivered the following:

ORDER

1. The applicant has filed this Original Application seeking the following main relief:-

- i) Call for the records leading to the issuance of Annexures -A3, A10, A11 and A12;
- ii) To declare that Annexures – A3, A10, A11 and A-12 are bad in law and are liable to be quashed;
- iii) To declare that applicant is entitled to be retained at Kochi;
- iv) To declare that 5th respondent is liable to be transferred to Kollam or any other place of her choice.

2. The applicant joined the service of National Sample Survey Organisation (FOD) as Investigator on 25.09.1991 in the Sub Regional Office at Kozhikode. Thereafter, he was transferred to Sub Regional Office, Thrissur. While working there from 25.12.1996, he was transferred to Sub Regional Office, Salem. Since he was not allowed to complete the minimum prescribed tenure of 3 years at Thrissur, he filed Original Application No.634/09 before this Tribunal. In compliance with the order of this Tribunal he was accommodated at Kochi where there was a vacancy. While so, 226 Statistical Investigators Grade-II including the applicant were promoted on ad-hoc basis to Statistical Investigators Grade-I (Gazetted) vide Annexure A-3. The name of the applicant appears at serial No. 27 (Employee Code No.3728). He was transferred from Kochi to Kollam. Out of the 11 persons promoted in Kerala State, he is the senior most. His juniors namely, Shri.P Santhosh (Employee Code-3864), M.Sasikumar (Employee Code-3872), Bobby Thomas Mathews (Employee Code-3879),





I.Sushama Lekha (Employee Code-3898), Mathew Varghese (Employee Code 3899), K.N Rajeev Kumar (Employee Code-3937) and T.N Shyni Mole (Employee Code 4151) are retained in the same place where they are working. The applicant avers that he joined at Kochi on 03.11.2009 and he has not completed the minimum prescribed tenure of 3 years. The 5th respondent Smt.T.N Shyni Mole has joined service at Kochi in 1996 and is continuing here for more than 15 years. Therefore, she has an uninterrupted service of 15 years at Kochi. In accordance with para 3(ii) of Annexure A-4 O.M dated 09.05.2005 of the first respondent, the officials with the longest tenure at a particular station will be transferred first. Therefore, the 5th respondent being the junior most in Kerala should have been transferred to Kollam instead of the applicant who has not finished the incumbency period of three years at Kochi as per Annexure A-5 O.M. Aggrieved by his transfer, the applicant submitted Annexure A-6 representation dated 24.5.11. The applicant and his wife being issue less, are undergoing Infertility treatment under Dr.K Murali, M.D (Ayurveda) at Kochi. Moreover, the father-in-law is a dependant on the applicant and he is a heart patient and had undergone Cardio Vascular and Thoracic Surgery on 19.02.2007 at Amritha Institute of Medical Sciences and Research Centre, Ernakulam. He needs continuous post operative treatment. Besides, he is also suffering from Lung disease and allergy. His father who is aged 73 years is a widower and there is no one to look after him as his brother and sister are away from Kerala. The applicant avers that out of his 19 ½ years of service, he was outside Kochi for 18 years. He is a native of Thrippunithura, Ernakulam District and he needs to be at Ernakulam because of his compelling domestic circumstances.

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3. The first respondent has issued another O.M vide Annexure A-12, wherein it is mentioned that female promotees are to be allowed to continue in their present place of posting against existing or future vacancies. According to the applicant this condition is tantamount to hostile and unreasonable discrimination among staff and is therefore bad in law. The above mentioned condition in effect means that when a lady enters service she cannot be transferred out even on promotion. She gets all the service benefits in the absence of a sanctioned post. Therefore, these conditions spelt out in Annexure A-12 are totally arbitrary, illegal and invalid.

4. The respondents filed reply statement and submitted that the transfer policy guidelines for 2011 batch clearly mention that in case of a female candidate promoted on ad-hoc basis, she should be allowed to continue at same station against existing or future vacancy. Therefore, Smt.T.N Shini Mole was accommodated against the only vacancy available at FOD Kochi and the applicant had to be transferred out to Kollam in view of non-availability of vacancy at Kochi. The respondents produced Annexure R-1 which is a notification issued on 12.2.2002. They also annexed R-2 willingness letter of the applicant, wherein he has declared that he is willing to be governed by the appropriate service rules of Subordinate Statistical Service (SSS for short). They also produced the Annexure R-3 seniority list of Statistical Investigators Grade-II. The respondents produced Annexure R-4 to show that wherever vacancies were available revised posting order was issued. The respondents submitted that the Cadre Controlling Authority was not compelling the incumbents for joining on ad-hoc promotion at new place of posting and they are at liberty to forgo their ad-hoc promotion and produced Annexure R-5 in support of their

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contention.

5. The applicant filed rejoinder and more or less reiterated the contentions in the Original Application. What he highlighted was that the first respondent promoted 226 Statistical Investigators Grade-II of three batches from 2009, 2010 and 2011 together. The applicant was due for promotion in 2010 and the 5th respondent in 2011 only. Had promotion orders been issued batch-wise separately, he would have been posted to the existing vacancy at Kochi. By the issuance of a common order his rights have been affected and his junior got an undue benefit of being retained at Kochi in comparison to him who is many places senior to her. The respondents have violated the conditions in para 6 of the transfer policy guidelines which states emphatically that seniors will be considered for the same station and juniors will be moved out. According to him since his promotion is based on All India Seniority and therefore, being the senior most among all promotees from Kerala, he has a preference over others to get posted in the regular vacancy available in the station where he is working. The applicant obtained some relevant information under the RTI Act and produced the same at Annexure A-19. It shows that while the sanctioned strength of Superintending Officers at Trivandrum is 4 there are 8 serving officers. Moreover, 5 such officers are continuing at Kochi for periods ranging from 21 years to 12 years. The applicant states that a junior to the applicant Shri P Santhosh who has been transferred from Trivandrum to Chennai has filed O.A 560/2011 before this Tribunal. This O.A was allowed vide Annexure A-20 order dated 21.02.2012. The applicant in M.A 276/12 by producing the Annexure A-20 order, seeks the same relief as was granted to the applicant therein.

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6. Arguments were heard and documents perused.

7. The undisputed facts are that the Statistical Investigators Grade II of 3 batches viz, 2009, 2010, 2011 were promoted together. The applicant belongs to 2010 batch. Even though, the applicant has not completed the mandatory tenure of 3 years at Kochi and he was the senior most among 11 Statistical Investigator Grade II promoted from Kerala, he was picked up for transfer from his present station at Kochi. An identical issue relating to transfer of Statistical Investigator Grade II on his promotion was dealt with in O.A 560/11. The applicant has produced the final order of this Tribunal as Annexure A-20. Para 12 of the order is extracted below:-

"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. "

This shows that the applicant should have been accorded the first priority for posting on adhoc promotion at his present station, at Kochi. The 5th respondent was entitled for in situ promotion only after the first preference was given to the applicant, as per the precedence noted in the transfer policy guidelines mentioned above.

8. In view of the finding supra, I do find force in the contention of the applicant that there is violation of transfer policy guidelines and there is some discrimination in the treatment meted out to the applicant in comparison with those with longer station seniority who are retained at Kochi in preference to him.

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As per transfer policy guidelines of the respondents a lady officer can be retained on promotion at the same station against a future vacancy. The facts and circumstances of the case being identical to those dealt with in O.A 560/11; I respectfully follow the decision in O.A 560/11 supra. Accordingly, Annexure A-3 impugned order is quashed and set aside to the extent it is applicable to the applicant. The first respondent should consider the issue of transfer of another Assistant Superintending Officer, with the longest stay at Kochi, to accommodate the applicant at Kochi, since transfer policy permits, retention of R-5, being a lady officer, against future vacancy. Accordingly, the first respondent is directed to issue revised posting order within a time line of eight weeks. The interim order will be in force till then. The Original Application is allowed. No costs.

(Dated, this the 10th day of April, 2012)


(K NOORJEHAN)
ADMINISTRATIVE MEMBER

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