

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 63 OF 2010

Tuesday, this the 8th day of July, 2010.

CORAM:

**HON'BLE Mr. GEORGE PARACKEN JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

P. Narayanan, S/o. Sumathy,
Skipper, Fishery Survey of India,
Cochin. Residing at "Sivasakthi",
Upasana Road, Maradu Post,
Kochi - 682 304.

... Applicant

(By Advocate Mr. T.C. Govindaswamy)

Versus

1. Union of India represented by
The Secretary to the Government of India,
Ministry of Agriculture, (Department of
Animal Husbandry, Dairying and Fisheries)
New Delhi.
2. The Director General,
Fishery Survey of India,
Botawala Chambers, Sir P.M. Road,
Mumbai 400 001.
3. The Zonal Director,
Fishery Survey of India,
Kochi.
4. Shri. P. Haridas,
Mate Gr.II, O/o the Zonal Director,
Fishery Survey of India,
Kochi.

... Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC for R1 to 3)

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The application having been heard on 8.7.2010, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr. GEORGE PARACKEN JUDICIAL MEMBER

The applicant is a Skipper whose grievance is against the Annexure A-1 Office Order dated 05.01.2010 by which he was transferred from Cochin Base to Murmugao Base. By the said Order, another Skipper Shri. K.R. Shaji was also transferred from Cochin Base to Chennai Base. Both were to be relieved immediately to enable one Shri. P. Haridas and another Shri. C.A. Gopi to assume charge as Skippers, on their promotion. The applicant challenged the aforesaid order of his transfer before this Tribunal vide O.A. No. 20/10 and the same was disposed of vide order dated 08.01.2010 directing the respondent to grant an opportunity to him to make a representation to the 2nd respondent, namely, the Director General, Fishery Survey of India, Mumbai who in turn to consider it on merit and to arrive at a judicious decision. Pursuant to the aforesaid orders, the applicant made the Annexure A-3 representation dated 11.01.2010 and the respondents issued the Annexure R2 letter No. 2-2/2008-E.I dated 18.01.2010 rejecting the same and stating that Shri. P. Haridas and Shri. C.A. Gopi were promoted on the recommendations of the DPC and their promotions were to be implemented so that they are not deprived of the promotion to the top most post in their cadre. Further, it has been stated in the said order that as they were due to

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retire by the end of January, 2010 and May, 2010 respectively, there was no justification to post them elsewhere on promotion but in the case of the applicant who has completed five years service in Cochin Base, there was full justification for his transfer and his request for retention at Cochin Base cannot be acceded to. As the applicant came to know about the aforesaid decision, apprehending that the respondents would relieve him immediately, he challenged it in the present O.A. vide an Interim Order dated 25.01.2010, this Tribunal directed the respondents that they shall not implement the impugned Annexure – A1 transfer order in his case before we peruse their relevant records.

2. In the reply statement dated 26.03.2010 filed by the Official respondents submitted that though Shri. P. Haridas (Respondent No.4) retired on superannuation on 31.01.2010, yet Annexure A-1 order transferring the applicant to Murmugao still stands as the said development has taken place while this O.A. was under adjudication. They have also submitted that the vacancy caused by the retirement of Shri. P. Haridas will be filled up by transferring another Skipper who is senior to the applicant and still waiting for his transfer to Cochin Base at the fag end of his service. The other submission of the respondents is that the applicant's services are needed at the Murmugao Base of FSI.

3. On behalf of the respondents, the learned counsel has also filed another statement saying that presently the vessel M.V. Matsya Sugandhi in

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which the applicant was working as a Skipper has been identified to be decommissioned. For this purpose, a committee under the Chairmanship of the Director General, FSI, Mumbai has been constituted to examine and to submit its report on the overall condition of the vessel. On receipt of the committee's report, a detailed proposal will be sent to the Ministry for approval for decommissioning and disposal of the vessel. Further, the vessel has been kept idle due to a major engine problem developed during April, 2010 and therefore, the services of the applicant being the senior most Skipper are not required on board the said vessel.

4. They have also relied upon the judgement of the Hon'ble Supreme Court **State Bank of India v. Anjan Sanyal & Others** [2001 (3) SCC 436], **State of Madhya Pradesh v. S.S. Kourav & Others** [JT 1995 (2) SC 498] , **Rajendra Singh v. S/O UP** [2010 (1) SLR (SC) 633] and **S/O UP v. Gobardhan Lal** [2004 (2) SCSLI 42] and submitted that transfer of an employee is part of the service conditions and such orders of transfer are not required to be interfered with lightly by a court of law in exercise of his discretionary jurisdiction and the wheels of administration should be allowed to run smoothly.

5 The learned counsel for the applicant, however, argued that the reasons given in the Counsel Statement were not the basis of the transfer of the applicant's transfer. On the other hand, as stated in the impugned transfer order itself, applicant's transfer was specifically for the reason to find



berth for the fourth respondent on his promotion as Skipper. Since, admittedly, he has retired from service on superannuation on 31.01.2010 the exigency occurred for his transfer no more exists. As regards decommissioning of the vessel in which he has been working is concerned, he has submitted that it is only an afterthought and no decision has been taken so far in the matter. He has also submitted that the respondents cannot give different reason to justify his transfer by filing a fresh affidavit as held by the Apex Court in **Mohinder Singh v. Chief Election Commissioner** [A.I.R. S.C. 851], wherein it was held as under:-

“The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.”

6. We have heard Shri. T.C. Govindaswamy, learned counsel for the applicant and Shri. Sunil Jacob Jose, learned SCGSC for the respondents 1 to 3. There is no doubt that the respondents have a right to transfer their employees in the exigency of service. But, it is also a well settled position that the employee concerned has a right to ventilate his grievance arising out of such transfer by making a suitable representation to the competent authority. The respondent has to consider such representations in the overall interest of the organization as well as that of the employee and to take a judicious decision. The respondents have, of course, considered the representation made by the applicant but rejected it on the ground that even

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though Shri. P. Haridas was to superannuate on 31.01.2010, the order transferring him to Murmugao was issued earlier and Skippers senior to him are waiting for their transfer to Cochin Base. However, we observe that the exigency which has arisen for his transfer was the promotion of two of his juniors, namely, Shri. P. Haridas and Shri. C.A. Gopi as 'Skippers' and they could not be transferred anywhere else at the fag end of their service but they have since been superannuated from service on 31.01.2010 and 31.05.2010 respectively. Therefore, the exigency which has occurred for the transfer of the applicant to Murmugao does not exist any more. We, therefore, allow this O.A and quash and set aside the impugned Annexure - A1 transfer order dated 05.01.2010 to the extent it applies to the applicant as well as the Annexure - R2 letter dated 18.01.2010 issued by the 2nd respondent rejecting his representation dated 11.01.2010. As regards the submission of the respondents that the applicant's service is no more required in Cochin Base in view of the fact that the vessel M.V. Matsya Sugandhi is under decommissioning, we do not express any opinion on the same as the decision whether to transfer him and other employees working in the said vessel or not is to be decided by the concerned authorities in the respondents department separately at the appropriate time.

7. There shall be no order as to costs.

(Dated, the 8th July, 2010.)


K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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