

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No.89/2000

Thursday, this the 27th day of January, 2000.

CORAM:

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

T. Mohandasan,
PN 2712, Upper Division Clerk,
Canteen Stores Department,
Kochi Depot.

..Applicant

By Advocate M/s. Santhosh & Rajan

Vs.

1. Union of India represented by the Secretary,
Ministry of Defence, New Delhi.
2. The General Manager,
Canteen Stores Depot,
Mumbai.
3. The Deputy General Manager,
Canteen Stores Depot, Mumbai.
4. The Area Manager,
Canteen Stores Depot,
Kochi.
5. The Assistant Manager,
Canteen Stores Depot,
Kochi.

..Respondents

By Advocate Mr. Govindh K. Bharathan, SCGSC

The application having been heard on 27.1.2000, the
Tribunal on the same day delivered the following:

ORDER

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

The applicant seeks to quash A-3 and A-7, to declare that he is not entitled to transfer and posting at Leh due to the declaration by the competent authority to work in high altitude station and to direct the 2nd respondent to dispose of A-5 and A-8 representation of the applicant.

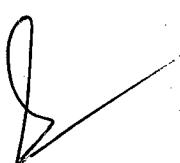
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2. The applicant is working as Upper Division Clerk under the respondents at Cochin. As per order dated 29th of June, 1999, he was transferred from Cochin to Leh. He was directed to make himself available for medical examination. He was examined and was found medically unfit for posting at high altitudes. After that, he submitted a representation to the 2nd respondent on 10.9.99 to reconsider the transfer order. He has been now directed as per order dated 31.12.99 to appear for a re-medical examination. The said order is malafide. On receipt of the order for re-medical examination, he submitted another representation on 3.1.2000 to reconsider the transfer order. Respondents are taking steps to relieve him to Leh.

3. The learned counsel appearing for the applicant submitted that the action of the officer who has issued A-7 order directing the applicant to appear for re-medical examination is mala fide. When malafides is alleged against an officer, that officer should be brought in the party array by name. There is nobody in the party array of respondents by name. In that case, the question of malafides cannot be looked into.

4. The applicant was transferred as per A-3 order dated 29th of June, 1999 from Cochin to Leh. He was examined by the Doctor and according to him, he was found not fit to work at the station to which he is transferred as per A-3. It is submitted that he was medically examined in the month of July, 1999. He submitted A-5 representation in the light of the report of the medical officer. He says that without considering the same, he has been directed to appear for a re-medical examination. It cannot be

contd..3/-



said that the order A-7 directing the applicant to appear for a fresh medical examination on 31.12.99 is totally ignoring A-5 representation. In A-5, the ground stated is that he is suffering from Rheumatic Arthritis and he is advised further treatment. If that is so, respondents are fully justified in ascertaining the present physical fitness of the applicant to work at the station to which he has been transferred as per A-3. Though the applicant has not stated in the O.A. whether he appeared for re-medical examination on 31.12.99 as per A-7, the learned counsel appearing for the applicant, to my query, submitted that the applicant did not make himself available for re-medical examination. What prevented the applicant from appearing for medical examination is not known. If he is not physically fit to work at the station to which he has been transferred as per A-3, that could have been ascertained by medical examination. Why the applicant feels shy to get himself medically examined in order to ascertain his present physical fitness is kept as a secret by him. If he is found unfit on medical examination, that will be revealed but the applicant wants to avoid the same.

5. There is a relief sought to direct the respondents to consider A-5 and A-8 representations. Regarding A-5, I have already mentioned. As far as A-8 is concerned, it is dated 3.1.2000 and this O.A. was filed on 24.1.2000. Any direction to consider and dispose of A-8 at this stage is premature.

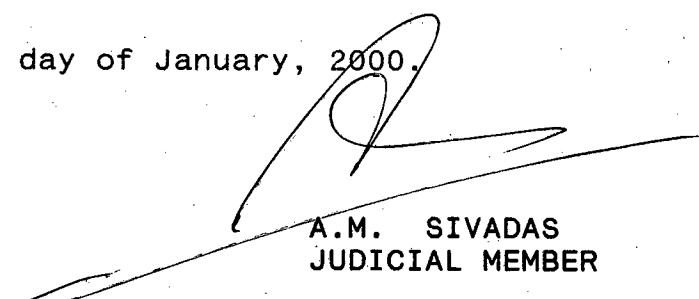
6. I do not find any ground to admit this O.A.

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7. Accordingly, the O.A. is dismissed.

Dated this the 27th day of January, 2000.


A.M. SIVADAS
JUDICIAL MEMBER

nv/2712000

LIST OF ANNEXURES REFERRED TO IN THIS ORDER

1. Annexure A-3: True copy of transfer order No. 139/99 dated 29.6.99 issued by the 3rd respondent.
2. Annexure A-5: True copy of applicant's representation dated 10.9.99 with forwarding letter No. CHD/PN 2712/EST/1616 dated 13.10.1999 of the 4th respondent.
3. Annexure A-7: True copy of letter No. CHD/0014/04/Est/2583 dated 31.12.99 issued by the 5th respondent.
4. Annexure A-8: True copy of applicant's letter dated 3.1.2000 addressed to the 2nd respondent.