

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
~~XXX~~ No.

91

1990

DATE OF DECISION 31.5.90

V.A. Uthaman

Applicant (s)

M/s M.C. Cherian,
Saramma Cherian &
T.A. Rajan

Advocate for the Applicant (s)

Versus

The Director, Central
Institute of Fisheries
Nautical & Engg. Training,
and another.

Respondent (s)

Advocate for the Respondent (s)

P. Sankarankutty Nair, ACGSC

CORAM:

The Hon'ble Mr. S.P. Mukerji, Vice Chairman

The Hon'ble Mr. A.V. Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. To be circulated to all Benches of the Tribunal? Yes

JUDGEMENT

(Shri S.P. Mukerji, Vice Chairman)

In this application dated 31.1.90, the applicant who has been working as a Senior Deckhand/Bosun in the Central Institute of Fisheries Nautical & Engineering Training (CIFNET), Cochin has prayed that the impugned order dated 3.1.90 at Annexure-3 transferring the applicant as Senior Deckhand from Cochin to Madras and the order dated 29.1.90 at Annexure-5 rejecting his representation should be set aside. The brief facts

of the case are as follows:

2. The applicant who is a member of the Scheduled Caste is holding a substantive post of Senior Deckhand. He has passed SSLC and holds the required certificate for being promoted as Bosun. He is the senior-most Senior Deckhand for such promotion. He has been officiating intermittently as Bosun from May 1986 onwards and was being given the regular pay scale of Bosun during such officiation but from June '87 onwards he was denied the regular pay scale of Bosun but was paid in the lower scale of Senior Deckhand with a special pay of Rs 200 during his officiation as Bosun. He had not been regularised even as Senior Deckhand and ^{was} denied leave to write the SSLC examination. These reliefs he got only after he moved this Tribunal in OA 259/86. The respondents, according to him, were not happy with him as he had moved the Tribunal. Another application, OA 408/89 is also pending in which he had claimed regular appointment as Bosun and pay scale of Bosun while so officiating. He had applied for a House Building Advance and an amount of Rs 32,600 was sanctioned. As he could not complete the building because of shortage of funds, he applied for an additional amount ^{his application} but ^{was} rejected by the Director but on appeal the Government sanctioned an additional amount of Rs 15,000 vide Annexure-1 order dated 15.12.89. While the appeal xxxxx was pending, the Director, CIFNET passed the order dated 11th December, 1989 (Annexure-2) directing the entire amount of Rs 32,600 to be refunded

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in one lump sum. In the context of the previous and pending litigation the Director passed the impugned order on 3.1.90 transferring him from Cochinto Madras and posting a Junior Deckhand from Madras to Cochin. His representation⁶ against the transfer was rejected by the impugned order dated 29.1.90 at Annexure-5. The applicant has argued that there are 4 sailing fishing vessels in Cochin for which 8 regular Bosuns are required. At present, there are only 6 regular Bosuns and he is the only eligible⁸ Senior Deckhand who could be promoted as Bosun and therefore the need of his being kept in the public interest at Cochin is more than his going to Madras where there is only one sailing fishing vessel and 3 Bosuns. The other vessel⁸ has been lying in a damaged condition for more than one year. He has also argued that there are other Senior Deckhands at Cochin who had never been transferred out of Cochin. The applicant had worked outside Cochin for 4 years. He has still a half-constructed building, his father is lying in paralytic stroke, his son⁶ ^{was} appearing in SSLC examination in March and he has to look after his mentally retarded child. On these grounds, he has stated that his order of transfer cannot be held to be in public interest but is motivated by the litigation, to which he has been driven against the department.

3. The Tribunal on 31.1.90, while admitting the application, passed an interim order staying the operation of the impugned order of transfer. In spite of the stay order, the Administrative Officer on 2.2.90 passed an order stating that the applicant stood relieved from duty with effect from 31.1.90 and therefore he should not be permitted to join duty until further instructions. On 6.2.90 the Tribunal passed an order on the prayer of the applicant that the respondents must put the applicant back on duty. In the counter affidavit the respondents have stated that the Annexure-7 order issued by the Skipper was without any authority and knowledge of the respondents and might ~~be~~ have been issued in complicity with the applicant. On receipt of the further order of the Tribunal dated 6.2.90 the applicant was put on board the vessel which had already sailed. The respondents have denied ^{causing} ~~any~~ harassment ^{to the applicant} and have stated that while he was officiating intermittently from 1986 on promotion as Bosun, he was paid ^{the prescribed} salary. They have conceded that the application OA 408/89 is pending before the Tribunal and that the reliefs claimed in another application OA 259/86 including leave and regularisation as Senior Deckhand were granted before the Tribunal in the decision of ^{that} case. They have explained that

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when the applicant was not found to be eligible for a loan of Rs 94,000, the admissible amount was granted with an undertaking that the applicant would complete the construction of the building by supplementing the loan by his personal resources. When he submitted an application for enhancement of the amount of loan, it was recommended to the higher authorities which sanctioned an enhancement by Rs 15,000. They have conceded that Annexure-2 order for recovery of the loan in one lump sum instalment was issued in accordance with rules. As regards his transfer to Madras, the respondents have conceded that there were two vessels in Madras of which one was not in full fledged working condition though it has not been condemned or de-commissioned but has been kept idle. They have also conceded that for each vessel 2 Bosuns are needed and 3 Bosuns are already there at Madras. The applicant was transferred to Madras as there were no other Senior Deckhands in Madras with the Competency Certificate. His presence in Madras would enable the respondents to have somebody who can be posted as Bosun at short notice.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The applicant is a member of the Scheduled Caste and in accordance with the policy of the Government

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of India, members of the Scheduled Caste should be posted as near their native place as possible.

Since the applicant belongs to Kerala, his transfer to Madras may not be in conformity with this policy. His transfer to Madras when he is constructing a house for which a loan had been sanctioned, enhanced and disbursement of the amount was still pending, prima facie appears to be quite harsh. Further, in accordance with the respondents themselves, for one fishing vessel two Bosuns are needed and therefore at Cochin, with 4 vessels, 8 Bosuns are required. As against 8, only 6 Bosuns are available in Cochin. On the other hand, ⁱⁿ Madras, there is only one vessel which is in commission for which the requirement is of 2 Bosuns, but there are 3 regular Bosuns already available. From the respondents' own showing, there is a deficiency of two Bosuns in Cochin and surplus of one Bosun in Madras. In the circumstances, the transfer of the applicant, who is the senior-most Senior Deckhand with the Competency Certificate to work as Bosun, from Cochin to Madras appears to be more against public interest than in favour of it. It is also admitted that in Cochin the respondents have been engaging a casual Bosun to make up the deficiency. The transfer of the applicant before the

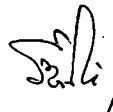
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end of the academic session is also against the guidelines of transfer.

5. In the conspectus of facts and circumstances, we are fully convinced that the transfer of the applicant is neither in the public interest nor in administrative exigencies, nor in conformity with the policy and guidelines of transfer accepted by the Government. There are elements in the transfer which make it appear contrary to public interest and the guidelines. In the circumstances, we allow and this application, /set aside the impugned orders at Annexures 3 and 5 without any order as to costs.



(A.V. Haridasan)
Judicial Member

 31.5.90

(S.P. Mukerji)
Vice Chairman