

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 110 of 2000

Wednesday, this the 2nd day of February, 2000

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

1. B. Sasikumar,
PN 2751,
Lower 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.

6. K.S. Sivaraman,
Assistant Manager,
Canteen Stores Depot, Kochi.

.. Respondents

By Advocate Mr. Govindh K. Bharathan, SCGSC

The application having been heard on 2nd February, 2000,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks to quash A-1 and A-6, to declare that he is not entitled to be transferred and posted at Leh due to the declaration by the competent authority that he is unfit to work in high altitude station, and to direct the 2nd respondent to dispose of the representation A-4.

Contd..2

2. The applicant is working as a Lower Division Clerk under the respondents at Kochi. As per order dated 29th of June, 1999, he was transferred from Kochi to Leh. He was directed to make himself available for a medical examination. He was examined and found medically unfit for posting at high altitude stations. After that he has submitted a representation to the 2nd respondent on 10-7-1999 to reconsider the order of transfer. He has now been directed as per order dated 31-12-1999 to appear for a re-medical examination. The said order is malafide, according to the applicant. Respondents 4 and 6 are taking steps to relieve him from Kochi to Leh.

3. It is stated in the OA that the action of the 6th respondent, who is brought by name, has acted malafide in issuing A-6 order directing the applicant to appear for re-medical examination. Apart from just using the word 'malafide', there is absolutely nothing in the OA to arrive at a conclusion even, *prima facie*, how the action of the 6th respondent is vitiated by malafides. It is not enough to use a single word 'malafide'. It should be stated clearly how and why the action is vitiated by malafides. It cannot be taken for granted that simply by using the word 'malafide', the action is malafide. There is no evidence to establish malafides even, *prima facie*. Evidence to establish malafides has to be strong and convincing. Hence, the ground of malafide cannot be accepted.

4. The applicant was transferred as per A-1 order dated 29th June, 1999 from Kochi to Leh. He was examined by a doctor and was found unfit to work at a high altitude station to which he has transferred as per A-1. A-3 is the certificate issued by the doctor after examining the applicant also. It is dated the 28th of July, 1999. The applicant submitted A-4 representation

to the 2nd respondent. He says that without considering the same, he has been directed to appear for a medical examination. In A-4, it is stated that his children are studying in Kendriya Vidhyalaya, Ernakulam and that he is a diabetic patient under treatment. The ground urged in A-4 representation that his children are studying in Kendriya Vidhyalaya, Ernakulam is practically given a clean go-by in the OA. The only other ground stated is that he is a diabetic patient. A-3 does not say that he is diabetic. In A-3, in the Diagnosis column, as far as the applicant is concerned, it is stated 'NIDDM' - 'Hypertension'. It cannot be a case and it need not be assumed that once a person is physically unfit to work in high altitude stations, he will always continue to be so. As per A-6, he is again directed to appear for medical examination. The direction was to appear for medical examination on 31-12-1999. From a reading of the OA it appears that he has not appeared before the doctor for medical examination. It seems rather he is interested in avoiding the same. If he is really sick, what is the difficulty for him to appear before the doctor and subject himself to a medical examination, is kept as a top secret. If his case is true, there cannot be any difficulty for him and he need not feel shy to get himself subjected to a re-medical examination.

5. It is also stated in the OA that before considering A-4 and disposing of the same, A-6 order has been issued. The grounds stated in A-4, I have already stated. That apart, it can only be said that bearing in mind the physical condition of the applicant he has been directed to appear for a re-medical examination which will reveal his present physical fitness to work at high altitude stations. As already stated, the applicant wants to avoid the same.

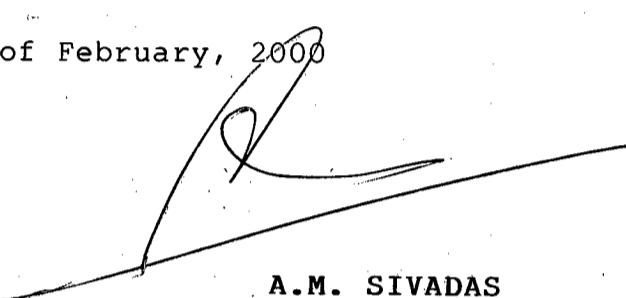
6. Applicant says that A-6 order is not issued either by the

2nd or 3rd respondent and hence it is without jurisdiction. There is no mention in the OA as to the lack of jurisdiction of the 5th respondent to issue A-6.

7. I do not find any ground to admit the Original Application.

8. Accordingly, the Original Application is dismissed. No costs.

Wednesday, this the 2nd day of February, 2000


A.M. SIVADAS
JUDICIAL MEMBER

ak.

List of Annexures referred to in the OA:

1. Annexure A-1 - True copy of Order No.139/99 dt. 29-06-99 issued by the 3rd respondent.
2. Annexure A-6 - True copy of order No. CHD/0014/04/Est/2583 dt. 31-12-99 issued by the 5th/6th respondent.
3. Annexure A-4 - True copy of applicant's representation dated 10-07-99 addressed to the 2nd respondent.
4. Annexure A-3 - True copy of medical examination report No. 227/5/106 dated 28-07-99 of the Commanding Officer, INHS Sanjivani, Naval Base, Kochi.