

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A. No. 116 / 2006**

Tuesday this the 4<sup>th</sup> day of July, 2006

**CORAM :**

**HON'BLE Mr.K.B.S.RAJAN, JUDICIAL MEMBER**

MES 188613 M.K.Asraph  
Junior Engineer (Civil)  
Garrison Engineer (E/M)  
Naval Base, Kochi  
Residing at : Maruthomkudy House,  
Edathala, Aluva

Applicant

(By Advocate Mr. C.P.Saji )

Versus

1. Union of India represented by the Secretary  
Ministry of Defence  
South Block, New Delhi
2. The Chief Engineer, MES  
Southern Command, Pune
3. The Chief Engineer (NW) Kochi  
Naval Base, Kochi
4. Garrison Engineer (E/M) (N.W)  
Naval Base, Kochi

Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC )

The application having been heard on 03.07.2006, the  
Tribunal on 04.07.2006 delivered the following :

**ORDER**

**HON'BLE Mr.K.B.S.RAJAN, JUDICIAL MEMBER**

The short question involved in this case is whether certain  
subsequent developments ( availability of additional posts and certain  
vital changes in the transfer policy) should be taken into consideration  
for adjudication of this Original Application.

2. Briefly stated, the applicant, a Junior Engineer in the Military Engineering Service who has served about 15 years outside Kerala of which two years tenure was in hard station and who has been posted at MES, Cochin in 2002 was transferred to Vasco on 12.5.2004(Annexure-2). The applicant challenged the said transfer order in OA 133/05 and there was a stay operating in his favour. The stay in fact was also in respect of certain proposed postings of other Junior Engineers in Cochin. According to the applicant, the respondents had informed him that he would be retained at Cochin but subject to his withdrawing the OA and on the basis of the same, the applicant had chosen to withdraw the OA 133/05. The Department also initially did not disturb the applicant. However, later on by order dated 29.09.2005(Annexure-10) the applicant was again transferred to Vasco and the same forced him to file OA 1/06. When the case came up for consideration this Tribunal passed the following order :-

"It is now the contention of the applicant that by way of communication dated Annexure A7 dated 29.9.05 the 2<sup>nd</sup> applicant in OA 133/05 and the applicant herein are proposed to be moved to the station where they were transferred by the earlier order. It is the submission of the counsel for the applicant that the orders in respect of Sh.P.Abdulla has been already implemented and he has joined the new place of posting, therefore, the applicant's apprehension is that his order will be implemented also at any time. The applicant had submitted a representation Annexure A-6 dated 19.9.05 which is still pending. However, it is submitted by the counsel for the applicant that since further developments have taken place after the representation, the applicant may be provided with another opportunity to give a comprehensive representation to the respondents in the light of the earlier contentions and grounds raised now, especially para 4 (d). The respondents' counsel submitted that if such a representation is received they will consider the same.

  
In view of the submission made, we are of the view that the OA can be disposed of at this stage with the direction to the applicant to submit a comprehensive representation to the 2<sup>nd</sup> respondent within one week and

thereafter the 2<sup>nd</sup> respondent shall dispose of the same in the light of the grounds raised therein and communicate a decision within four weeks from the date of receipt of such representation to the applicant. Till then, status quo as on date shall be maintained in respect of the applicant's posting."

3. On the strength of the above order the applicant moved a representation dated 09.01.2006 (Annexure A-12) wherein, among other things, he had stated as under:-

"It is not be out of place to submit the following. Four incumbents in the JE(Civil) post who have longer stay than me at Kochi are retained. All of them are seniors to me in the Station seniority. It may be noted that women employees have no special preference to retain at Home station and they are liable to serve anywhere in the country as agreed to by them while accepting the Appointment order. Even if posting is unavoidable on account of job requirement, station seniors are supposed to be moved out. They have stayed at Kochi more than my incumbency at Kochi.

Needless to submit that MES/109085 Smt Maggy Francis who is working as JE(Civil) at Trivandrum stand posted to Kochi during December, 2005 vide your HQ posting Order 132404/2/Jul 05/77/E1B(s) (A1) dated 06 Dec.05. This JE (Civil) was posted from Kochi to Trivandrum in the year 2002 on mutual transfer on her request. Suffice to stay that there exist vacancy still, and there appears no good and sufficient reason to displace me by reviving the earlier transfer order."

4. The respondents had disposed of the representation by one of the impugned orders dated 14.02.2006(Annexure-13). It has been stated by them in the decision that the present policy viz., withdrawal of exemption from postings of female employees cannot be applied to the old posting orders and since the applicant's case falls within the category of old posting order, he cannot derive any benefit out of the modified guidelines. As regards posting of another JE (Civil) from Trivandrum to Cochin, the respondents have stated that there is no bar on posting on compassionate grounds

even to surplus complex. In the wake of the order dated 14.2.2006 movement order dated 20.2.2006(Annexure-14) was also passed.

5. The applicant has therefore come up with this OA challenging the aforesaid order dated 12.05.1004, 29.09.2005, 14.2.2006 and 20.02.2006.

6. By way of an interim relief the movement order (dated 20.02.2006) was stayed and the said interim order continues. The applicant in this OA has raised various grounds as contained in Para 5 (A) to (I). One of the grounds raised is that the reason given by the respondents is to the acute shortage of staff at GE Kota vide Para No.2 (d) of order dated 14.02.2006 is invalid as the applicant's move was to Vasco and not Kota. Grounds such as violation of proposed norms, availability of vacancies at Cochin itself, victimisation, favouritism and malafide have also been raised.

7. The respondents have contested the OA according to them, the applicant cannot take advantage of the subsequent developments relating to availability of posts at Cochin or change in the transfer policy with regard to exemptions available to female employees. According to them, since the original order related to 2004 the situation that prevailed as of 2004 and the guidelines of transfer applicable at that time alone should be considered and on such consideration, the applicant has no case and the transfer orders are valid. Reference to Kota was stated to be an inadvertent mistake.



8. The applicant had filed a rejoinder annexing certain official documents relating to management of Group C & D personnel and the respondents from their side filed additional reply statement to the rejoinder. In the additional reply statement the respondents have stated that as of 2004 at Command Managing level there were 6 JE (Civil) as authorized posts while 7 were actually holding. It has also been contented in the additional reply statement that the normal tenure of three years applicable to persons posted to tenure station is not applicable to individuals posted out in Command Managing level posting. It has also been maintained that in accordance with the earlier order of transfer effected in 2004 all have undertaken the move save the applicant and change of posting of a single hand as per revised policy would be unfair and might be questioned by other individuals already posted out.

9. Arguments were heard and the documents perused. The contention that there is no application of mind in the passing of impugned order dated 14.2.2006 as reference to Kota is irrelevant, is to be summarily rejected as it is an obvious typographical error, as conceded by the respondents.

10. Admittedly, the earlier OA 133/05 challenging the order of transfer was withdrawn by the applicant vide this Tribunal's order dated 28.02.2005. By the said order liberty was given to the applicant to file a fresh OA, if required. It is almost seven months thereafter only that the applicant's move was ordered in September, 2005. However, prior to the issue of this order, on 10.05.2005, it was undertaken by the respondents themselves that there was



acute shortage of JE (Civil) at Naval Base Post Cochin(Annexure-6). Obviously the shortage is after taking into account certain additional posts sanctioned to this Command. When the applicant challenged order dated 29.09.2005 through OA 1/06 he has brought to the knowledge of the Tribunal the subsequent developments as extracted earlier vide order dated 03.01.2006. According to the applicant, the respondents have completely ignored the spirit behind the said order of this Tribunal. Had the Tribunal of the view that subsequent developments viz., availability of vacancies and change in the transfer policy should not be taken into account the aforesaid order would not have been passed. There is substance in this argument of the applicant's counsel. For in matters of transfer such subsequent developments made have to be taken into consideration. For example, in the case of UOI vs. N.P.Thomas (1993) 1 SCC 704 the subsequent development of availability of vacancies was directed to be considered by the respondents. Similarly, in the case of A.K.Bindal Vs UOI (2003) 5 SCC 163, in a service matter, the Apex Court has held, "apart from what have discussed earlier, it is necessary to take note of a subsequent development which has a series impact on the relief claimed by the petitioners."

11. Taking into account the aforesaid decisions of the Apex Court the case of the applicant herein should also be viewed with reference to the situation that prevails now.

12. Both as per the earlier and the current policy of transfer ordinarily the tenure of any individual in a tenure station is three

years. Though the respondents have taken a stand that the tenure period is not applicable for transfer on Command Manning Level, they have not stated the period of tenure for such posting. The tenure period cannot be different. The applicant was transferred to Cochin in 2002 and as per the aforesaid guidelines, he became liable to be transferred in 2005 whereas he was transferred in 2004 itself. At that time there were certain female Jr.Engineers who had longer station seniority than the applicant but they were enjoying the exemption of being posted out. If the earlier transfer guidelines of normal three years tenure was kept in mind, then the validity of the very transfer of the applicant in May 2004, which is less than two years period, becomes questionable. True, at that time there was surplus at Cochin which perhaps would have prompted the Department to shift somebody. The exemption available to the female employees resulted in the next seniormost to be shifted and the axe fell upon the applicant. However, the applicant's filing OA 133/05 resulted in stay of transfer of applicant then. It is thereafter, essential that subsequent developments that have taken place are taken into account. Today there is no surplus in Cochin nor deficiency (as per the applicant's counsel at the time of arguments) at Vasco and as such, the precise reason or administrative ground of transfer of the applicant does not exist. Even if there can be any surpluses as on date, the respondents should only consider the present guidelines which do not give any exemption to the female Jr.Engineers. Again per chance if there, as on date, is no vacancy at Vasco, the posting of the applicant at Vasco would result in surplus there. As such the contention of the respondents that for a single individual the revised guidelines cannot be applied is not

correct since what is to be seen is the ground reality as on date and not the one prevailing in 2004. As such, viewed from any angle, it would be seen that the transfer of the applicant from Cochin does not appear to be on valid grounds. The respondents are in patent error in presuming that since the rejection of the applicant's representation relates to his transfer order of 2004, the rule position and ground reality that prevailed in 2004 alone should be considered, disregarding the later developments. In fact, when the Tribunal had directed reconsideration of the case of the applicant vide order dated 03.01.2006, it was accepted by the counsel for the respondents that the representation of the applicant would be considered and as such, the respondents ought to have considered the representation of the applicant in terms of the latest guidelines and the vacancy position at the time of representation. No public interest would be served by shifting the applicant from Cochin to Vasco when there was no vacancy at Vasco nor there is surplus at Cochin.

13. The prerogative of the employer to shift the employees depending upon the functional requirement cannot be doubted at all. At the same time it is to be seen that when certain norms have been laid the same are to be kept in view while invoking the power to transfer. Judicious use of this power will not be interfered with. In the instant case, in view of what has been stated above, the respondents are not justified in sticking to their gun without taking into consideration the subsequent developments. If the applicant happens to be the seniormost for the purpose of transfer and under the rotational transfer basis, he can be shifted and the same can be



done in future. The impugned transfer order dated 12.05.1004 read with 29.09.2005 and 14.02.2006 cannot be legally sustained and they are hereby quashed and set aside. The OA thus succeeds. The respondents are directed not to disturb the applicant from the present place of posting and should there be a necessity to effect transfers under the present guidelines, they are at liberty to effect such transfers but strictly in accordance with such guidelines.

14. Under the above circumstances there shall be no order as to costs.

Dated, the 4<sup>th</sup> July, 2006.



K.B.S.RAJAN  
JUDICIAL MEMBER

vs