

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 147 of 2008

Thursday, this the 19th day of June, 2008

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

S. Balasubramanian,
S/o. M. Somasundaram,
Assistant Light Keeper (Senior Scale),
Ponnani Light House,
Residing at Light House Quarter No.7,
Ponnani Light House, Ponnani Nagaram Post,
Ponnani, Malappuram District. **Applicant.**

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India represented by
The Secretary to the Govt. of India,
Ministry of Shipping, Road Transport &
Highways, Department of Light House &
Light Ships, New Delhi.
2. The Director General,
Department of Light Houses & Light Ships,
Deep Bhavan, Tulsi Marg,
No. A-13, Sector 24, Noida,
Guatam Budh Nagar Dt, Uttar Pradesh.
3. The Director (Regional),
Directorate of Light House & Light Ships,
Gandhi Nagar, Kadavanthara P.O.,
KOCHI - 682 020. **Respondents.**

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

O R D E R
DR. K B S RAJAN, JUDICIAL MEMBER

The applicant was appointed as Assistant light keeper (Senior Scale), under the Director (Regional), Department of Light house and Light Ships at Kochi on 17.08.2000. His initial posting was at Chetwai Lighthouse and he was thereafter

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transferred to Minicoy Light house on 24.05.2001. In September 2004, he had been shifted to Ponnani lighthouse.

2. Earlier, in 2000, to a request of the applicant's father for a transfer to Chennai, the Director, Department of Light house and Light Ships, informed that the case of the applicant for transfer to Chennai would be considered on completion of 7 years of service in a particular district. Annexure A-2 refers. According to the applicant when he was expecting a transfer to Chennai, he was issued with a transfer order to Mount Dilli Lighthouse 'to take over the complete charge of the station'. This position was earlier held by Shri. E.V. Pednaker, Head Light Keeper (SS) who has been transferred to Mumbai at his own request. The grievance of the applicant is two fold: -

- a. When his request for transfer was to Chennai, he stands posted to Mount Dilli and
- b. He has been posted to a post which is above his grade.

3. The grounds of attack include: -

- a. Arbitrariness
- b. Transfer to a higher post carrying a higher pay scale
- c. Malafide as the applicant is engaged in trade union activities
- d. Posting to a higher post is despite the fact that there are other Head light keepers who could have been shifted.
- e. hostile discrimination in as much as the request transfer for Mumbai of Shri. Padnaker within seven years in the district had been accepted whereas the applicant's request for transfer to Chennai, had been declined.

4. Respondents have contested the O.A. According to them, the applicant is



liable to an all India transfer and that the transfer effected is an operational requirement. It has also been stated that initially, the applicant wanted Chennai and now he wants Cochin, stating Union activities.

5. The applicant has filed a rejoinder denying the contentions raised in the counter.

6. Earlier by an interim order dated 02.05.2008 as the applicant was not relieved, status quo was ordered. The respondents had vide MA-2 order dated 05.05.2008 annexed to MA No. 347 of 2008 deputed the applicant on tour to Mount Dilli LH. His transfer, when status quo was ordered, was deprecated by this Tribunal. The Tribunal had, therefore, ordered stay of operation of MA-s order also.

7. Counsel for the applicant submitted that the post of Head Light Keeper is a senior level post against which posting of the applicant who is holding a lower post is thoroughly inapplicable. In particular, when other head light keepers are available, the transfer of the applicant should be viewed only as being accentuated by malafide. As per Annexure A-3 policy, transfer should normally be considered after 7 years of service in a particular district. In the case of the applicant, if he had been transferred to Chennai, he would have gladly welcomed the same, whereas the applicant has been transferred to Mount Dilli. As regards service exigencies, the counsel for the applicant stated that if the exigencies warranted posting of a hand at Mount Dilli, the respondents should not have transferred

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Padnekar without ensuring that his successor first joins, especially since Mr. Padnekar had not completed in the district.

8. Counsel for the respondents submitted that the case of Padnekar stands on a different footing. As the Light house has to be operated for movement of ships, the authorities have posted the applicant to Mount Dilli to man the Light house. It has been submitted that by posting the applicant to Mount Dilli, to take charge of the Light house it cannot be stated that he has been posted to a higher post. The counsel further argued that there are a number of decisions of the Apex Court wherein it has been held that transfer is a prerogative of the employer and that judicial review on transfer matters is very limited.

9. Arguments were heard, documents perused and considered. As early as in 2000, when the respondents informed the father of the applicant that the case of the applicant would be considered for transfer to Chennai region after the expiry of 7 years, there is a kind of a commitment made to the father of the applicant. If there be any vacancy at Chennai, his case should have been considered. In case of non-availability of post at Chennai, the applicant could have been retained at Ponnani itself. It is not appropriate to shift the applicant at this juncture as his posting to Chennai possibly may materialise as and when a vacancy may arise at Chennai. The counsel for the applicant is right when he submitted that while other head light keepers were available, posting of the applicant who is only an Assistant Light Keeper charge of Mount Dilli Light house which was hitherto manned by a Head light keeper, would go to show that the transfer is not without

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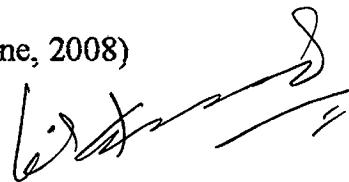
extraneous considerations. Perhaps, his trade union activities would have been the cause for the transfer of the applicant. As such notwithstanding the power to transfer being vested with the authorities, the instant transfer of the applicant does not appear to be for bonafide reasons. If the respondents have felt that manning Mount Dilli Light house was absolutely essential, they should not have transferred Shri Padnekar from there especially when he had not completed 7 years in the District as per the prevailing transfer policy. Thus, the transfer on request of Mr. Padnekar has been made within seven years of his service although a different treatment has been meted out to the applicant. Hostile discrimination has been meted to the applicant which directly infringes upon the right of the applicant under Articles 14 and 16 of the Constitution.

10. In view of the above, the Annexure A-1 order dated 3rd March 2008 whereby the applicant stood transferred to Mount Dilli is quashed and set aside. However, in order to man the Light house at Mount Dilli, the respondents may consider along with other Head Light Keepers/Assistant Keepers for temporary ^{Light} ~~move~~ for a limited period in which event, if the turn of the applicant also comes, he can be shifted on such temporary duty. As the applicant's request for transfer to Chennai is still pending, the respondents should consider the same as and when a vacancy arises at Chennai. This would then level the discrimination meted to the applicant when the respondent had posted Shri Pednaker within seven years of his tenure in the district.



11. The O.A. is allowed on the above terms. No costs.

(Dated, the 19th June, 2008)



(Dr. K B S RAJAN)

JUDICIAL MEMBER

CVR.