

O.A.No.152/2005.

The application having been heard on 1.9.05 the Tribunal on the same day delivered the following:


ORDER(Oral)

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant joined duty at Vasen, Goa on 26.5.1994. The post of Superintendent D&R Gr.II was re-designated as Garrison Engineer and the applicant was shifted to Port Blair in July 1999. He worked there upto May, 2001 as Junior Engineer (Civil). He joined the present station at Kochi on 11.6.2001. While he was continuing as such he was again transferred out of Kerala vide order dated 12.5.2004(A2). Aggrieved by A-2 he has filed a representation dated 4.6.2004 (A3) before the 1st respondent requesting for a posting to any nearby station viz., Wellington, Coimbatore or Bangalore. The same was not considered and disposed of. According to the applicant, it is against the guidelines. Aggrieved, he has filed O.A.755/04 (A8) before this Tribunal and this Tribunal vide order dated 18.10.2004 had permitted the applicant to make a comprehensive representation to the 1st respondent and the 1st respondent was directed to consider and dispose of the same in the light of the rules and instructions on the subject and to pass appropriate orders within one month thereafter. Accordingly, the applicant has made a representation (A-9) dated 25.10.2004, which was rejected by the impugned order dated 25.11.2004(A-10). The earlier impugned orders dated 12.5.2004(A2) and A-4 dated 20.9.2004 in O.A.755/04, were also challenged in this O.A. as Annexures A-2 and A-4. Aggrieved by the non-consideration of his representation, the applicant has filed this O.A. seeking the following main reliefs:

- i. To call for the records leading to Annexure A-2, A4 and A10 and quash the same as against the applicant.
- ii. To declare that the provisions in para 60(b) of Annexure A-5 is ultravires of Article 14 of the Constitution of India and are liable to be struck down.
- iii. To direct the first respondent to appoint the applicant to the open vacancy at Wellington.

2. The respondents 1-4 have filed a detailed reply statement contending that, the applicant was posted out from Kochi, as Kochi Complex was surplus as per Command Manning Level. Southern Command has a deficiency of 45% in the category of Junior Engineer (Civil). Kochi was surplus as per Command Manning Level (CML) in the category of Junior Engineer (Civil). Accordingly, the applicant



was posted out on Command Manning Level. The applicant's representation for the change of posting to Wellington, Coimbatore or Bangalore could not be entertained, as there were already surplus staff in Coimbatore and Bangalore. The applicant was posted to Kota, as Kota Complex was short of 4 Junior Engineer (Civil) during Command Manning Level -04. In the additional reply statement the respondents contended that while issuing Command Manning Level (CM L-2004) postings Kochi Complex was holding 36 Junior Engineer (Civil) against authorisation of 33. It is also submitted that, during CML 04, the total holding of Kochi Complex was reflected as 36 by Zonal CE. After the issuance of CML posting, it was brought out that, the total holding was 33 and not 36. Accordingly some posting orders were revised and amended. The posting order of 02 junior most individuals of Kochi Complex, Shri P.Y.Baby and Shri P.K.Anil Kumar were accordingly cancelled. Further Shri N. Natarajan who had applied for voluntary retirement, was also considered for maintaining the equitability. Shri S.Abdeen was given extension based on his representation dated 17th June, 2004. The applicant had stated that, his wife is suffering from Chronic Asthma and is bedridden. The applicant had requested for a change of posting to Thruvananthapuram/ Kochi / Ezhimala. As the requirement of Kota was critical, his representation for change of posting was not accepted. However, as the applicant was facing with severe family problems, he was given deferment up to December 2004 as a welfare measure. It is also contended that it is important so far as the department is concerned that, the strength of the employees should be distributed to all the formations to ensure that CE staff is available at all levels. During 2005, there were fresh recruitment of 143 JE(Civ) and these candidates were distributed to all zones to maintain equitability at all formations. It is also submitted that, in Command Manning Level there was a surplus of 12 in the category of Junior Engineer and accordingly the applicant was posted for duty to Command manning Level. The representation of the applicant was not considered in view of the fact that, there was no vacancy at Coimbatore and Bangalore and at Wellington, one Junior Engineer (Civil) had already been posted during Command Manning Level-04. Further, Garrison Engineer in Kota was deficient and suitable individuals were required at the formation. Clause 30 pertains to repatriation of persons who have completed their tenure period and Clause 40 pertains to local turnover, posting which is done to turnover people in the same complex to avoid indulge in undesirable activities in the same unit. Clause 58 pertains to timing of issue of posting. It does not speak about completion of three years period in the station. The applicant was posted out as per Clause 38, which



is under the heading of "Commanding Manning Level". In para 38 it clearly states that the longest stayee in a particular grade/post will be transferred from one station/complex to another in order to maintain manning level in all units/formations within the command and for this purpose, the vacancy available will be published by Chief Engineers Command to enable longest stayee to opt for their station/complex. There is no provision for three years stay as per Clause-38.

3. Shri P.M.Pareeth, learned counsel appeared for the applicant and Shri TPM Ibrahim Khan, SCGSC appeared for the respondents.

4. When the matter came up before the Bench, learned counsel for the respondents submitted that the applicant cannot challenge the order of transfer as a matter of right. It is the prerogative of the department to post an employee as and when required for filling the vacancies according to the necessity and exigencies of work. Accordingly, the applicant was transferred to the Kota.

5. Learned counsel for the applicant argued that, as per the Head Quarters letter dated 29.4.2005, there is one vacancy each at Wellington and Coimbatore. It is also contended that, the South Western Command was formed recently, wherein Kota is a part of that Command and the applicant may be permitted to make a representation for transfer to a place, which will come within that region. As per para 22 (k) of the guidelines, the individuals who are posted to other commands due to non-availability of vacancies in the parent command, will be treated as tenure posting and will be repatriated to their choice stations/complexes after completion of tenure period of two or three years as applicable. Nominal roll of such repatriates will be maintained by this Headquarters. Such individuals will submit application for repatriation duly indicating three stations/complexes of choice immediately after completion of one or two years of stay in the other command. As the Kota has become the tenure station he may be permitted to make a representation at the appropriate level after two years and to consider his case to the choice station in accordance with rules.

6. Learned counsel for the respondents submitted that, it is amenable to adopt such a course of action and it will be done according to the rules.

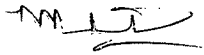
7. At this juncture, learned counsel for the applicant submitted that, if his repatriation is ordered, he may be given a breathing time to join. This may be



considered and done.

8. O.A. is disposed of as above. In the circumstances no order as to costs.

Dated the 1st September, 2005.



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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