

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION

:

25.5.1990

P R E S E N T

HON'BLE SHRI S.P. MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.152/90

K.K.Sivarama Pillai

.. Applicant

v.

1. The Director General of Defence Estates,
Ministry of Defence, R.K Puram,
New Delhi-66.
2. Union of India represented by
the Secretary, Ministry of Defence,
New Delhi.
3. K.Krishna Panicker, S.D.O Grade-I,
Asstt.Defence Estate Office,
Panampilly Nagar, Cochin.

.. Respondents

M/s. K.Usha, S.Radhakrishnan
N.S. Aravindakshan

.. Counsel for
the applicant

Mr. V.Krishnakumar

.. Counsel for
R1 & 2.

Mr. C.S.Ramanathan

.. Counsel for
R3.

J U D G M E N T

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

The applicant's grievance is against Annexure-VIII, an order transferring ^{his 3rd resp} him from Cochin to Trivandrum with his post of SDO Grade I. According to him this would permanently postpone his chance of promotion.

2. The applicant is presently working as SDO Grade I and has got less than two years to retire. He joined as SDO Grade III^y on 2.9.63 and has put in about 27 years of service. After his service in as many as nine stations all over India ultimately he was posted by the 1st respondent as per letter No. 41/77/ADM/Vol.V dated 19.5.86 as SDO Grade II at Trivandrum. The next promotion

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to which the applicant is eligible is SDO Grade I.

3. According to the applicant the DPC has found him fit for promotion as SDO Grade I in the year 1987 as also in 1988. On account of family difficulties and serious ailments he wanted to continue in Trivandrum and requested the respondents to retain him at Trivandrum even at the cost of foregoing the promotion. It is at this stage that the respondents have passed the impugned order transferring the post as also the third respondent.

4 The complaint of the applicant is that by the action of the respondents his chance of getting promotion to the SDO Grade I would be permanently barred and he will be retiring as SDO Grade II without getting the benefit of promotion and higher salary for computation of pension. This according to him is great injustice.

The respondents should have created the post of SDO Grade I at Trivandrum and promoted him especially when persons junior to him have already been promoted as SDO Grade I from the list of D.P.C for the years 1987 and 1988 superseding his claim for promotion. He did not challenge the supersession only because of his ^{desire to} ~~aspiration~~ to continue at Trivandrum on account of his family problem and continued illness. This he has indicated in his various representations and the Director has accepted his request to allow him to continue at Trivandrum and recommended to the higher authorities ^{stated by} as in Annexure VII.

5. The respondents in the counter affidavit stated

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that the applicant has voluntarily forgo^ene the promotion and that there is no post of SDO Grade I available for promoting and posting him in Kerala at this stage. But in the exigencies of service, the transfer of the third respondent with the post became necessary from Cochin to Trivandrum and the impugned order has been passed in the public interest and there is no illegality in the order. The third respondent also filed a counter affidavit supporting the stand of the respondents 1 and 2.

6. However, at this stage we are not going into the legality of the impugned order challenged in this case. Since the applicant has not brought to our notice any rule, order or Govt. of India letter prohibiting respondents 1 and 2 from making a transfer of a person along with the post of SDO Grade I from one station to another in the exigencies of service, we are not in a position to uphold the contentions of the applicant against Annexure VIII. Under these circumstances, on the other hand, we accept the contentions of the learned counsel for the respondents.

7. But we feel that there is some injustice so far as the applicant is concerned. Having regard to the facts and circumstances of this case it is a genuine case in which the applicant ought to have been posted as SDO Grade I, if any such post was available at Kerala.

He is a chronic heart patient and he has only two years to retire. He had also worked in various places throughout India during the 27 years of service. But it is also true that he has requested the respondents to retain him at Trivandrum and expressed his willingness to forego the promotion of SDO Grade I twice for continuing in Kerala. The applicant submitted that the DPC has assigned him in the year 1988 first position while recommending personnel for SDO Grade I. From that list persons junior to the applicant having lower rank have been appointed as SDO Grade I. Under these circumstances the applicant has a legitimate right to be posted as SDO Grade I in the next arising vacancy. According to the applicant it is very likely that a vacancy of SDO Grade I would arise on 31.8.90 within the Kerala Region and if this is correct the applicant is entitled to be posted in that vacancy. We hope that there may not be any impediment for the respondents in giving such a posting to the applicant in Kerala at the fag end of his service.

8. Having regard to the facts and circumstances of this case, we are of the view that the claim of the applicant for ^aposting in Kerala Region as SDO Grade I is a reasonable request and the respondents would consider the same seriously on sympathetic consideration especially on account of the fact that he has got only

less than two years ^b before attaining the age of superannuation.

9. In the interest of justice, we feel that this application can be disposed of with the direction that the respondents may consider the posting of the applicant as SDO Grade I as indicated above in the next available vacancy of SDO Grade I in the Kerala Region before the expiry of the list already prepared by the DPC. With the above observations and directions the OA is disposed of, but without any order as to costs.


(N.DHARMADAN)
JUDICIAL MEMBER

23.5.90.


(S.P. MUKERJI)
VICE CHAIRMAN

25.5.90.

n.j.j.