

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.159/93

DATE OF DECISION : 20.09.1993

O.M.John,
Tracer, DINT,
Naval Base,
Cochin-4.

.. Applicant

Mr. M.R.Rajendran Nair

.. Adv. for applicant

V/s

1. The Chief of Naval Staff,
Naval head Quarters,
New Delhi.

2. The Flag Officer Commanding
in Chief, Head Quarter,
Southern Naval Command,
Cochin.

3. Shri N.Mohanan,
Technician, NSRY,
Cochin-4.

.. Respondents

Mr. S.Krishnamoorthy, ACGSC

.. Adv. for Resp. 1 & 2.

Mr. C.S.Ajith Prakash

.. Adv. for Respondent 3.

CORAM : The Hon'ble Mr. N.Dharmadan, Judicial Member

JUDGEMENT

MR. N.DHARMADAN, JUDICIAL MEMBER

Applicant is at present working as Tracer in Naval Base, Cochin. He is mainly aggrieved by the transfer to INS Hansa, Goa, after promotion as per Annexure-III order dated 08/12.1.1993.

2. According to the applicant, when Annexure-I select list for promotion to the Grade of Draftsman (Construction) in the Navy was prepared, the applicant was found suitable for promotion and included as serial No.11. The 3rd respondent was assigned only rank No.18. Applicant filed

..... 2/-

Annexure-II representation even before Annexure-I for posting at Cochin in the promoted post stating that his aged parents are residing with him and his children are studying in schools in Cochin. Since his wife is employed in State Government about 45 KM away from home, the family cannot accompany him. Therefore, according to him, on promotion the circumstances compell him to continue at Cochin for the time being. After the issue of Annexure-III transfer order, applicant again submitted another representation, Annexure-IV, on 20.1.93 stating same reasons. Since these representations have not been considered favourably, he has challenged the order, Annexure-III, to the extent it relates to his transfer from Cochin to Goa.

3. Respondents 1 & 2 and the 3rd respondent have filed separate reply statements. According to them the transfer had been effected considering the request of the 3rd respondent for allowing him to continue at Cochin in the vacant post, which arose immediately after the issue of Annexure-I. The applicant filed a rejoinder producing Annexure-V order by which the 3rd respondent has been posted at Cochin as Draftsman. It is also alleged that the said order has been passed after the interim order passed by this Tribunal presumably due to extraneous considerations and hence it is to be ignored.

4. While admitting the application on 25.1.93 this Tribunal passed an interim order directing respondents 1 & 2 to maintain status-quo regarding applicant's continuance at Cochin and that the vacancy of Draftsman, if any, available at Cochin shall not be filled up without further directions. The learned counsel for the respondents submitted that the interim order has been duly complied with and there is no violation of the same as alleged by the applicant in the course of the arguments.

5. Annexure-V order has been passed on 8.2.93 but the said order has not been implemented. It is kept in abeyance in view of the interim order already passed in this case. So, it cannot be treated as an order having been passed in violation of the interim order as alleged by the applicant.

6. Learned counsel for the applicant submitted that the first respondent deliberately avoided the transfer of the applicant in the vacancy of Draftsman available at NSRY, Cochin, solely for the purpose of filling up the same with 3rd respondent, who became qualified for promotion in terms of Annexure-I list only after the promotion of the applicant during the pendency of this application. He further submitted that this order was passed due to undue favouritism shown in the matter of posting and transfer.

7. The respondents have not stated in the reply that the Annexure-IV representation filed by the applicant was considered by the first respondent before passing Annexure-V order by which the 3rd respondent was posted at Cochin as Draftsman. When the representation filed by the 3rd respondent was considered, it was the duty of the concerned authority who passed Annexure-V to consider Annexure-IV representation filed by the applicant also.


8. Regarding the allegations of the applicant in para 9 that the transfer is to be effected on the basis of length of stay of an officer in a particular station and Shri Sasikumar, Rank No.1 has more than 20 years of service at Cochin and he ought to have been transferred first, the respondents have stated in the reply that Shri Sasikumar has been retained at Cochin keeping in view (4) his position in the select list and availability of vacancy. According to the applicant, same principle, if followed in the case of the applicant, he can be posted in the existing vacancy at Cochin.

9. The respondents 1 & 2 submitted that the 3rd respondent has been given a posting at Cochin on compassionate ground taking into consideration the statements made by him in his representation. As indicated above, while considering the representation submitted by the 3rd respondent the representations filed by the applicant also deserve consideration. There is no indication in the reply statement that the competent authority considered Annexure-IV representation filed by the applicant particularly when the applicant has also made same grounds for considering his posting at Cochin on compassionate grounds.

10. Under the above circumstances, considering the facts of this case, I am satisfied that justice would be met in this case if I dispose of the application with appropriate directions to the competent authority, viz. the first respondent, without going into the merits of the contentions and considering the issues raised in the course of the arguments.

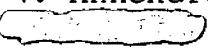
11. Accordingly, I direct the first respondent to consider Annexure-IV representation filed by the applicant along with representations filed by the 3rd respondent and take a final decision as to who ⁽²⁾ is eligible to be posted in the existing vacancy of Draftsman, NSRY, Cochin, in accordance with law. I further direct that a decision shall be taken in this case uninfluenced by the statements in the reply and Annexure-V order. Till a final decision is taken as indicated above, the interim order passed on 25.1.93 shall be in force.

12. The application is disposed as above. No costs.


20.09.93

(N.DHARMADAN)
JUDICIAL MEMBER
20.09.1993

LIST OF ANNEXURES:

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| 1. Annexure-I | .. Copy of order No.NC/2628/T dated 30.12.1992. |
| 2. Annexure-II | .. Copy of representation dated 29.7.1992. |
| 3. Annexure-III | .. Copy of order No.NC/2108 dated 8/12.1.1993. |
| 4. Annexure-IV  | .. Copy of representation dated 20.1.1993. |
| 5. Annexure-V | .. Copy of order No.NC/2108 dated 8.2.93. |