

Central Administrative Tribunal  
Ernakulam Bench

Dated Tuesday the twentyeighth day of February,  
One thousand, nine hundred and eighty nine.

Present

Hon'ble Shri S P Mukerji, Vice Chairman  
and

Hon'ble Shri G Sreedharan Nair, Judicial Member

O.A No.174/87

- 1 NB Radhakrishnan Nair
  - 2 TP Gopinathan
  - 3 MK Unnikrishnan
  - 4 K Bhaskaran
  - 5 PL Clarence
  - 6 CP Jogi
  - 7 KK Sudheer
  - 8 KG Saju
  - 9 Joseph Jessly
  - 10 PJ Jacob
  - 11 C Sasidharan Pillai
  - 12 GS Sreekumar
  - 13 BR Satheesh Kumar
- : Applicants

Vs

- 1 The Chief Engineer  
Military Engineering Service  
South West Zone, Naval Base P.O,  
Cochin-4
- 2 The Commander Works Engineer  
Military Engineering Service  
Naval Base, PO, Cochin-4
- 3 The Garrison Engineer,  
-do-
- 4 VD Thomas, Refrigeration Mechanic  
Highly Skilled II,  
-do-
- 5 KM Varghese,  
-do-
- 6 PM Varghese,  
-do-
- 7 KRS Pillai,  
-do-

...Contd.p/2

8 K Divakaran, Refrigeration Mechanic,  
Highly Skilled II,  
-do-

9 Bhanuvikraman,  
-do-

10 Y Samkutty,  
-do-

11 A P Pillai,  
-do-

12 K A Mathai, Refrigeration Mechanic,  
Highly Skilled I,  
-do-

13 M Abdul Rahiman,  
-do- : Respondents

M/s VM Nayanar, K Balakrishnan &  
PK Ravikrishnan : Counsel of Applicants

Mr K Karthikeya Panicker , ACGSC : Counsel for (R 1- 12)

M/s DV Radhakrishnan, K Radhamani  
Ammu & Raju K Mathew : Counsel for ( R-13)

O R D E R

Shri S P Mukerji, Vice Chairman

and  
Shri NB Radhakrishnan Nair/twelve other  
Refrigeration Mechanics working under the Garrison  
Naval Base, Cochin  
Engineer/have moved this application under Section  
19 of the Administrative Tribunals Act of 1985  
praying that the impugned order at Annexure VI  
laying down that the instructions in CPRD 73/73 and  
11/75 are made applicable to MES Industrial Workers  
with effect from 16th December, 85, only, should be  
set aside and that the promotions granted to  
Respondents No. 4 to 13 to Highly Skilled Grades  
I & II should be declared as illegal. They have  
also prayed that Respondents No. 1 to 3 be directed  
to reconsider the representations filed by the

applicants and to <sup>pass</sup> / orders of promotions to them  
without relying on Annexure-VII.

2 The brief facts of the case are as follows:  
The applicants were appointed as Refrigeration  
Mechanics under the Garrison Engineer, Military  
Engineering Service, Naval Base, Cochin on various  
dates between 20.6.77 and 10.6.80. Respondents No.  
4 to 13 even though originally appointed as  
Refrigeration Mechanics earlier than <sup>some of</sup> the applicants  
were transferred to Cochin Unit at their own request  
on subsequent dates. According to the applicants,  
since these respondents were transferred to the  
seniority unit of the applicants from outside ~~their~~  
~~units~~ at their own request, the seniority of the  
respondents in the seniority unit of the applicants  
should be determined on the basis of the dates when  
these respondents took over in the applicant's  
seniority unit and their previous service in the  
other seniority unit should not be taken into account.  
In this respect, the applicants have relied on the  
Ministry of Defence Memorandum of 29th June, 73  
and copy of A.G's Branch note of 27th August, 1976  
at Annexure-1 indicating that " Government servants  
rendered surplus and adjusted or transferred on  
compassionate/medical grounds after 1st July 1973 do  
not get the benefit of their previous services on

reporting to the new Unit/establishments and their seniority is reckoned from the date of their joining new units/establishments". It was clarified in the AG's note that the denial of this benefit will be <sup>only</sup> in respect of promotion and confirmation <sup>6</sup> in the new Units/Establishments. They have further relied upon the Chief Engineer, Southern Command, Pune's letter of 23rd April, 86 (Annexure-II) which clearly stated that the promotion/confirmation of industrial personnel <sup>(Commander Works Engineer)</sup> is on CWE <sup>6</sup> area basis and any person seeking compassionate posting from one CWE area to other CWE area will lose seniority for the purpose of promotion and confirmation. It appears that some posts of Refrigeration Mechanics were upgraded to Highly Skilled Grade-II and it was ordained that promotion should be made to this grade strictly on the basis of seniority with exemption from passing the trade test. It was further ordained that promotion from Grade II to Grade I will be made on completion of one year <sup>of</sup> service <sup>6</sup> as Grade II provided the candidates pass trade test within two chances by June, 86. Respondents No.4 to 13 on the basis of their higher seniority over the applicants were thus promoted to Grade - II to Highly Skilled Grade II and the Respondent No.13 was further

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promoted to Grade-I. The case of the applicants is that if the seniority of these respondents had been determined on the basis of their date of joining the Cochin Unit and their previous service in the other CWE Unit from where they were transferred at their own request had not been taken into account they would not have been senior to the applicants and would not have encroached upon the chances of promotion to Grade II and Grade I available to the applicants. The applicants have challenged the order dated 29.12.86 passed by Respondent No.3 rejecting their representations and also Annexure-VII which is a letter of Engineer-in-Chief's Branch on the basis of which their representations were rejected. The applicants have also relied upon the judgement of the High Court of Kerala dated 18.3.81 in OP No.130 of 1980 in which on an identical issue raised by the Refrigeration Mechanics of the same unit, it was held that the transferees from other units to Cochin unit cannot count their past service for the purpose of seniority for promotion. This judgement by the Single Judge ~~Bench~~ was upheld in appeal by the Division Bench also in Writ Appeal No. 216/1981 on 16.12.85. The judgements are available at Annexures VIII & IX. This application before us has been contested by Respondents 1 to 3 and 13. Other respondents refrained from entering appearance despite service. The case for the Respondents 1 to 3 is that guiding principles in fixing seniority have been laid down by Annexure- I

order, but the new principles for fixing seniority have been made applicable from 16.12.85 when the judgement of the Division Bench in Writ Appeal No.216/81 (Annexure-IX) was delivered. According to the respondents since departmental orders were not issued, Respondents No.4 to 13 who sought compassionate posting were not aware of the 'clauses of losing seniority' at the time of moving on posting. Accordingly, in order to bring uniformity, the department has issued instructions (Annexure R1) that this Rule will be applicable only from 16.12.85 and past cases will not be reopened. They have argued that there have been no violation of the judgement of the High Court of Kerala and "guiding principles for fixing seniority of industrial personnel as per CPRD 73/73 and 11/75 has been made applicable to MES throughout India from the date of judgement". Respondent No.13 has indicated that he was permanently transferred from the Garrison Engineer's office in West Bengal in the Eastern Command to Garrison Engineer, Cochin, Southern Command by the order dated 30.10.85. The transfer order was <sup>not</sup> made subject to any condition and if he had known about the loss of seniority he would not have made any request for transfer. He has argued that since his service was centrally controlled, his past service before

joining the Southern Command has to be taken into account. He has defended his promotion to Highly skilled, Grade-I on the ground that he had passed the trade test of Charge Mechanic which is equivalent to Highly Skilled, Grade-I in 1976. He has denied that Annexure-III stipulates the condition that one year of service as Grade-II is required for promotion as Grade-I. He argued that he has been drawing the pay of Rs 330-480 as Charge Mechanic/ Refrigeration Mechanic/ Highly Skilled Grade II since 15.10.81 and there was no irregularity in his promotion to Grade I. Adverting to the judgements of the High Court of Kerala, he argued that neither he, nor the applicants was a party to those proceedings and the judgements being not declaratory in nature, they <sup>as</sup> cannot apply between him and the applicants.

3 We have heard the arguments of the learned counsel of both the parties and gone through the documents carefully. Copy of AG's Branch note dated 27th August, 1976 at Annexure-I to the petition reads as follows:

"2. In accordance with the new Seniority rules circulated vide Ministry of Defence-Memorandum No.28(6)67/D(Appts) dated 29th June 1973 (CPRO-73/73), Government Servants rendered surplus and adjusted or transferred on compassionate/medical grounds after 1st July 1973 do not get the benefit of their previous service on reporting to the new Units/Establishments and their seniority is reckoned from the date of their joining new units/establishments.

3 A query has been raised by HQ Southern Command as to whether such individuals should

be treated as fresh entrants for all purposes such as pension, leave, quasi-permanency of of the revised principles will apply only for determining seniority. This point has been clarified that the civilian employees, who are rendered surplus and adjusted or transferred on compassionate/medical grounds under the provisions of SAO 8/5/76 or otherwise will not be treated as fresh entrants for the purpose of eligibility for pension, leave and quasi-permanency in the grade. They will not, however, be given the benefit of their previous service for promotion and confirmation in the new units/establishments". (emphasis added)

From the above it is clear that in accordance with the seniority rules which were circulated vide Ministry of Defence Memorandum dated 29th June, 73, Government servants rendered surplus or transferred or adjusted on compassionate/medical grounds after 1st July, 73 cannot get the benefit of their previous service and their seniority is reckoned from the date of their joining in the new units/establishments. In view of the clear indication in the new seniority rules there is no scope for accepting the plea of the respondents that if Respondents 4 to 13 had known about the loss of seniority, they would not have applied for transfer on compassionate grounds to the Southern Command. As regards what constitutes a seniority unit, the Engineer-in-Chief's letter of 8th October, 1986 addressed to all Command Chief Engineers etc., at Annexure-VII makes the position very clear. Para 3 of this letter reads as follows:

3. Since the seniority of industrial personnel for the purpose of promotion/confirmation is controlled at the CWE area, the individuals seeking transfer on compassionate grounds from one CWE area to other CWE area whether within the same Zone/Command or outside Zone/Command are not entitled to the benefit of previous service for the purpose of promotion/confirmation.



An individual seeking transfer on compassionate grounds for duty in the new formation, in order to avoid representations at a later stage, an undertaking to this effect may be obtained from the individual before he applies for transfer on compassionate grounds. These instructions will be applicable wef 16 Dec.85 onwards". (emphasis added)

The above will show that the seniority of the industrial personnel is controlled at the level of Command Works Engineer<sup>(CWE)</sup> and therefore, the question of Respondents No. 4 to 10 who were admittedly transferred from another CWE area, counting their previous service for seniority did not arise. In the judgement of the Single Judge Bench of the Kerala High Court dated 18th March 1981 (Annexure-VIII) it was observed that the Ministry of Defence letter dated 29.6.73 which has been referred to at Annexure-I, in the instant case before us and at Ext.P1 before the High Court of Kerala with OP No.130/80, the seniority is to be reckoned from the date of joining the new units of establishments and that the principles governing the seniority were brought to the notice of the petitioners in that case in 1977. The arguments now propounded by the respondents had been argued before the Kerala High Court which concluded that the mere statement of the respondents that all the MES Establishments in India are to be taken as a unit, by itself is not enough to confer the benefit of seniority for previous service in another Command. Respondents 1 & 2 in that case were directed to consider the question of promotion

Of the petitioners. In the Writ Appeal, the Chief Justice of Kerala High Court speaking for the Division Bench came to the conclusion that the orders were clear that "seniority of individuals adjusted or transferred on compassionate grounds on or after 1st July, 73 will be determined in accordance with the revised principles of seniority". It is further provided that individuals adjusted or transferred on compassionate grounds on or after 1st July, 1973 will not get the benefit of the previous service on their reporting to the new units. It is clear from these provisions that those who stand transferred on compassionate ground to another unit cannot count their previous services for the purpose of seniority in the new unit to which they are transferred. In other words, they will have to be counted as junior-most in the new unit on the date on which they are transferred".

4 From the above it is clear that the High Court did not enunciate any new rule of seniority or expanded ~~the~~ existing rules and instructions of seniority to any new category of transferees on request. They simply interpreted the <sup>existing</sup> ~~the~~ rules and instructions to say that those rules and instructions did not give the benefit of seniority to those transferees on request on compassionate ground who are so transferred after 1st July, 1973 to a new unit. It was, therefore, wrong on the part of the

respondents to implement this judgement by applying the revised principles of seniority as laid down in CPRO 73/73 (as clarified in CPRO 11/75) with effect from 16.12.85 only. To this extent/para 2 of the Engineer-in-Chief's letter of 8th October, 86 at Annexure-VII suffers from a grave infirmity.

5 Even on the face of record, applying the revised principles of seniority contained in CPRO 73/73 with effect from 16.12.85 is self contradictory. It is evident from Annexure I quoted above as also the judgements of the Kerala High Court that the Ministry of Defence Memorandum of 29th June, 1973 reproduced in CPRO 73/73 clearly enjoins that in accordance with the revised principles of seniority the Government servants transferred on compassionate grounds will not get the benefit of previous service for seniority in the new unit will be applicable only to those who are so transferred after 1st July, 73. The respondents cannot by administrative instructions make these principles applicable to those who are transferred after 16th December, 85. The administrative instructions of the Engineer-in-Chiefs cannot take precedence over the seniority rules or instructions as circulated by the Ministry of Defence Memorandum of 29th June, 73. Since the Engineer-in-Chief's letter at Annexure-VII as in para 3 makes it clear that promotions and confirmations

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are controlled at the CWE area, the question of having an All India seniority and the Respondents No. 4 to 13 carrying their service in another CWE area for the purposes of their seniority in the Cochin Unit when they had been transferred on request<sup>or</sup> on compassionate ground does not arise. Since the applicants are claiming seniority on the basis of the seniority rules and instructions of the Ministry of Defence promulgated in 1973 (CPRD 73/73) the validity of which has been upheld by the Kerala High Court, the question of the applicants and the respondents not being a party in the Writ Petition before the Kerala High Court does not arise. We<sup>are</sup> clearly and respectfully of the view that the interpretation given by the High Court of Kerala is<sup>the</sup> correct interpretation on CPRD 73/73 by which Respondents 4 to 13 before us will not be entitled to reckon their previous service in another CWE area for the purpose of seniority in the CWE area, Cochin.

6 In the facts and circumstances we allow the application and set aside Annexure VI and Annexure VII in so far as they make<sup>only</sup> CPRD 73/73 and 11/75 applicable<sup>to</sup> cases of transfer with effect from 16.12.85 and direct that CPRD 73/73 and 11/75

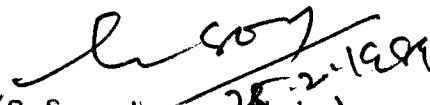
the principles of seniority given in

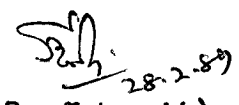
are to be made applicable to persons transferred after 1st July, 1973. We further direct that the seniority of Respondents 4 to 13 in the CWE area at Cochin should be re-determined on the basis of the date of their joining the Cochin area and promotions given to them as against the applicants be reviewed on the basis of their revised seniority/<sup>✓</sup> rules and instructions governing such promotions. Since ~~the~~ <sup>✓</sup> Respondents No. 4 to 13 had discharged the duties of the higher posts, in case they are to be reverted no recovery ~~for~~ <sup>✓</sup> excess payment should be made. If the applicants are promoted on the basis of the review as directed above, they should be promoted notionally with retrospective effect from the <sup>date</sup> ~~✓~~ their immediate juniors were promoted and their pay in the higher grade fixed by counting the period of their notional promotions for increments, but without <sup>payment of</sup> ~~✓~~ arrears of past salary and allowances. The respondents are directed to complete action on the above lines within a period of three months from the date of communication of this order.

✓ in accordance  
with the

✓

7 There will be no order as to costs.

  
(G Sreedharan Nair)  
Judicial Member  
28.2.89

  
(S P Mukerji)  
Vice Chairman  
28.2.89