

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No.176/97

Friday, this the 25th day of July, 1997

CORAM

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

Annamma Balachandran, W/o V. Balachandran,
Upper Division Clerk,
C/o Chief Engineer,
Military Engineering Service, Kochi-4.
Residing at 46/686E, Vaduthala, Cochin-23.

..Applicant

By Advocate Mr M.R. Rajendran Nair.

Vs.

1. Union of India represented by
Secretary to Government,
Ministry of Defence, New Delhi.
2. The Engineer-in-Chief,
Military Engineering Service,
Army Headquarters,
Delhi Headquarters P.O., New Delhi.
3. The Chief Engineer,
Military Engineering Service,
Southern Command, Pune.
4. The Chief Engineer,
Military Engineering Service,
Cochin Zone, Naval Base P.O., Cochin.

..Respondents

By Advocate Mr George Joseph, Addl.CGSC

The application having been heard on 25.7.1997, the
Tribunal on the same day delivered the following:

O R D E R

The applicant aggrieved by A-1 and A-9 orders to
the extent they relate to the applicant seeks to quash them.

2. The applicant commenced service under the respondents in the year 1963. After having served at various places, in January, 1997 she got posted at Kochi and is continuing there. The applicant says that her husband is also an employee of the Military Engineering Service who is on the verge of

retirement. She also says that she attained the age of 55 years as on 23.11.1996 and she has got only a short span of service to retire. As per A-1 dated 30.4.1996 she was transferred from Kochi to Bangalore. As she was aggrieved by A-1 order, she submitted a representation before the authority concerned for retaining her at Kochi. The said representation was disposed of as per A-2 order dated 18th of July, 1996 permitting the applicant to remain at Kochi till 30.10.1996. Against A-2 order another representation was submitted by her and the same was rejected as per A-3. Subsequently, A-4 representation was submitted by the applicant. While so, as per A-5 five Lower Division Clerks working at Kochi were promoted as Upper Division Clerks and were given posting at Kochi itself, says the applicant. When movement order was served on the applicant, she approached this Bench of the Tribunal by filing OA No. 1163/96. That O.A was disposed of by this Bench of the Tribunal directing the 2nd respondent to pass orders on A-8 representation therein within two months. As per A-9 order the 2nd respondent has rejected the representation of the applicant.

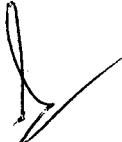
3. A-9 dated 24.1.1997 is the order passed by the 2nd respondent in pursuance of the direction of this Bench of the Tribunal in A-8 order. As per A-8 order the direction was to consider the representation of the applicant as sympathetically as possible and to pass appropriate orders.

4. The representation of the applicant as per A-9 has been rejected on two grounds. The first ground is that she happened to be one of the longest stayees in the station

complex and the second ground is that being longest stayee and the liability to serve anywhere within the Command, she has to move as ordered keeping in view of the laid down guidelines for such transfers.

5. The learned counsel appearing for respondents argued that a transfer made in public interest cannot be interfered with by the Tribunal unless it is vitiated by mala fides. There is no dispute with regard to this proposition. But the question here is, whether the reasons given for rejecting the representation as borne out by A-9 are sustainable. A-9 starts saying that the applicant is one of the longest stayees in the station complex. So, it is very evident that the applicant is not the longest stayee in the station complex. In the O.A, it has been specifically stated by making an amendment that the applicant is not the longest stayee in the station complex. Names of longest stayees in the station complex are also mentioned in Ground 'G'. There is no denial of the same in the reply statement filed by the respondents which is subsequent to the amendment of the O.A. A fact which is not denied is to be taken as admitted. That being so, it is to be taken as admitted by the respondents that the applicant is not the longest stayee in the station complex and the persons mentioned in Ground 'G' of the O.A are the persons having longer stay in the station complex than the applicant.

6. As the same A-9 concludes by saying that the applicant being longest stayee and in tune with the provisions contained in the guidelines the transfer is effected. It cannot be a case that one is one of the longest stayees and the longest stayee at the same time. Then it is also to be considered whether



the rejection of the representation of the applicant is in tune with the provisions contained in the guidelines. As per the guidelines when departmental promotion committee panel is out, the Headquarters will decide as to how many promotees will be adjusted within that Command and how many will move out. The guidelines also say that before any promotee is adjusted even within the Command, the longest stayees amongst the promotees in non-tenure stations in a Command will move to other Command as allocated. The applicant is a non-industrial staff. As per the guidelines in all cases where non-industrial staff are rendered surplus by reduction in the authorised strength and their adjustment in the same Command becomes necessary, the longest stayee in the station will be posted out. In the case of postings involving inter-command transfers, the juniormost person in the grade within the Command will be declared surplus. The guidelines also take the age factor. It says that persons having attained the age of 55 years prior to the date of issue of posting order should not be transferred except at their request to stations of their choice. The guidelines also say that when both the husband and wife are Central Government employees, the present policy is to keep both at the same station as far as possible. The guidelines further say that staff on promotion be adjusted in the same station (not necessarily in the same unit), provided vacancies are available.

7. In the reply statement it is stated that:

"it is further submitted that the contention of the applicant that these promotees are senior to the applicant is not correct".



There is no such contention taken by the applicant. It is also stated in the reply statement that the applicant's contention that five Lower Division Clerks have been promoted and adjusted in Kochi complex has no bearing as it was a subsequent event which occurred on the 28th of September, 1996. I am unable to agree with this contention. It has got relevance and bearing. In view of the retention of the fresh promotees to the cadre of Upper Division Clerks at Kochi, the stand of the respondents that the applicant was transferred along with others to liquidate the surplusage, cannot be accepted.

8. It is true that guidelines cannot be enforced before a Court or a Tribunal. But at the same time it cannot be forgotten that the guidelines have been evolved by the respondents to guide them in the matter of transfers to avoid arbitrariness. Though the guidelines are non-statutory, still the respondents, who claim that their actions are guided on the guidelines, should be compelled to follow those norms on pain of invalidation of actions taken in violation of them. For this view support is lend by the decision of the Apex Court in B.S. Minhas Vs. Indian Statistical Institute & Ors (AIR 1984 SC 363).

9. An executive agency must be rigorously held to the standards by which it professes its action to be judged. He that takes the procedural sword shall perish with that sword (see Vitarelli Vs. Seaton, (1959) 3 Law Ed 2d 1012). So, as far as the respondents are concerned, no doubt, they are bound to comply with the guidelines especially in view of the fact that in A-9 it is specifically stated that the order of rejection

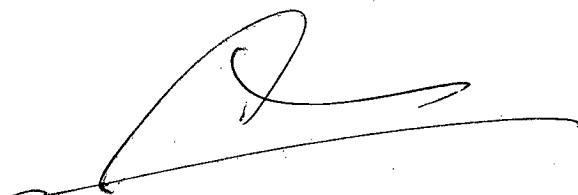
is based on the guidelines for transfers. On going through the guidelines, it is clearly seen that the 2nd respondent who has passed A-9 order has not complied with the guidelines. It is not enough to say that the rejection is based on guidelines. It should be, in fact, on strict adherence to the guidelines and the order which says that the rejection of transfer is based on guidelines should reflect it in clear terms.

10. As the question to be looked into is whether the grounds stated in A-9 are sustainable or not and as it is seen that both the grounds stated cannot be sustained as not only being vague but also being contradictory to each other and further being not in compliance with the guidelines, it is not possible to uphold A-9 order.

11. Accordingly, A-9 order is set aside. The 2nd respondent is directed to consider afresh the representation submitted by the applicant (A-8 in OA 1163/96) as sympathetically as possible with strict adherence to the guidelines for transfers, instead of simply saying that the order is passed keeping in view of the guidelines, within a period of one month from the date of receipt of a copy of this order. A-1 order of transfer shall be kept in abeyance till disposal of the representation of the applicant.

12. Original Application is disposed of as above. No costs.

Dated the 25th of July, 1997.



A.M. SIVADAS
JUDICIAL MEMBER

LIST OF ANNEXURES

1. Annexure A1: True copy of the relevant extract of the Order No.132402/96/UDC/0/EIB(S) dated 30.4.96 issued by the 3rd respondent.
2. Annexure A2: True copy of the relevant extract of the Order No.132492/96/Postings/83/EIB(S) dated 18.7.96 issued by the 3rd respondent.
3. Annexure A3: True copy of the Communication No.140103/132/E10 dated 1.10.96 issued by the 4th respondent to the applicant.
4. Annexure A5: True copy of the relevant extract of the Order No.132406/2/Cadre Review/EIB (S) dated 28.9.96 issued by the 3rd respondent.
5. Annexure A8: True copy of the Order in D.A. No.1163 of 1996 dated 25.10.96 issued by the Central Administrative Tribunal, Ernakulam Bench.
6. Annexure A9: True copy of the Letter No.140103/1404/E10 dated 24.1.97 together with the Letter No.79040/E1 C(i) dated 22.1.97 issued by the 2nd respondent.

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