

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 186/93 ~~X89~~

DATE OF DECISION 8.3.1993.

Shri John Chellappan Applicant (X)

Shri P. Sivan Pillai Advocate for the Applicant (X)

Versus

Union of India (Secy., Min. of Agriculture) & (2) others. Respondent (s)

Shri George CP Tharakan, SCGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. AV Haridasan, Judicial Member.

~~The Hon'ble Mr.~~

1. Whether Reporters of local papers may be allowed to see the Judgement? *Je*
2. To be referred to the Reporter or not? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. To be circulated to all Benches of the Tribunal? *no*

JUDGEMENT

This is the second round of litigation between the applicant, a Processing Assistant in the Integrated Fisheries Project, Kochi and the establishment of the Integrated Fisheries Project regarding transfer of the applicant to Visakhapatnam. The factual matrix is thus:

2. The applicant, who has a post-graduate degree in Science and a degree in education, has been working as a Processing Assistant in the Integrated Fisheries Project, Kochi since 18.4.1980. He was offered an adhoc promotion as Marketing Assistant by order dated 30.11.1990 which was declined by him owing to personal reasons. Again he was offered a promotion as a Marketing Assistant by order dated

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9.11.1992 which was also declined by him for personal reasons. The action of the applicant in declining the promotions caused displeasure in the mind of the 2nd respondent, the Director, Integrated Fisheries Project, who by memo dated 5.12.1992 communicated this displeasure to the applicant. Shortly thereafter, by order dated 29.12.1992 served on the applicant on the evening of 30.12.92, the 2nd respondent transferred the applicant to Integrated Fisheries Project, Visakhapatnam unit stating that he would stand relieved from Kochi on the afternoon of 31st December, 1992. Feeling that this order of transfer (Annexure A-1) was made ^{with} ~~by~~ malafide intention and was arbitrary, the applicant challenged the order in OA 1901/92 before this Tribunal. He had alleged in that application that the order of transfer impugned in that case was not based on the exigencies of service, that it was against the terms of agreement arrived at between the management and the Union in a conciliatory proceedings and that in picking and choosing the applicant who is neither the junior-most nor the senior-most Processing Assistant for transfer during the midst of academic year was arbitrary and illegal. This application was disposed of at the admission stage by this Tribunal directing the applicant to make a detailed representation to the 2nd respondent and the 2nd respondent to consider and dispose of the representation in accordance with law. It was also directed that the order of transfer impugned in that case should be kept in abeyance till the disposal of the representation. Pursuant to the above direction, the applicant made a detailed representation to the 2nd respondent, a copy of which is at Annexure A5. The 2nd respondent has by order dated 22.1.1993 rejected the representation and directed the applicant to report to the officer incharge, IFP Visakhapatnam Unit after availing the minimum joining time. It is in this background that the applicant has filed this application

impugning the Annexure A1 order of transfer and the order dated 22.1.1993 at Annexure A6 rejecting his representation against the transfer. It has been averred in the application that the impugned order of transfer was motivated by the displeasure of the 2nd respondent towards the applicant and is, therefore, mala fide, that the transfer of the applicant from Kochi Unit to Vizag Unit which is an entirely different cadre is against the provisions of Fundamental Rules 14 and 15, that the order of transfer impugned in this case is in violation of the ~~xxxxxxx~~ settlement arrived at the conciliatory meeting before the Assistant Labour Commissioner, Ernakulam on 13.3.1991 and 25.3.1991 and is, therefore, against the provisions of Section 18 of the Industrial Disputes Act, that even if the services of the Processing Assistant is required in public interest at Visakhapatnam, since the applicant is neither the junior-most nor the senior-most Processing Assistant presently working in Kochi, the action on the part of the 2nd respondent to chose him for transfer is discriminatory and violative of Articles 14 and 16 of the Constitution, that the transfer of the applicant during the midst of the academic year and while his house construction is in progress is highly prejudicial to his family life and that for these reasons the impugned orders are liable to be quashed.

3. While the application was admitted, the impugned order of transfer was stayed pending further direction to be given after hearing the counsel for the respondent further on his getting detailed instructions. The respondents filed a reply statement in which their right to file a detailed reply statement was reserved. But when the application came up for hearing on 12.2.1993, the learned counsel for the respondents submitted that as there is urgency in the matter, the reply

statement filed by the respondents should be treated as the final reply to the Original Application and that the matter should be immediately heard and disposed of. Therefore, the application was posted for final hearing on 17.2.1993 on which date I have heard the arguments of the counsel for the parties.

4. The respondents contend that the settlement arrived at before the Assistant Labour Commissioner relied upon by the applicant at Annexure A8 & A9 being only consensus arrived at during the conciliatory proceedings cannot have a permanent standing, that even if it is assumed that the impugned order at Annexure A1 is in violation of Section 18 of the Industrial Disputes Act since it is allegedly in violation of the above said settlement, the applicant should have taken up the issue before the Labour Court or the Industrial Tribunal, that the transfer of the applicant to Visakhapatnam does not offend FR 14 or 15 as Visakhapatnam Unit is not a separate cadre, that as the transfer is ordered purely in the exigencies of service as services of an experienced Processing Assistant is urgently needed at Visakhapatnam Unit, the personal inconveniences of the applicant should not stand in the way of the administrative exigencies and that it is just and necessary in the public interest that the application is dismissed.

5. The contention of the respondents that Annexure A8 & A9 cannot be considered as an agreement of settlement, but are only consensus arrived during conciliatory proceedings and that, therefore, action in variation thereof cannot be considered as a breach of the provisions of Section 18 of the ID Act is untenable. Annexure A8 relates to the disputes relating to transfer on promotion of employees from Kochi unit to Visakhapatnam of the Integrated Fisheries Project

and Annexure A9 relates to dispute in regard to transfer in the same category. Annexure A9 is the one which is relevant to the issue involved in this case. The part of this Annexure which is relevant can be extracted as follows:-

"Demand No.4. Transfer and posting of existing staff

In addition to what has already been stated in the last discussion dated 13.3.91, the Director, IFP further clarified that the transfers in the same category will be affected only on request from employees. However, it is further clarified that if Unions have got any other grievance with regard to any particular individual case, they can approach the management for their redressal."

It is evident from the above extract that the dispute regarding the transfer of staff in the same category from Kochi Unit to Visakhapatnam Unit of IFP has been ^{settled} finally and that it cannot be considered as a consensus arrived during the conciliatory proceedings. Therefore, this settlement is binding on the parties. Since the Director of the Integrated Fisheries Project, Kochi, is a signatory to the conciliatory settlement before the Assistant Labour Commissioner, I am of the view that the Director is bound to abide by the settlement under provisions of Section 18 of the Industrial Disputes Act. These two settlements at Annexure A8 and A9 were considered by this Bench of the Tribunal in OA 401/91 and it was held that Annexure A8 and A9 was a settlement which was binding on the administration. Therefore, it is idle to contend that the respondents are entitled to transfer the Processing Assistant from Kochi Unit to the Unit at Visakhapatnam against his willingness. The argument that even if the impugned order of transfer violates Section 18 of the ID Act, the application is not maintainable because the applicant should have approached the Industrial Tribunal or the Labour Court also does not stand to reason because the applicant is impugning the order of his transfer on the ground that the

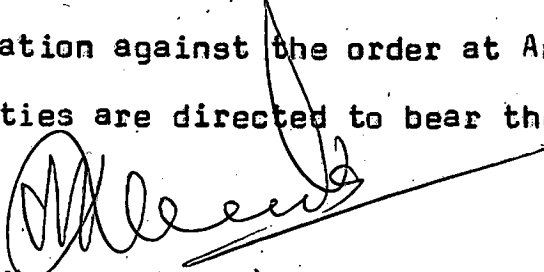
respondents have issued the order not only in violation of the provisions contained in Section 18 of the ID Act, but also on the ground of hostile discrimination offending Articles 14 & 16 of the Constitution.

6. The applicant has in his representation submitted to the 2nd respondent as also in this application categorically alleged that the impugned order at Annexure A1 was issued as a punitive measure with malafide motive on account of the displeasure in the mind of the Director for the reason that the applicant declined the adhoc promotions granted to him. Though in the reply statement it has been contended that the transfer was ordered only in the exigencies of service, the specific allegation that the displeasure of the Director was the motivating factor underlying the impugned order has not been specifically denied. Further, the applicant has in his representation (Annexure A5) mentioned that he being neither the junior-most nor the senior-most of the Processing Assistants, picking him up for the transfer is arbitrary, irrational and malafide. This ground raised in the representation against the impugned order has not been considered or dealt with in the impugned order at Annexure A6 rejecting the representation of the applicant. Even in the reply statement filed on behalf of the respondents, it has not been made clear as to why other Processing Assistants who are either senior or junior to the applicant were not considered for a transfer if the transfer of a Processing Assistant from the Kochi Unit to Visakhapatnam was absolutely essential. Though the respondents contend that the services of an experienced Processing Assistant are unavoidable in Visakhapatnam Unit, it has not been made clear why the other Processing Assistants some of them more experienced than the applicant have not been considered for transfer. It has not been stated in the reply statement or

in the order at Annexure A6 that the applicant is the most experienced or the most suitable Processing Assistant to be transferred to the Visakhapatnam Unit. The case of the applicant is that his transfer during the middle of the academic year while the construction of his house is in the mid-way and while he is aspiring to pursue his academic career for Doctorate would jeopardise not only his family life, but also his career advancement. This aspect has not been considered by the respondents. Therefore, the inference that the applicant has been subjected to hostile discrimination is irresistible. The respondents themselves have admitted in the reply statement that the applicant has been nominated for a training in Shanghai and during the course of the argument it was submitted that the applicant has already been relieved to take up the training at Shanghai. If the services of the applicant at Visakhapatnam were felt inevitable and urgent, the applicant would not have been nominated for the training and relieved to take the training. Under these circumstances, the respondents should have respected the bipartite settlement at Annexure A9, considered the filling up of the vacancy of Processing Assistant at Visakhapatnam by calling volunteers or by making other arrangements without violating the provisions of the settlement and without any discrimination in the matter of transfer. Since the allegation of the applicant that he is neither the junior-most nor the senior-most among the Processing Assistants has not been disputed, the reason behind picking up the applicant from the middle for transfer to Visakhapatnam appears to be arbitrary and irrational and the case of the applicant that this was a direct result of the displeasure in the mind of the 2nd respondent against the applicant cannot be considered as far-fetched. On a careful appraisal of the facts and circumstances brought out in the

pleadings and documents on record, I am convinced that the impugned order of transfer is unsustainable for it was issued in violation of Section 18 of the Industrial Disputes Act and also because there is an element of hostile discrimination in picking and choosing the applicant for the transfer.

7. In the result, the application is allowed, the impugned order of transfer at Annexure A1 and the order at Annexure A6 rejecting his representation against the order at Annexure A1 are set aside. The parties are directed to bear their costs.



(AV HARIDASAN)
JUDICIAL MEMBER
08.3.1993

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