

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 206 of 1997

Thursday, this the 31st day of July, 1997

CORAM

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

1. T.R. Mohanakrishnan,
S/o Raghavan Nair,
UDC, Office of the Garrison Engineer
(Air Force), Thirumala PO, Trivandrum-6
residing at TC 19/367, Kavitha,
Thirumala, Trivandrum-6 .. Applicant

By Advocate Mr. MR Rajendran Nair

Versus

1. Chief Engineer,
Southern Command, Pune.
2. Garrison Engineer (Air Force),
Thirumala PO, Trivandrum. .. Respondents

By Advocate Mr. George Joseph, ACGSC

The application having been heard on 31.7.1997, the Tribunal on the same day delivered the following:

O R D E R

The applicant, aggrieved by A-3 order 9.5.1996 issued by the 2nd respondent transferring him from Trivandrum to Jamnagar, seeks to quash A-3 and to direct the respondents to allow him to continue in Trivandrum till 13.3.1998.

2. The applicant says that he was elected to the Works Committee constituted as per Industrial Disputes Act with effect from 13.3.1996 and the tenure of the

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Committee is for two years. A-1 is the copy of the circular containing the names of elected members issued by the 2nd respondent.

3. The applicant submitted A-4 representation requesting to cancel his transfer on the ground that he has been elected as member and secretary of the Works Committee. A-5 is issued in response to A-4 representation. It is stated in A-5 that the applicant's representation against his posting to Jamnagar has been turned down as per contents of CE(AF), Bangalore letter No. 122012/AF/2049/EIB(S) dated 24th July, 1996. A-5 also contains a copy of the said letter of CE(AF), Bangalore dated 24th of July, 1996. From the same it is seen that CE(AF), Bangalore has returned the representation of the applicant "unactioned" with certain observations. Then it is not known on what basis the 2nd respondent has stated in A-5 that the applicant's representation has been turned down based on the letter of CE(AF), Bangalore dted 24th July, 1996.

4. As per clause 19 of letter No. 27133/Gen/EIC(2) dated 11.7.1990 issued by the Engineer-in-Chief's Branch, Army Headquarters, New Delhi circulated in letter No. 133501/17/EIB(S) dated 15.4.1991 by the 1st respondent, the elected representatives are protected from transfer during their tenure, except on grounds of discipline, promotion, reduction in establishment or on operational grounds. It also says that even transfer

on grounds of operational requirements and discipline shall be effected with prior permission of the Ministry of Defence. R-1, the warning list dated 8th of November, 1995, says that:

"No protection from posting to tenure station will be granted to person elected for second term consecutively or at different spells. Despite clear instructions, if a person due for tenure posting is elected as Works Committee Member/important office bearer, no protection will be granted to such person and explanation will be called for from the defaulting head of the offices".

According to the applicant, he is not elected for the second term at all.

5. Reliance is placed on R-1 by the respondents. In paragraph 3 of the reply statement, relying on paragraph 5 of R-1, it is stated thus:

"..it was clearly mentioned that if any person due for tenure station posting is elected as Works Committee Member/important office bearer, after issue of the warning list, no protection will be granted to such persons..".

It is not a reproduction of paragraph 5 of R-1 as such. It is only relying on a portion of paragraph 5 of R-1 probably to suit the convenience of the respondents. If the respondents are relying on paragraph 5 of R-1, they have to rely in its entirety and cannot disregard one portion and to rely on the rest to suit their convenience.

6. It appears that paragraph 5 of R-1 is not strictly in conformity with clause 19 of A-2 issued by an authority higher to the authority who has issued R-1.

7. In A-6 issued by the CE(AF), Bangalore addressed to the 1st respondent, in paragraph 3 it is stated that:

"It could be seen from your HQ letter No.132402/96/Service Seniority/02/EIB(S) dated 8 Nov 95, that there is no embargo has been laid down debaring an individual contesting election for an executive member of works committee either first time or second, though his name was reflected in the warning list".

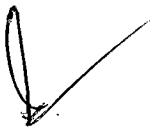
So it gives a clear idea that how he has understood paragraph 5 of R-1. Paragraph 5 of A-6 seeks for Headquarters decision. Paragraph 6 of A-6 says that:

"CWE (AF) Trivandrum is being advised to relieve Shri TR Mohana Krishnan, UDC, on receipt of your HQ's decision".

Learned counsel appearing for the applicant submitted that no communication has been received so far regarding the decision from the Headquarters. The learned counsel for respondents could not bring to my notice any decision of the Headquarters referred to in A-6. As per A-6 the applicant is to be relieved from Trivandrum only on receipt of the decision from the Headquarters.

8. A-3 order of transfer dated 9th of May, 1996 was not implemented till the date of filing of this OA, ie. 5.2.1997. As per interim order dated 7.2.1997 this Tribunal permitted the applicant to continue in his present station till 26.2.1997, if he was not relieved. As per order dated 26.2.1997 the interim order passed on 7.2.1997 was extended until further orders.

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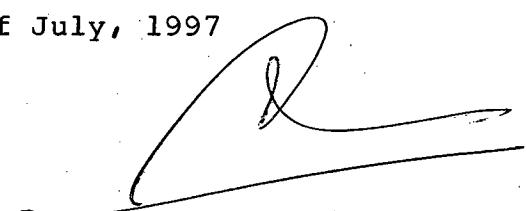


9. After hearing the learned counsel for both sides and on going through the pleadings and annexures, it appears that the question has not been considered in the proper perspective after understanding the provisions contained in A-2 and R-1 properly. Learned counsel for the applicant submitted that in the circumstances of the case, it is suffice to permit the applicant to make a comprehensive representation to the first respondent for redressal of his grievance. Learned counsel for respondents submitted that there is no objection for adopting such a course.

10. Accordingly, the applicant is permitted to make a comprehensive representation to the first respondent within two weeks from today through proper channel. If such a representation is received, the first respondent shall consider the same in the light of the relevant provisions and also in the light of the observations made above and dispose of the same by a speaking order as expeditiously as possible. Till the disposal of the representation made by the applicant to the first respondent, A-3, the impugned order, shall be kept in abeyance.

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

Dated the 31st of July, 1997



A.M. SIVADAS
JUDICIAL MEMBER

LIST OF ANNEXURES

1. Annexure A1: True copy of the Circular containing the names of elected members dated 9.3.96 issued by the 2nd respondent.
2. Annexure A2: True copy of the relevant portion of letter No.133501/17/EIB(S) dated 15.4.91 issued by the Engineer-in-Chief's Branch, Army Head Quarters, New Delhi.
3. Annexure A3: True copy of the transfer Order No.1011/7147/EIB dated 9.5.96 issued by the 2nd respondent.
4. Annexure A4: True copy of the representation dated 14.5.96 submitted by the applicant to the 1st respondent.
5. Annexure A5: True copy of the Letter No.1011/7253/EIB dated 19.9.96 issued by the 2nd respondent.
6. Annexure A6: True copy of the letter No.18071/778/EIB dated 3.1.97 issued by Commander works Engineers (Air Force), Thirumala P.O., Trivandrum-6.
7. Annexure R1: True copy of letter No.132402/96/Service Seniority/02/EIB(S) dated 08 November 1995 sent by Chief Engineer, Southern Command, Pune.

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