

Central Administrative Tribunal
Ernakulam Bench

Dated Wednesday the twelfth day of April, ..,
One thousand nine hundred and eighty nine.

Present

Hon'ble Shri G Sreedharan Nair, Judicial Member
and

Hon'ble Shri N V Krishnan, Administrative Member

OA 209/89

CJ Mathew : Applicant

Vs

1 Government of India rep. by
Secretary, Ministry of Finance
Dept. of Revenue, New Delhi.

2 Chief Commissioner of Income Tax : Respondents
(Karnataka, Goa & Kerala)
Central Revenue Building
Queens Road, Bangalore.

M/s CS Rajan, P Sankaran Kutty Nair
and TV Ajayakumar : Counsel of Applicant.

Mr PVM Nambiar, Sr CGSC : Counsel of Respondents

O R D E R

Shri G Sreedharan Nair, Judicial Member

In this application, the applicant (on promotion as Assistant Commissioner of Income-tax) who has been posted to Tamil Nadu by the order dated 23.2.89 challenges the same on two grounds. Firstly, it is alleged that there is infraction of the guidelines in the OM dated 3.4.86 issued by the Ministry of Personnel, since the wife of the applicant is employed

as a Teacher in an aided school at Trichur.

Secondly, it is stated that atleast 12 vacancies of Assistant Commissioners are therein the Cochin charge itself.

2 It was submitted on behalf of the Sr CGSC, *who has taken notice on behalf of the respondents* that the applicant is not entitled to the benefit of the aforesaid O.M. as the wife of the applicant is not employed under the State Government, being only a Teacher in an aided school. However, it was submitted by counsel of the applicant that in view of the Kerala Education Act and the rules thereunder, a Teacher in an aided school has also to be deemed as an employee under the State Government, *On the question of the existing vacancies at Cochin charge, the counsel of respondents was not in a position to state anything positive.*

3 It is seen from the impugned order that it concerns 148 *Assistant Commissioners of Income-tax (Junior)*, and that they have been put under various charges. It was accordingly seen that the applicant has been put under the Tamil Nadu charge. It is also significant to note that in the proforma which the applicant had filled up and submitted before the postings were made, next to Cochin, the applicant himself had preferred Coimbatore. It is further seen from the proforma that from the year 1969 onwards the applicant had all along *been* serving under the Cochin charge. In the circumstances

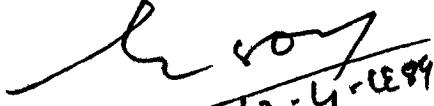
posting of the applicant in the Tamil Nadu charge
~~faulted~~
cannot, ~~prima facie~~, be ~~held~~. However, since reliance
was placed by the counsel of applicant on the guidelines
laid down in the O.M., the question whether the applicant
is entitled to take advantage of the same, and if so,
in view of the alleged existence of many vacancies
under the Cochin charge itself, whether the applicant
can be retained under that charge is a matter that does
not appear to have been considered by the respondents.
Hence, while dismissing the application we would direct
the respondents to consider the said aspect in case
the applicant makes a proper representation highlighting
the same within 5 days.

4 The application is disposed of as above.

Copies of the order may be given to the counsel on either
side to-day itself as requested by them.


(NV Krishnan)
Administrative Member

12.4.89


(G Sreedharan Nair)
Judicial Member

12.4.89