

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No.246/2007

Dated Thursday the 2nd day of August, 2007

**CORAM:**

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

T. Sreedharan

Peon, O/o Chief Engineer (NAVAC), Kochi  
residing at Sreebhavanam,  
Kannanakuzhi, Cherumood PO,  
Alappuzha.

... Applicant

By Advocate Mr. R. Sreeraj.

V/s.

1 Union of India represented by  
Secretary to Government of India,  
Ministry of Defence, New Delhi.

2 The Chief Engineer  
Military Engineer Services,  
Headquarters, Southern Command, Pune

3 The Chief Engineer (NAVAC)  
Military Engineer Services,  
Ezhimala

... Respondents

By Advocate Mr. Sunil Jose ACGSC

This Original Application having been heard on 2nd August, 2007, the Tribunal on the same day delivered the following:-

**ORDER**

**Hon'ble Mr. George Paracken, Judicial Member**

1 The applicant is a Peon (Group 'D' staff) working under the 3<sup>rd</sup> Respondent at Kochi. His name appears at serial no.4 of the Annexure A-1 impugned transfer order dated 26<sup>th</sup> April, 2006.

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2 By the said order he has been transferred from the Office of CE(NAVAC) Ezhimala at Kochi to the Office of the CE(NAVAC) Ezhimala. He made the Annexure A-2 representation dated 23/5/2006 requesting to the Respondent No.2 to cancel his posting to Ezhimala on humanitarian ground and to adjust him in any of the MES Offices situated in Kochi. By the Annexure A1(A) letter dated 22/11/2006, the 2<sup>nd</sup> Respondent rejected his request for cancellation of his posting stating that the posting of all the persons whose names are mentioned in the Annexure A1 order including that of the Applicant to Ezhimala enbloc as a policy decision as the Office the the CE (NAVAC), Ezhimala at Kochi was being shifted to Ezhimala. Counsel for applicant has also submitted that even though 21 persons have been transferred by the aforesaid Annexure A-1 order, many of them have not been relieved by the Respondents themselves and moreover, the persons at serial nos.1, 2, 9, 11 and 12 of the Annexure A 1 order have filed OA Nos.494/06, 492/06, 538/06,, 539/06 and 8/07 respectively against their transfer and this Tribunal has allowed all of them.

3 I have gone through the orders passed by this Tribunal particularly the common order in OA 538/06 and 539/06 dated 30/6/2007. The operative part of the said order is as under :-

"9. I have heard learned counsel Shri R Sreeraj for the applicant and Shri Shaji for the SCGSC appearing for the respondents.

10 The question of validity of the orders of the transfer of persons like the applicants working in CE (NAVAC) Kochi to CE(NAVAC) Ezhimala had come before this Bench in various Original Applications and the issues have been examined by us in detail in our order in OA 8/2006. In our order in OA.492/2006 and 494/2006 filed by two women employees in the same office, the orders of transfer had been quashed as it was found that there was a provision for exemption of women employees from transfer to tenure stations. The respondents have raised the very same contentions in these OAs also. It is also held in the

earlier OAs that the contention of the respondents that there is an enbloc shifting of the CE (NAVAC) office from Kochi to Ezhimala is not entirely correct as six of the constituent offices of CE(NAVAC), Ezhimala had been functioning in Ezhimala from 1998 itself and it is only the 7<sup>th</sup> office of the CE(NAVAC) which had been functioning at Kochi had been shifted to Ezhimala under the guise of enbloc shifting of the entire CE (NAVAC) to Ezhimala. The respondents cannot resort to fill up all the deficiencies of the entire complex at Ezhimala by resorting to para 57 of the Guidelines. The respondents raised an additional contention that they have also adjusted the surplus and met the deficiency referred to in Command Manning Level. If the respondents are adopting the CML as the basis for the transfers, they have to resort to the procedure prescribed in paragraphs 35 to 39 and there appears to be an exemption for Group-D employees from posting at tenure stations under these provisions, which position the respondents have also confirmed in their reply statement. As pointed out in the earlier orders there are several inconsistencies in the stand taken by the respondents. For example at one and they state that there are deficiencies in the case of Group-D employees and there is surplus at the Cochin Complex. For example in the table given in para 6 of their additional reply statement in OA 539/2006 reproduced below the figures furnished as quite contrary to the fact.

| Sl.No. | Category | CML Authorisation | Holding |
|--------|----------|-------------------|---------|
| 1      | 2        | 3                 | 4       |
| a)     | Dafttry  | 7                 | 4       |
| b)     | Peons    | 35                | 3       |

The learned counsel for the respondents has claimed during the arguments that as regards Dafttries entries in the columns 3 and CML authorisation in col.4 holding "have to be reversed and it was a typing mistake. No such explanations are forthcoming for the entries under the category of Peon which shows only deficiency. In fact in the very next para 7 of the same reply the respondents have stated thus:

"Though the holding is below the CML authorisation in both the categories of Peon and Dafttry, the postings have been issued keeping the organisation requirement of enbloc shift of the Office of the Chief Engineer from Kochi to Ezhimala as already brought out in para 5 above."

The respondents are admitting in the above paragraph that the holding in both the categories of Group-D is

below the CML authorisation. If that is so how they could resort to shifting of the applicants as falling under surplus category and such a contention has to be rejected outright.

11 Therefore I am inclined to reiterate our earlier view that the respondents are trying to justify the transfer of the applicants by some means or other and these transfers have been made by mixing up various provisions of the Guidelines without proper application of mind and in violation of the provisions regarding age limit and procedures prescribing options, etc. The conduct of the respondents in ordering these transfers is not transparent and not in accordance with the spirit of the norms laid down in the transfer policy at Annexure A-3. The respondents should have in particular considered the age factor while considering posting to at tenure stations.

11 In view of the facts and circumstances mentioned above and in line with our decisions in earlier OAs, the transfers of the applicants in Annexure A-1 order are quashed. The respondents are directed to permit the applicants to continue to work at the station in which they are presently working. The OAs are allowed. No costs."

4 The present OA is fully covered by the aforesaid order of the Tribunal and I allow the present OA also and the order in respect of the applicant in Annexure A-1 is quashed and set aside. There shall be no orders as to costs.

  
GEORGE PARACKEN  
JUDICIAL MEMBER

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