

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 259/ 2011

Thursday, this, the 25th day of August, 2011.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

1. M.J.Priyanka,
LDC, INS Zamorin,
Ezhimala, Kannur-670 310.
2. V.K.Regitha,
LDC, INS Zamorin,
Ezhimala, Kannur-67 310.Applicants

(By Advocate Mr Vishnu S Chempazhanthiyil)

v.

1. The Flag Officer Commanding-in-Chief,
(for CAPO/SSO (CP)),
Headquarters Southern Naval Command,
Kochi-682 004.
2. The Commanding Officer,
INS Zamorin, Ezhimala,
Kannur-679 310.
3. The Commandant,
INA Ezhimala, Kannur-679 310.
4. Reshma Babu,
LDC INA Ezhimala,
Kannur-679 310.Respondents

(By Advocate Mr Sunil Jacob Jose, SCGSC for R.1 to 3)

(By Advocate Mr P Santhoshkumar for R.4)

This application having been finally heard on 25.8.2011, the Tribunal on the same day delivered the following:


ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

The two applicants presently working in Naval Academy at Ezhimala as Lower Division Clerks had applied for transfer on compassionate ground to Naval

Base Kochi. Their applications were forwarded by their superiors at Ezhimala respectively on 4.3.2009 and 16.5.2009. Respondent No.4 who was also working with them had applied for such a transfer on 29.4.2010. In addition, there was one more candidate who had applied on 2.7.2010. Respondents had considered these applications and since there was only one vacancy, they have approved the transfer of respondent No.4 vide Annexure A-6 order dated 21.3.2011. This order of transfer was challenged on the ground that as per para 6 of the guidelines for transfer, all the cases will be treated alike and a person whose application is accepted and registered first will be placed senior to another person brought on waiting list subsequently. Thus, transfers will be ordered strictly in the order of seniority on the waiting list and request for granting priority to another over others will not be entertained under any circumstances.

2. The official respondents had furnished their reply. The fact as to the date of submission of application of the applicants being prior in point of time has been admitted by them. They have however, stated that the transfer of 4th respondent has been issued disregarding the seniority in submission of applications due to the reason that one kidney of her mother is removed due to cancer. They have thus stated that as the case of 4th respondent was more deserving, her transfer was effected first. The requests of the applicants for transfer have already been registered by the respondents for consideration and on availability of vacancies and relief to be posted at Ezhimala due action would be taken. The respondents have further stated that due to the shortage of staff at Ezhimala posting of any person from Ezhimala could be possible only when replacement is available. In fact the transfer of respondent No.4 also could be possible only after a newly recruited LDC was available for posting to Ezhimala.



3. Respondent No.4 has also filed a reply and justified the transfer order on the ground that her presence was very much essential as her mother, a cancer patient need the assistance.


4. Applicants have filed rejoinder reiterating the professed norm.

5. Counsel for the applicants, after referring to the aforesaid guidelines also submitted that certain amount of favoritism appears to have been shown in effecting the transfer of respondent No.4 in preference to the applicants on account of the fact that the mother of respondent No.4 is already employed in Naval Base, Kochi. Counsel has highlighted both para 5 and 6 of the guidelines which provide for preparation of a waiting list and which also stipulates that there shall be no jumping of the queue.

6. Counsel for the respondents reiterated the contentions as raised in the counter.

7. Arguments were heard and documents perused. The limited scope of judicial interference in matters of transfer is by now well settled and the counsel for the applicants has been fair enough to make a submission in this regard. His contention, however, is that in the absence of statutory rule, the professed guidelines which uniformly apply to the three wings of the defence forces should be fully followed and from that point of view, the professed norms of transfer have been violated which give a lever to the applicants to challenge the same.


8. Per contra, counsel for the respondents submitted that while four applications were received and were to be considered against only one vacancy, justice demands that the more deserving case be considered first. They have



also stated that the requests of the applicants have been kept fully alive and they would be considered for transfer in the next available vacancies.

9. The predicament of the respondents could well be understood. An employee of the respondents has been a cancer patient and the respondents are certainly not wrong when they have considered the transfer of respondent No.4 as the same would serve the double purpose of consideration of the application of respondent No.4 as well as keeping in mind the welfare of another employee (the mother of respondent No.4). At the same time, respondents have also kept in view that the applicants' cases would also be considered on availability of vacancies at Kochi and subject to availability of replacement at Ezhimala. Thus, a balance has been struck in their action to ensure that the guidelines are not thoroughly violated inasmuch as they were only bending the guidelines and not breaking it. In the event of replacements being available at Ezhimala, either by virtue of any transfer or probably by way of induction of raw recruits, subject to availability of vacancies at Kochi, the applicants would certainly be considered for transfer to Kochi. All out efforts, therefore, be made to ascertain the availability of vacancies at Kochi and in the case of any recruitment is made, the posting may be at Ezhimala so that replacement is also available, and the applicants' transfer be effected. With the above observation/directions, the O.A is disposed of.

10. There shall be no order as to costs.



Dr K.B.S.RAJAN
JUDICIAL MEMBER