

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.268/2011 & 117/11

Friday this the 22nd day of July, 2011

CORAM:

Hon'ble Dr. K.B.S Rajan, Judicial Member

O.A 268/11

**K.A Harilal, aged 48 years,
 S/o K.N Appu
 Junior Engineer (QS&C)
 GE E/M (NW) Kochi
 residing at
 Chandrakantham, Kanjiramattom P.O
 Ernakulam District, Pin – 682 315**

O.A 117/11

**Savithri Sudhakaran
 aged 50 years, W/o Sudhakaran
 Junior Engineer (QS & C) GE(I)NW(N) Kochi
 residing at Sreekripa (Vadakkedath)
 Thottathiparambu Road
 Maradu P.O, Chambakkara**

.....

Applicants

(By Advocate – Mr.R Sreeraj)

V e r s u s

1. Union of India represented by
 Secretary to Government of India
 Ministry of Defence,
 New Delhi – 110 001.

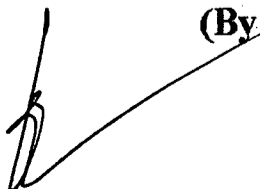
2. The Chief Engineer,
 Military Engineer Services
 Southern Command
 Pune – 411 001

3. The Chief Engineer (Naval Works),
 Military Engineer Services
 Naval Base, Kochi – 4

.....

Respondents

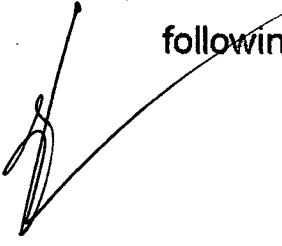
(By Advocate – Mr. Sunil Jacob Jose, SCGSC)



This Original Application having been heard on 15.07.2011, the Tribunal on the 22nd day delivered the following:

ORDER

By Hon'ble Dr.K.B.S Rajan, Judicial Member -

1. As the legal point involved in the above two Original Applications is one and the same, these O.As are dealt with and decided in a common Order.
 2. The applicants are working as JE (QS&C) in the third respondent's organisation. They are aggrieved by Annexure A-1 transfer order whereby the applicant in O.A 268/11 stands transferred to Mumbai while the applicant in O.A 117/11 stands transferred to Goa. The grievance is mainly on the ground that the professed norms of transfer policy guidelines as contained in Annexure A-2 (Vide O.A 268/11) have been violated. In fact, vide Annexure A-3 letter dated 23.08.2010, the All India MES Civilian Engineers Association has been informed by the Director (for Engineer-in-Chief, Army Headquarters) that the posting policy involved is to be complied with in letter and spirit.
 3. The policy guidelines as vide Annexure A-2, contained the following features:-
- 

(a) The following are the contingencies warranting transfer of personnel from one place to another and the time schedule is indicated against each.

- (a) Tenure stations/complexes turnover - Jan/Feb
- (b) Compassionate grounds - Feb/Mar & Aug/Sep
- (c) Maint of Command manning level - Mar/Apr
- (d) Local turn over - May/Jan
- (e) Promotions -
- (f) Mutual Basis -
- (g) Administrative ground -
- (h) Adjustment of surplus/deficiency -

(b) the individuals so transferred should make representation within 21 days on receipt of posting order in which event the same would be considered and in case of rejection of the same, they could also file an appeal before the Director General (Personnel). But in that event the move will not be held up on account of filing of an appeal.

(c) Other concessions for retiring age/time span before retirement and female employees have also been provided for as contained in Clause 58 and 59 of the guidelines.

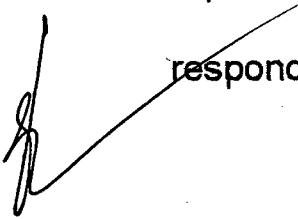
(d) In so far as the Command Manning Level posting (CML)

is concerned, the same shall be a one way traffic (without any replacement).

(e) Provision also exists for giving three choice stations by the employees and all efforts would be made to accommodate the individuals in their respective choice stations.

4. Vide Annexure A-4, initially there were transfers of as many as 38 individuals from Southern Command and atleast two individuals (Serial No.21 & 22) from Kochi were transferred (Annexure A-4 dated 06 Aug 2010). Subsequently, a supplementary transfer order was issued vide Annexure A-1 dated 08.11.2010 in which as stated, the two applicants in this O.A were transferred.

5. Availing provisions for making their representation, the applicants made due representations (vide Annexure A-5 in O.A 268/11) bringing out the guidelines and also the extent of breach of those guidelines. The same, however, had been turned down by Annexure A-6 order dated 21.02.2011 in almost a mono syllable term, "examined at appropriate level by the competent authority and not agreed to". The individual was also directed to be relieved without fail by 28.02.2011. In so far as applicant in O.A 117/11, her representation is at Annexure A-3 which was rejected by the second respondent.



6. Both the applicants by approaching this Tribunal got an order of stay/status-quo at the time of admission.

7. Respondents have contested the O.A. According to them in the Southern Command the authorised strength of JE (QS&C) is 590, against which actual holding is only 437, which works out to 74% of Command Manning Level. Applying this 74% through Kochi Complex, the maximum number of JEs that could be posted at Kochi works out to 15 and since as on date there is a surplus of 3 numbers of JE(QS&C), necessarily the transfer has to be effected.

8. Applicant's have filed their rejoinder indicating the staff position at Kochi which comes to 27 exclusive of 9 posts sanctioned for Hqs CE Zone, thus making a total of 36 JE (QS&C) and 74% thereon comes to 27 numbers. They have in fact worked out at the rate of 65% also which is the CML after effecting certain promotions and according to the applicants even 65% is not filled up at Kochi. In addition they had offered transfer to three individuals Shri T Haridasan, Shri Vinodkumar Nair and Shri JJ Kennedy who have been posted to Kochi from non-tenure stations like Agrani (Coimbatore) and Trivandrum. However, if there was excess of man power over and above CML, according to the applicants such postings could not be possible.

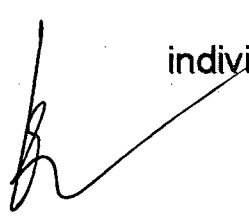
9. Respondents have filed their additional reply, once again

reiterating their stand as contained in the counter and annexed to the additional counter the staff strength position for 2008-09.

10. The applicants have filed additional rejoinder which is more exhaustive and elaborate, almost in the form of written argument.

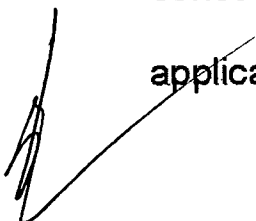
11. Counsel for the applicant has invited the attention of the Tribunal to Annexure A-4 and Annexure A-1 and submitted that though these transfer orders were effected as a matter of CML, the time scheduled (Feb/Mar) has not been adhered to. Secondly, he has stated that Annexure A-2 policy guidelines which are supposed to have been followed in letter and spirit as confirmed vide Annexure A-3, have not been followed in as much as there have been some replacements as itemised in the para 10 of the rejoinder which is normally not in the case of CML transfers. He has invited the attention of the Tribunal to various clauses in the guidelines especially clause 5, 8, 35, 36, 38 and 61. He had also submitted that whereas the law is clear that proper reasons should be given in case of rejection of the representation, Annexure A-6 communication is silent about the reason for the decision of the respondents to reject the claim.

12. Referring to Annexure A-8 order, counsel has stated that through Annexure A-8 order dated 09.02.2011 as many as six individuals stood transferred and as such taking into account the



move of 6 JEs(QS&C) and there shall be only deficiency in Kochi and hence the necessity to transfer the applicant would not arise. The counsel for the applicant has also referred to two individuals Smt.K.P Parvathy and Smt.R Bhuvana, in whose case the respondents have not relieved them on the ground that their representations are still pending. As regards the applicant in O.A 117/11, the counsel submitted that initially the said applicant had opted for Trivandrum as her first choice and she was senior to be considered for that posting. However, her name did not figure in the Annexure A-4 transfer order which contained the transfer of one Mr.Abdula who happens to be junior and who was also in the list of probable promotees. Had he not been transferred, that vacancy would have been available, where the said applicant could be posted. He has also submitted that recently one individual stood transferred from Trivandrum and thus the vacancy exists there. Thus, apart from objection by the applicants' counsel, as to the breach of the professed norms, the counsel also submitted that notwithstanding the same, the applicant in O.A 117/11 is prepared to move to Trivandrum instead of Goa.

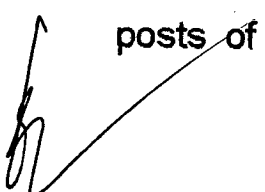
13. The counsel for the respondents submitted that the scope of judicial interference in the transfer matter is, as held by the Apex Court in a catena of cases, totally restricted. According to him at Kochi there has been excess/over the Command Manning Level consequent to which certain transfers are to be effected. The applicant in O.A 117/11 has been given transfer to Goa which is her



second choice. As regards, Mr. Abdula the counsel submitted that when he was in a tenure post, his request was for posting to Trivandrum which could not at the time materialise and as such, he stands in a better priority for being posted to Trivandrum. The counsel for the respondent also has referred to three individuals who are to be posted to Kochi on the basis of tenure transfer which receives a highest priority among transfers.

14. Arguments were heard and documents perused.

15. Though objected to by the applicants, in issuing CML transfer orders in two instalments, there is full justification. When the first transfer order vide Annexure A-4 was issued, respondents were awaiting certain promotion orders to be issued and as such they were contemplating to defer transfer of certain individuals as promotions when made, would have corresponding impact in the borne strength. However, as the promotion orders could not be issued, they had to resort to the second instalment of transfer order. It appears that while issuing the first transfer order Shri Adbula was posted keeping in view his earlier request for posting to Trivandrum. To that extent, the department's action cannot be faulted. However, in so far as the strength is concerned there appears to be some miscalculations. The SCGSC did make available the chart containing the state of actual authorisation holding as per CML. It reflected 24 posts of JE (QS&C) as authorised strength and 65% thereof has



been worked out at 16. After taking into account three transfers on tenure basis, according to the counsel, necessity arose for transferring four individuals. Two of the said transferees are the applicants and the rest two are Shri R Bhuvana and Smt K.P Parvathy, whose representations are under consideration as submitted by the Counsel for the applicant. Statistics as contained in Annexure -R1 (a document of the respondents office) show the over all ceiling of JE(QS&C) at 36 with bifurcation of 9 for Hqs Central Zone and 27 for lower formations. Admittedly CML is calculated on the basis of over all strength in the Command. Thus 65% of 36 works out to 24 and not 16. It appears the calculation mistake seems to have been committed by not taking into account the strength of 9 JE (QS&C) in the out lying areas of Kochi. If this mistake is rectified, there may not perhaps be any necessity for not only for the 2 applicants but also the other two individuals. The respondents are to undertake the exercise of verifying the overall staff strength of JE (QS&C) and arrive at the exact figure of 65% and then only they should consider whether these individuals should at all be transferred.

16. Here again even though the decision of the Apex Court in Union of India and others vs SL Abbas in (1993) 4 SCC 357 is specific that who is to be posted where is a prerogative of the examiner, if the guidelines are to be followed then female individuals should not be posted to far of places and as such the request of the applicant in

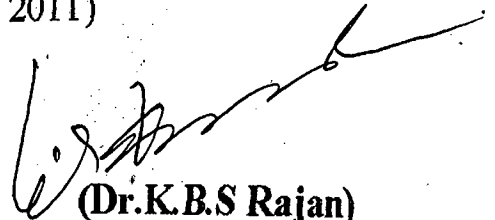


117/11 for posting to Trivandrum (or any other nearby area) should be considered. According to the counsel for the applicant Wellington, Coimbatore and Trivandrum do have vacancies and the said applicant in O.A 117/11 could be accordingly accommodated. We find substance in the contention. Thus in so far as the applicant in O.A 117/11 is concerned, she may be retained at Kochi in case the CML does not exceed 65% at Kochi and in case if it exceeds, the said applicant could be considered for Trivandrum as her first choice or other places where vacancies within CML are available.

17. As regards the other applicant in O.A 268/11, here depending upon the calculation as directed above, his retention should be considered at Kochi. In case of non-availability of vacancies, the said applicant may have to move to out, depending upon service exigencies, either to nearby place or Mumbai.

18. The CE, HQ Southern Command, is therefore directed to undertake the above exercise and arrive at a judicious conclusion and act accordingly. Till then the interim order already passed to retain the applicants in their respective places shall continue.

(Dated this the 22nd day of July, 2011)


(Dr. K.B.S Rajan)
Judicial Member