

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.27/2007

Wednesday this the 13 th day of June, 2007.

CORAM:

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

**T.R.Mohanakrishnan,
S/o Late R.Raghavan Nair,
Assistant, O/o The Chief Engineer,
Naval Works, Kochi,
residing at Ashalayam,
Palluruthy P.O., Kochi-6.**

Applicant

(By Advocate Shri R.Sreeraj)

Vs.

- 1. Union of India represented by
the Secretary to the Government of India,
Ministry of Defence, New Delhi.**
- 2. The Chief Engineer,
Military Engineer Services,
Head Quarters,
Southern Command, Pune.**
- 3. The Chief Engineer,
Naval Works,
Military Engineering Services,
Kochi. Respondents**

(By Advocate Shri TPM Ibrahim Khan, SCGSC)

**The application having been heard on 13.6.2007,
the Tribunal on the same day delivered the following.**

ORDER

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

**The applicant who is 55 years old, has put in 35 years of service of
which he spent outside of native place for 22 years and since 2002 he is at
Cochin. He is a member of JCM as also the Chairman of All India MES
Clerical Cadre and Group 'D' employees Association. The applicant now**

stands transferred from CE(NW) Kochi to CE CZ Chennai /CWE Wellington vide Sl.No.23 of order dated 27.07.06. The applicant has approached this Tribunal challenging the order of transfer inter alia on the following grounds:

(a) His transfer has been effected with a view to accommodate certain persons on promotion whereas according to Clause 22 of General Transfer Policy vide A-2 staff on promotion be adjusted in the same station provided vacancies are available. Thus in the instant case, according to the applicant, the staff on promotion is adjusted not against an available vacancy, but by creating a vacancy.

(b) The Government has formulated a policy in regard to transfer of JCM functionaries and vide A-7, the President and General Secretary of the Branch unit of the recognised Union/Association who are members of the Staff Council should not except for special reasons, be shifted from the main administrative office to sub-ordinate offices (including other offices or buildings). According to the applicant, his present transfer is violative of the aforesaid concession granted to such office bearers.

(c) The applicant has been empanelled in the list of promotees for the post of Office Superintendent, and he is likely to be promoted to the cadre shortly. And he has already expressed his intention to continue at Cochin where a vacancy of Office Superintendent exists.

2. The respondents have contested the O.A. According to them, as per the policy, during promotion, the seniormost employee of that category will be posted out to accommodate the newly promoted employee, while the promotee is junior in station.

3. Counsel for the applicant submitted that, the aforesaid contention of the respondents has no base since the same goes diagonally opposite to the policy framed vide Clause 22 of the General Policy. According to the counsel, accommodation of promotees in the same station is only, when a vacancy is available.



4. In the instant case, promotions have taken place as early as in September-October 2005, while when the applicant's transfer had taken place in July 2006. This move of the applicant according to the applicant's counsel, is only to accommodate one of the promotees as is evident from para 4 of the counter. In addition, the counsel for applicant has submitted that, in a recent communication addressed to the applicant, the fact relating to the applicant's continuation as one of the office bearers of the Association is being taken into account, and the matter is under active consideration (This has also reflected in the additional reply vide para 5 thereof).

5. Counsel for the respondents submitted that, normally judicial interference in transfer matter is minimum and the same could be, only when the transfer is issued on the basis of malafides or violation of professed norms. According to the counsel for respondents, since the applicant, the longest stayee, is posted outside, the same is in accordance with the provisions of para 8 of transfer policy.

6. Arguments were heard and the documents perused. No doubt, this is a settled law that, judicial review on transfers is only limited. In the instant case, it is evident that the applicant is the Chairman of the MES, All India Clerical Cadre and Group 'D' employees Association and this has been recognised by the respondents. As such, his transfer has to be viewed as violative of provisions contained in A-7. Secondly, independent of accommodating any promotees, had provisions of A-7 not been applicable to this case, and, had the transfer order been issued, it would have been in accordance with para 8 of the transfer policy, relied upon by the respondents.



In the instant case, however, the shift of the applicant from Cochin to Wellington is to accommodate a newly promoted individual, whereas clause 22 which specifies that, accommodation of the promotees shall be only when the vacancies are available. In other words, attempt should not be made to create a vacancy by disturbing any individual to accommodate a newly promoted individual. Thus viewed from this angle also the transfer order cannot be sustained. Thirdly, the applicant has already been enlisted in the panel of promotees to the post of Office Superintendent -Grade -II . It has been submitted by the counsel for applicant that, in the event of promotion materializing shortly, he may have to be shifted again from Wellington, since according to his instructions there is no post/vacancy of Office Superintendent Gr.II at Wellington. Taking into account all these aspects, it is clear that the respondents have not taken into account A-7 order and clause 22 of the General Policy and to this extent the transfer is violative of professed norms. It has been held by the Apex court in the case of State of U.P vs. Asokkumar Saxena (1998) 3 SCC 303, that the transfer orders may not be interfered with save when there is infraction of professed norms. Further, as submitted by the counsel for the applicant, if this transfer order is effected, in its close heels, one more transfer /move may have to be passed on the applicant on his being posted to the post of Office Superintendent. As such, it is felt that the present transfer order has not issued in administrative interest, as it may lead to issue of another order in the near future.

7. In view of the above, this O.A.is allowed. Annexure -1 order dated 27.7.06(A-1) is quashed in so far as it relates to the transfer of the applicant from Cochin to Wellington. Respondents are directed to allow the applicant

to continue in the same place and decide his posting in accordance with the rules as and when he is promoted. No costs.

Dated the 13 th June, 2007.



DR. K.B.S.RAJAN
JUDICIAL MEMBER

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