

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATED FRIDAY, THE TWENTYEIGHTH DAY OF JULY, ONE THOUSAND NINE HUNDRED EIGHTYNINE.

P R E S E N T

Hon'ble Shri S.P Mukerji, Vice-Chairman

ORIGINAL APPLICATION NO.275/89

G.G.Pillai .. Applicant

Vs.

1. The Director General,
Defence Estates, Ministry of Defence,
Dts. General Defence Estates,
R.K Puram, New Delhi-110066.

2. Asstt. Defence Estates Officer,
Panampilly Nagar, Cochin-16.

3. The Asstt. Defence Estates Officer,
Elamkam Lane, Trivandrum.

4. Asstt. Defence Estates Officer,
Dada Vydyaa Road, Panaji, Goa.

5. K.Sukumara Menon, U.D Clerk,
Office of the Asstt. Defence Estates Officer,
Goa. .. Respondents

M/s. K.Usha & M.P Ashok Kumar .. Counsel for the applicant

Mr T.M.P Ibrahim Khan, ACGSC .. Counsel for R-1 to 4

M/s. P.K Aboobacker & Joy George .. Counsel for R-5

O R D E R

Shri S.P Mukerji, Vice-Chairman

In this application dated 8.5.89 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as a U.D.C in the office of the Assistant Defence Estates Officer, Cochin, has prayed that the impugned order dated 20th April, 1989 (Annexure -IV) in so far as it transfers him from Cochin to Goa should be set

aside and that the respondents be directed to post him at Trivandrum. The brief facts of the case are as follows.

2. The applicant joined the Military Lands and Cantonments Department as L.D.C in December, 1963. He was promoted as U.D.C on 2.12.76. During the period between 2.12.63 and 8.8.85 he has undergone ten postings, four of which have been repeatedly at Goa which according to him is a hard station. His last posting at Goa was from 1.11.81 to 7.8.85. Since his wife was working in the Education Department of the Kerala Government at Mavelikkara near Trivandrum, in accordance with the policy of the Government of India to post the husband and wife in the same station as far as possible, he represented for a posting in Kerala. Since at that time there was no office of the respondents at Trivandrum, he was posted to Cochin on 8.8.85. An office of the respondents was subsequently opened at Trivandrum in 1986 and the applicant submitted a representation for his transfer from Cochin to Trivandrum to be near the place of posting of his wife. The applicant was transferred to Trivandrum by the order dated 15.7.88 on the vacancy caused by the transfer on promotion of one of the incumbents there. Since that person did not want to leave Trivandrum, the transfer order of the applicant was cancelled on 11.10.1988. The matter did not stop there, but the first respondent issued fresh order transferring the applicant again back to Goa by the impugned

order dated 20.4.1989. According to the applicant , his transfer to Goa again, is in violation of a number of directives issued by the respondents themselves. Firstly as a Group C employee he should not have been transferred except for adjustment of surplus or deficient staff or on promotion or on mutual basis or on exigencies of service in accordance with the orders at Annexure A-V issued by the Ministry of Defence. Secondly, in accordance with the Ministry of Defence's another order of 21.5.1975 at Annexure-VI , Class III and Class IV employees , as far as possible , should not be transferred/over/long distances. He has also mentioned that while the three U.D.Cs at Trivandrum , where he was to be posted have been in Kerala between five to ten years , he is being transferred out of Kerala after being in Kerala(Cochin) for the first time in his career for less than four years. None of the U.D.Cs at Trivandrum has any spouse working at Trivandrum or anywhere at Kerala. He has argued that he is being transferred to Goa to accommodate another officer from Goa to Cochin on compassionate grounds, when it has been laid down by Annexure-V order by the Ministry of Defence that such postings would be effected against near vacancies failing which against volunteers. The respondents have conceded that Goa was a tenure station and that the applicant had been posted at Goa four times earlier. Respondent 5 who has been transferred from Goa.

to Cochin to replace the applicant has indicated that he has been undergoing prolonged treatment at Cochin and that he is still ^{medical} _{on} medical leave from Goa and under treatment at Cochin, where he had been advised to take rest upto 27.5.1989 and not to travel long distances.

3. I have heard the arguments of the learned Counsel for all the parties and gone through the documents carefully. It goes without saying that having been posted at Goa which is a hard tenure station, ^{for the applicant} _^ four times in his career, another posting back to Goa when he had been transferred from Cochin to Trivandrum to be near his wife will be too harsh a treatment to him. I am satisfied that in accordance with the policy of the Government of India that husbands and wives should be posted near one another, _^ the applicant's posting at Trivandrum by the order dated 15.7.1988 was fully in accord with ^{the} _^ fairness and aforesaid policy. Even if it is admitted that his transfer to Trivandrum could not be given effect to, as the vacancy to which he was going did not materialise because the incumbent there refused to leave Trivandrum on promotion, there is no reason why the applicant should have been singled out and posted back to Goa in order to accommodate respondent 5 at Cochin. The applicant's posting at Goa is violative of a number of orders and guidelines issued by the Government of India

as has been brought out by the applicant. What is most noteworthy is that having been posted at Goa four times it should have been the turn of some other person at Cochin or Trivandrum to accommodate respondent 5. No case has been made out by the respondents to indicate that the applicant as a U.D.C possesses such unique talent or skill as would make him the only suitable person to be posted at Goa. The post at Goa where the transferred has been applicant has been lying vacant ever since its present ^S incumbent has been undergoing medical treatment at Cochin. There is no administrative compulsion for the applicant's posting at Goa. If the respondents 1 to 4 desire to accommodate respondent 5 on compassionate ground at Cochin it would be most appropriate to revive the original transfer of the applicant from Cochin to Trivandrum to create a berth for respondent 5 at Cochin and to post one of the three U.D.Cs at Trivandrum to Goa in accordance with the policy guidelines of the Government of India. Singling out only the applicant time and again for posting at Goa when there is an office at Trivandrum, where he can be posted to be near his wife, is not only discriminatory, but also in violation of the policy guidelines of the Government of India to post husband and wife

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to as nearer stations as possible. In the facts and circumstances I allow the application, set aside the impugned order dated 20.4.89 in so far as the applicant is concerned and direct that the applicant should be considered for a posting at Trivandrum in compliance of the policy guidelines of the Government of India, as discussed above. In the circumstances, there will be no order as to costs.

S.P. Mukerji
28.7.89
(S.P. MUKERJI)
VICE CHAIRMAN

n.j.i.