

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.28/2007

Friday, this the 14 th day of September, 2007.

CORAM :

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

C.K.Sasi
S/o Late C.A.Kumaran,
Office Superintendent,
O/o the Assistant Garrison Engineer
(Independent), Alwaye, residing at
'Arun Nivas', NPOL, Karumakkadu Road,
Thrikkakara P.O. : Applicant

(By Advocate Mr.R.Sreeraj)

Vs.

1. Union of India – represented by its
Secretary to Government of India,
Ministry of Defence,
New Delhi.
2. The Chief Engineer,
Military Engineer Services
Head Quarters, Southern Command, Pune.
3. The Assistant Garrison Engineer (Independent)
Military Engineer Services
Alwaye. : Respondents

(By Advocate Shri P.S. Biju, ACGSC)

The application having been heard on 11.9.2007, the Tribunal on 14.9.2007 delivered the following :

ORDER

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

The applicant is functioning as Office Superintendent under the 3rd respondent. Vide Annexure A-1 order dated 27.7.06 he was transferred from CE (NW) Kochi/AGE (1) Alwaye to CE (Navy) Vizag /GE(1) Chilka. According to the applicant the said transfer order being not in conformity with the Posting/Transfer Policy (Annexure A-2) and guidelines (Annexure A-3), he had moved a

representation vide Annexure A-4 letter dated 10.8.2006. He has specifically mentioned therein that, as per the Government letters (details contained in para 4) the sanctioned strength of Office Superintendent is as many as 13 (10 +3), while at present only six Office Superintendents are positioned at Kochi Complex. He has also referred to the names of three individuals who have longer station seniority compared to the applicant. In addition, according to the applicant, vide order dated 12.6.97 when the spouse is also employed, both husband and wife should be invariably posted in the same station so as to enable them to live a normal family life and look after the welfare of the children, especially till the children are ten years of age. In addition to the above, as per the applicant, there are compelling reasons on the ground of ailment of the applicant and his spouse to be at Kerala.

2. In response to the applicant's representation dated 10.8.06, vide order dated 5.10.06(Annexure A-5/2) the Chief Engineer, Southern Command, Pune has rejected the representation stating as under:-

“2. An application dated 10 Aug. 2006 submitted by MES/311379 Shri Sasi CK O/S of AGE (1) Alwaye stands posted to GE (1) Chilka requesting for cancellation of posting has been examined at appropriate level and rejected.”

3. The applicant has thus come up against his transfer order (Annexure A-1) and rejection of representation (Annexure A-5).


4. Respondents have contested the O.A. In their reply statement dated 27.4.07 it has been stated that, the applicant has been transferred as per transfer policy and ⁱⁿ the present station having surpluses, he has to be transferred to meet the essential job requirements of deficient units. His posting at Chilka is on job requirement basis and to meet essential requirements. Respondents have also

referred to certain decision of the Apex Court stating that, judicial review in the matter of transfer is very limited.

5. The applicant has filed his rejoinder wherein he has contended that, there is no surplus at all and as such, his transfer to Chilka is arbitrary. He has also mentioned that applicant's son is a student of Malayalam medium and as such, posting out of Kerala of the applicant would hamper the education of his son.

6. By order dated 11.1.07 this Tribunal had, by way of an interim measure, stayed the operation of A-1 transfer order qua the applicant. After exhausting all the pleadings on 13.6.07 when the case was heard, the respondents were directed to file additional affidavit to reflect as to the persons who have longer station seniority as the same would be required for adjudication of this O.A. Accordingly, the respondents furnished the additional affidavit wherein they have stated that, out of the 3 seniors referred to in the representation dated 10.8.06, one was transferred in October 2006, another could not be transferred as he came within the exempted category and the 3rd one was not actually senior to the applicant in the station seniority.

7. In his additional rejoinder, the applicant has stated that the applicant's date of joining Kochi office and that of the other individual (Shri M.N.Radhakrishnan Pillai) happened to be the same date viz., 19.8.02. In so far as the seniority in the grade of Office Superintendent, the said Radhakrishnan Pillai was promoted much earlier than the applicant and thus, his seniority in the post of Office Superintendent is taken into consideration, the said Radhakrishnan Pillai happened to be senior. In addition, the applicant is older to the said Radhakrishnan Pillai in age. The applicant in his additional rejoinder has also



stated that, there is no surplus in the category at present.

8. Counsel for the applicant reiterated all the aforementioned grounds viz., no surpluses in Kochi, applicant is not the senior-most under station seniority, the applicant's spouse is employed here, applicant's son has been studying in Malayalam medium School and medical grounds. He has, therefore, submitted that, under the above grounds the transfer order is vitiated especially, when no surplus subsists at Kochi and the main ground for transfer no longer exists.

9. Counsel for the respondents submitted that, in the reply and the additional reply, general grounds objecting to the O.A. have been raised and the same been taken into consideration.

10. Arguments were heard and documents perused. Nothing has been stated in detail by the respondents, as to how they have arrived at the surplusage as referred to in the additional reply. If the statistics provided for by the applicant (which have not been thoroughly controverted) is taken into consideration, the requirement of Office Superintendents at Kochi would have as many as 13, ^{but} ~~for~~ borne strength is only six, including a Military Officer functioning as Office Superintendents. Even if two, as surpluses, as given by respondents is taken into consideration, then also there have already been two transfers, So far, one in the general transfer and another in October 2006 as admitted by the respondents. In addition one Sadasivan Pillai, Office Superintendent (CE), Kochi superannuated in February 2007. Thus, as on date, there is no surplus in Kochi. The respondents have not specifically averred that the posting of the applicant to Chilka is warranted for administrative purposes. Though they have stated in their reply that the applicant was posted to Chilka on job requirement, nothing specific has been

given therein to justify such transfer in deviation to the guidelines on transfer as contended by the applicant in relation to posting of his spouse, children's education, medical ailment, station seniority etc. which are all in favour of the applicant.

11. In view of the above, the respondents have, not at all considered the various valid and justifiable grounds whereby the applicant has requested for reconsideration of his transfer. As discussed above, as on date, there is not any surplus also. As such, his posting to Chilka being against the professed guidelines, transfer of the applicant vide Annexure A-1 order gets vitiated.

12. In view of the above, O.A. succeeds. Impugned orders Annexure A1 (so far it relates to the applicant) and Annexure A-5 are quashed and set aside.

13. Respondents are directed not to disturb the applicant from his present place of posting. It is further made clear that, in future, if the applicant happens to be senior-most as per the guidelines etc. and if the grounds for retention do not exist, and the respondents effect any rotational transfer, they may consider the applicant for transfer as per guidelines.

14. Under the above circumstances, there shall be no order as to costs.

Dated the 14 th September, 2007.


Dr. K.B.S. RAJAN
JUDICIAL MEMBER