

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 288 / 2008

Friday, this the 19th day of December, 2008.

CORAM

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

M.O.Mathew,
S/o MM Oommen,
Junior Engineer (Electrical & Maintenance),
O/o the Garrison Engineer (Army),
Thirumala.P.O.
Trivandrum. - Applicant

(By Advocate Mr R Sreeraj)

v.

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 Garrison Engineer (Army),
Military Engineer Services,
Trivandrum. - Respondents

(By Advocate Mr TPM Ibrahim Khan, SCGSC)

The application having been heard on 17.12.2008, the Tribunal on 19.12.2008,
delivered the following:

ORDER

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

The applicant, functioning as J.E (E/M) commenced his service in the respondents' organization w.e.f. 11-05-1984. He joined the GE (Army) Trivandrum on 20-04-2003. Recently his wife had conceived after 18 years of marital life and due to her delicate health condition, the advice of the doctors is

that she should avoid exertions including long distance travel. The applicant had penned down a representation in regard to his posting which was on the anvil at that material point of time, keeping in view the above health condition of his wife. The second respondent had considered the same sympathetically and granted deferment of transfer of the applicant from Trivandrum to Nagpur till 30th April 2008. This move of the applicant was on the ground of surpluses of JE E/M at Trivandrum. The applicant's wife delivered a female child on 29th February 2008. The applicant had again made a representation dated 18th April 2008 and requested for deferment of his move for a further period of one year and further requested that preferably he be posted to any of the nearest stations i.e. Kochi, Thirunelveli or Ezhimala. However, the third respondent issued Annexure A-5 letter dated 26th May 2008 informing the AGE E/M (Army) Trivandrum that the 2nd respondent as per letter dated 8th May 2008 directed the third respondent to issue movement order on 10th May 2008 and accordingly the applicant was informed of this and was also furnished with a movement order dated 24th May 2008 proposing his date of SOS as 14th June 2008 and posted to CE (AF) Nagpur. The applicant had made a representation as according to him, the direction from the Second Respondent as above would be without considering his fresh request for deferment by one year and posting at nearby places. The fact that vacancies are available at Cochin has also been pointed out by the applicant. Annexure A-6 and A-7 refer. The latter representation was not however, forwarded by the 3rd respondent. Being aggrieved by the movement order the applicant challenged his transfer on various grounds, including that as per the guidelines, surplus position was to have been worked out with the cut off date of 31st March and as on that date i.e. 31st March 2007 there was no surplus at Trivandrum, rather, as on that date Nagpur was having surplus, and as such, posting of the applicant from Trivandrum to Nagpur is illegal and arbitrary. By an interim order by this Tribunal, the applicant has been continuing at Trivandrum.

2. Respondents have contested the OA. According to them, the applicant has the all India Transfer Liability. His representation for deferment of his posting vide Annexure A-2 was sympathetically considered and move deferred to 30th April 2008. As such, his move now ordered be not interfered with. Rejoinder and Additional Reply have also been filed.

3. Counsel for the applicant argued that if the policy is to see the surplus position as on 31st March, then in the instant case, there was no surplus of JE E/M at Trivandrum on the crucial date of 31st March 2007. As such, the posting is not based on any valid ground. The applicant is not, argued the counsel, averse to transfer but while posting him out, his domestic circumstances be also kept in view and as vacancies are available nearby, he could have been accommodated therein. In any event, Annexure A-1 order should be quashed, as it was not based on the surplus position as on 31st March 2007.

4. Counsel for the respondents submitted that the case of the applicant had been considered and it was for the reason of his wife's health condition that his move was deferred till 30th April 2008. The ground for further retention does not exist now. As regards the surplus, the counsel submitted that records produced would reflect the actual position.

5. Arguments were heard and documents produced have been scanned through. From the records produced, it is seen that it was on 19th April 2007 that the second respondent had issued a letter for liquidation of surplus holding of JEs at various complexes/stations. Trivandrum has been reflected as one having surplus holding of JE (Civil) while Nagpur had the surplus of JE (E/M). Deficient station/complex of JE (E/M) included Bangalore, Jaipur, Mumbai, Vizag, Pulgaon, Bidar and Vasco. By letter dated 16th May 2007, the 3rd

respondent gave the station seniority, clearly reflecting the designation of the applicant as JE (E/M) and in the details given, the three choice stations had also been given. However, Annexure A-1 order was issued by the second respondent, posting the applicant from Trivandrum to Nagpur. The subsequent representation dated 18th April 2008 was in fact strongly recommended by the Garrison Engineer while forwarding the representation to the second respondent. However, without referring to the above said communication, and referring only to earlier order dated 3rd January, 2008, the second respondent, on 8th May 2008 ordered the move of the applicant and sought confirmation of SOS by 10th May 2008 without fail. This was followed by another communication dated 12th May 2008 wherein also, there had been no reference of the applicant's representation dated 18th April, 2008. By communication dated 5th July 2008 it is revealed that the representation dated 18th April 2008 of the applicant was not forwarded by the CWE Wellington to the second respondent at all. Be that as it may, the respondents have, by a communication to the Senior Central Government Standing Counsel stated that there is no vacancy at Kochi or Thirunelveli or Ezhimala. Meanwhile, it is also seen from the records that one Mr. Udayakumar has joined Trivandrum office.

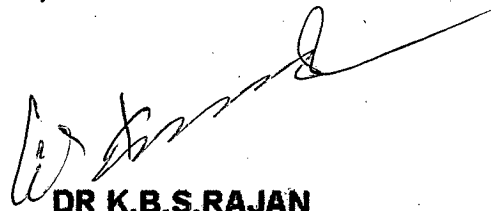
6. Obviously, there appears a clear mistake in assessing surplus at Trivandrum in respect of J.E (E/M). At the time when the C.E. Pune issued the communication dated 19th April 2007 there was no surplus at Trivandrum, rather, surplus was found only at Nagpur, where the applicant stands transferred. If on account of surplus the applicant had been transferred out of Trivandrum then, the logic in posting him at Nagpur where there is already a surplus and posting in his place at Trivandrum of another individual is not understood. There is a clear error or communication gap between the unit and the Headquarters in this regard.

7. This Tribunal is very much conscious of the fact that judicial intervention in matters of transfer is extremely limited. It is certainly for the employer to work out such posting and transfer but where the ground for transfer does not at all exist, judicial intervention could well be justified. Here, if surplus as of 31st March 2007 is the lone reason then when there is no surplus at Trivandrum, the applicant has a good case in challenging his transfer on this ground. Again, his move is not to any other place but to that place which has been declared as surplus unit in so far as JE E/M is concerned! This would mean that when the drill of 'liquidating surplus' is again conducted for the ensuing year, the axe would again fall on the applicant or some one else at Nagpur as there is surplus at Nagpur! This kind of a situation could well be avoided by recalculating the position with regard to JE E/M. The C.E. Pune could well undertake another exercise of working out the exact position of surplus of JE/EM and if at Trivandrum there be surplus, and if the turn for move out of the Trivandrum is for the applicant due to his station seniority, he could be transferred where there is shortage of JE E/M, or where the service/ administrative exigency warrants, as the C.E. Pune could consider.

8. Accordingly, the OA is disposed of with the direction to the C.E. Pune, the second respondent to reassess the surplus situation of JE E/M at Trivandrum and shortage situation at other places and if surplus at Trivandrum does exist and if the applicant is due for transfer on account of such surplus, the CE may issue another posting order to the applicant. The health ground of the wife of the applicant may not in all probability be continuing. If other domestic compulsions of the applicant deserve consideration at the hands of CE, Pune, the same be also considered, at the full discretion of the C.E. Pune. For this purpose, the representation of the applicant dated 18th April, 2008 be forwarded by the third respondent, with a view to avoiding delay, direct to CE Pune, with

copy to the Wellington and Chennai Office. Till such time the decision is taken by the second respondent, the applicant shall not be disturbed from the present place of posting.

Dated, the 19th December, 2008.



DR K.B.S.RAJAN
JUDICIAL MEMBER

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