

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM EBNCH**

Original Application No. 30 of 2007

Friday, this the 14th day of September, 2007

CORAM :

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

**M.K.Sukumaran Nair,
S/o late Krishnan Nair,
Lower Division Clerk,
O/o the Chief Engineer,
Naval Works, Kochi.**

: Applicant

(By Advocate Mr R Sreeraj.)

Versus

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

: Respondents

(By Advocate Mr.George Joseph, ACGSC)

ORDER

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

The applicant, initially appointed in the Northern Command in 1977, after 20 years, on request and losing his seniority position, got his transfer to his native State Kerala, (coming under the Southern Command). He is still continuing in the same post of LDC. He has about five years to superannuate.

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2. The applicant stands transferred from Kochi to Pulgaon, Maharashtra, vide Annexure A-1 order. Provision existed for filing of representation, which opportunity, the applicant zealously availed of and with a fond hope of his representation being favourably considered, penned one vide Annexure A-4 letter, in which he had highlighted the following:-

"(i) I have completed 29 years of service out of which I had served 21 years out of my State including two tenure stations at Manali (Himachal Pradesh) and Carnicobar. To reach at my home station I voluntarily moved to Carnicobar and got my home station posting during 1997 that too after 20 years of service.

(ii) As per your re-employment Scheme three Ex-service men have been appointed and posted to Kochi under DCRE. Instead of posting them to Kochi their appointment could be utilized for the job requirement of our department, for the station where I have been posted without disturbing a low paid employee like me.

(iii) It is also mentioned that a DPC for LDC to UDC have been approved vide your HQ letter No.150101/4/1756/E1B(R-DPC) dated 11 Mar 2006. In case the DPC was approved 6 LDCs would have been promoted to UDC and there will not be any surplus of LDCs in Kochi area.

(iv) Further the posting order is issued after commencement of academic year and it is difficult for me to shift my family at this juncture because my son is studying at Kochi. Being a low paid employee, still I am facing to look after two establishments, one at my village where my wife and parents are residing and my son and myself residing at Kochi for my son's education. Now this posting has created a third establishment to me and I cannot afford this expenditure."

3. As the representation was rejected, vide Annexure A-5 order, he has filed this O.A. on the following grounds:

(a) The impugned transfer order is in violation of professed posting policy and posting norms.

(b) There is no such job requirement or man power rationalization as provided for in the transfer order. For, there is no surplus in the cadre of LDC in Kochi. (Details of all the incumbents to the post of LDC have been given in page 3 of the O.A.)

(c) Of 29 years of the applicant's total service, already he has spent 25 years of service outside the Kerala State and within such period, he had done at least two hard station tenure.

(d) Even if it be assumed that there is surplus, since a panel for promotion to the post of UDC has already been prepared in which many LDCs figure in from this area, on their posting, there would be only deficiency in the cadre.

(e) In fact if there were surpluses, there would not have been any new posting to this area, whereas at least three postings of new appointees were made in the recent past. The authorities could have posted such new appointees to other places, had there been actually any surpluses.

(f) With the status of the applicant as LDC, it would be too difficult for him to have multiple establishments.

4. Respondents have contested the OA. According to them, while the sanctioned strength was 31, there were 39 incumbents in Kochi Complex and it was with a view to liquidating the surpluses that the applicant along with certain others has been transferred. Posting of the applicant was on job requirement basis to meet essential requirement. Pulgaon is a newly created unit.

5. The applicant had filed rejoinder in which he reiterated the earlier

contentions as in the OA and denied the details as regards the sanctioned strength.

6. In their additional reply, the respondents have stated that while working out surpluses, the overall strength of LDCs and UDCs had been taken into account.

7. During the hearing on 13.06.07, as certain material information was required, the following order was passed:-

"..... Arguments were heard in part. The applicant's main grounds of challenge on the transfer order are as under:

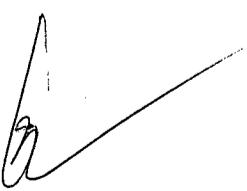
(a) The transfer of the applicant is with a view to accommodate the JCOs on deputation.

(b) Whereas according to the respondents his move is on the basis of surpluses and actually there is no surplus even as on the date of issue of the order.

(c) In any event as recently on 12.5.07, fifteen LDCs are in the panel for promotion of UDCs and in the event promotion materialising in the near future, there shall no more be any surplus as has been contended by the respondents and the situation as on date would vary.

(d) There are medical grounds and domestic grounds also which come in favour of the applicant's claim for being retained in Cochin.

In so far as (a) above is concerned, the claim of the applicant is to be disregarded, since, as rightly stated in para 4 of the counter, the order for deputation-cum-reemployment is exclusively made available for Junior Commissioned Officers of Army and this is a welfare measure for the retiring Army Personnel and there is no ban in such deputation being made at Cochin. As regards surplus, when subsequent development is taken into consideration, there may be a different scenario, whereby there may not be any surplus, rather, there can be deficiency in the total number of LDCs. If so, the question that would arise for consideration is whether the applicant's transfer would be justified.

 Counsel for the respondents submitted that the transfer is effected not only as surplus at Cochin but also as the office at

Pulgaon, has to be managed for which manpower is required.

If the applicant's transfer is more on the basis of surplus and as posting to Pulgaon is more incidental in nature, the applicant's claim should be properly considered, taking into account the domestic grounds also.

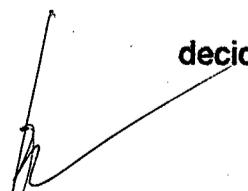
The respondents are therefore, directed to furnish an additional affidavit indicating the following:

- (a) Authorised strength of LDCs at Cochin.
- (b) Actual strength of LDCs at Cochin.
- (c) out of (b) above the number of LDCs likely to be promoted in the next few months.
- (d) After taking into account the promotions vide (c) above whether there would, still remain any surplus.
- (e) Details of other units where-from posting to man Pulgaon office could be possible.

The above information has to be obtained within a period of two weeks. "

8. The respondents have furnished the requisite details, vide additional affidavit filed on 01.08.2007.

9. Counsel for the applicant submitted that whereas earlier the sanctioned strength was reflected as 31, now, it has been reduced to 20, vide the tabular column of the additional affidavit. Thus, the respondents are not coming forth with the exact figure. However, he has relied upon the other details, especially the admission that if promotion to UDC is made, then there would be no surpluses in LDC. The Counsel also submitted that the fact that the applicant had been transferred to Kochi Complex on his request on compassionate ground whereby he had forgone his rich seniority may also be kept in view while deciding the case.

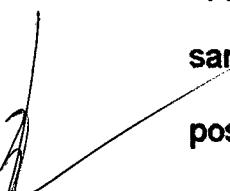


10. Counsel for the respondents relied upon the additional affidavit and the details furnished. Further he had stated that the applicant has All India Transfer Liability.

11. Arguments were heard and documents perused. The details furnished in the additional affidavit have also been considered. The details furnished therein have been exactly the ones which were called for and the dexterity in drafting the Affidavit deserves appreciation.

12. Transfer is certainly an incidence of service and no one has any vested right to stick to the same place or specify a particular place of posting. To that extent, the respondents are correct. However, in the instant case, what is to be seen is whether there is any absolute necessity to move persons from Kochi on account of surpluses. Surpluses are to be worked out keeping in view the probable variation in the near future both by way of retirement or promotion. Again, if the version of the applicant is taken for face value, the respondents have inducted three new faces as LDCs during the period when the Complex is allegedly having surpluses. If so, there does not appear any logic in posting. For, if appointments need not be deferred, even then, respondents could have well posted such new entrants to other places if they themselves volunteer. Or else, even the promotion could accompany transfer order, which is the normal practice and is also provided for vide para 49 of the Annexure A-3 guidelines.

13. Pragmatism is to be kept in view in posting low paid employees. The applicant having lost his seniority to the extent of 20 years, is languishing in the same post of LDC for over 29 years. This loss of seniority is for having himself posted to his native place. Of course, such a compassionate posting need not

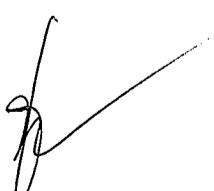


be eternal and normal period of three years is provided for in the guidelines and the applicant has crossed the same. Nevertheless, keeping in view the fact that once the promotions are effected there would be absolutely no surpluses as admitted by the respondents.

14. If only the promotion to UDC had preceded the transfer order, obviously, the applicant would not have been transferred. Again, the request of the applicant is more rationale – cancellation of transfer order and if so inevitable that he has to move out, then the place of posting be at another choice station (i.e. Port Blair) and such a posting be not during the middle of the academic career of his son. The Respondents, while passing the rejection order vide Annexure A-5 do not seem to have taken into account such a just request.

15. Taking into account all the above, it is evident that the transfer of the applicant has to be held as illegal and unjust, as the basic purpose for which such a transfer is resorted to (surpluses) does no longer subsist. If there be no surpluses, then the transfer of the applicant may have to be branded as 'unreasonable'. Be it frequent or unscheduled or unreasonable transfer, such transfers are to be avoided as held by the Apex Court in the case of B. Varadha Rao v. State of Karnataka, (1986) 4 SCC 131, wherein the Apex Court has held as under:-

"6. One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralisation. It therefore follows that the policy of transfer should be reasonable and fair and should apply to everybody equally. But, at the same time, it cannot be forgotten that so far as superior or more responsible posts are concerned, continued



posting at one station or in one department of the government is not conducive to good administration. It creates vested interest and therefore we find that even from the British times the general policy has been to restrict the period of posting for a definite period. We wish to add that the position of Class III and Class IV employees stand on a different footing. We trust that the government will keep these considerations in view while making an order of transfer." (Emphasis supplied)

16. In view of the above the OA is allowed. Impugned orders at Annexure A-1 in so far as it relates to the applicant and Annexure A-5 are hereby quashed and set aside. The respondents are directed not to disturb the applicant from the present place of posting. However, in case he is the senior most in the station seniority and if there be any inevitable contingency to move some of the incumbents in future, he may be considered for such a transfer after the completion of the current academic session and to the extent possible to a choice station, which the applicant may prefer, provided he does not come within any of the exempted category.

17. There shall be no order as to costs.

(Dated, the 14th September, 2007)



Dr. K B S RAJAN
JUDICIAL MEMBER

CVR.