

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 302/2006

WENESDAY THIS THE 30th DAY OF AUGUST, 2006

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

P. P. Purushothaman S/o P.P.Pythal
Assistant Engineer (Planning)
Kannur Central Division
Central Public Works Department
Payyannur
residing at No. II/667
Ammankowal Quarters, Edat P.O.
Payyannur, Kannur District.

Applicant

By Advocate M/s. Krishna Prasad & Hari Sharma.

Vs.

- 1 Union of India represented by the
Additional Director General
Central Public Works Department
Rajaji Bhavan, Basant Nagar, Chennai-90
- 2 The Additional Director General (SR)
Southern Region, 1st Floor, B-Wing
Rajaji Bhavan, CPWD, Basant Nagar,
Chennai-90
- 3 The Superintending Engineer (Coord)
SR/CPWD, Rajaji Bhavan, Basant Nagar
Chennai-90
- 4 The Executive Engineer
Kannur Central Division
Central Public Works Department
1st Floor, KMC Building
Near Gandhi Maidan, Payyanur
Kannur District.
- 5 K. V. Dhananjayan
Assistant Engineer,
Kannur Central Sub Division-2
CRP Campus,
Peringom, Kannur District.

Respondents

By Advocate MR. S. Abhilash, ACGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

This Application is filed by the applicant who is working as Assistant Engineer (Planning) in the Kannur Central Division of the CPWD at Payyannur against the impugned transfer order posting him to Calicut and further directing him to handover the work under him to the AE, Kannur Central Sub Division, in purported violation of the guidelines issued in the matter. The applicant has also alleged malafides and extraneous consideration in the transfer.

2 The applicant had joined duty at Payyannur on 14.7.2003. He has thus not completed the period of tenure of three years in the station. The second respondent as per OM dated 29.12.2005 had laid down the policy for rotational transfer of AEs of various stations (Annexure A1) according to which the period of tenure in regard to all stations in Kerala is four years. A list of persons who were notified for transfer in accordance with the guidelines has been issued by OM dated 29.12.2005 in which the applicant's name was not included in the list appended to Annexures A1/2. However the second respondent issued further order dated 16.3.2006 partially modifying Annexure A-1 with regard to one of the stations in Kerala namely 'Peringom' fixing the period of tenure at that station as two years and a Readiness list was issued dated 15.3.2006 in which also the applicant's name did not find place. Thereafter the applicant was served with the order dated 3.5.2006 in Annexure A-3 transferring him from Payyannur to Calicut. He submitted two

representations Annexures A-5 and A-6 which have not been considered by the competent authority and he was pressurised to handover charge and give effect to the transfer order immediately. The applicant has also alleged that he was transferred out of Payyannur to oblige one Shri K. V. Ddhananjayan, the 5th respondent who was working as AE at Peringom who has been trying for a posting in the place now held by the applicant and it is the contention of the applicant that reduction of the period of tenure at Peringom from four years to three years is also vitiated by malafides as reduction seems to have been done only to oblige the 5th respondent. Soon after Annexure A-3 transfer order was issued the applicant was directed to handover to the 5th respondent by issuing another order dated 10.5.2006 and this is a clear indication that the transfer was effected only to facilitate posting of the 5th respondent at Payyannur.

3 The respondents initially filed a counsel statement stating that the transfer/posting policy of AEs (Civil & Electrical) was changed reducing the period of tenure at Peringom under Kannur Central Division Payyannur from four years to two years and also the applicant had been served with a readiness list of Engineer (Civil) (Planning) who have completed the tenure period of two years vide OM dated 31.1.2006. In pursuance of the same only, the transfer orders were issued to the applicant on 3.4.2006. It was also reported that the 5th respondent assumed charge on 12.5.2006 and the applicant had approached the Tribunal after handing over the charge.

4 The applicant rebutted the contentions of the respondents. The

respondents filed another counsel statement enclosing the minutes of the meeting held by the CPWD Engineers' Association with the DG showing that 'Peringom' has been shown as a 'hard area' for the purpose of transfer alone and recording the decision that the AEs who had completed two years of tenure at Peringom, shall be entitled for transfer. They have denied the contentions of the applicant that there has been extraneous consideration in revising the period of tenure. A regular reply statement was filed by the respondents at this juncture in which it was submitted that as per the guidelines in the office order dated 16.3.2006, the normal tenure of posting in a station in Kerala is four years and normal continuous tenure for posting in the whole state of Kerala is 8 years. The applicant has been working for more than 4 years in Kannur Central Division from 31.12.2001 and due to administrative reasons the applicant was transferred from Kannur to Calicut which is not outside Kerala State. They also relied on the Hon'ble Supreme Court's judgment in AIR 1991 SC 532 holding that " A government servant holding a transferable post has no vested right to remain posted in one place or the other, and he is liable to be transferred from one place to the other".

5 In the meanwhile the applicant had filed M.A. 709/06 for a direction for disbursement of salary and in spite of the specific orders of the Tribunal to maintain status quo the respondents have clarified that the applicant was asked to be present on 12.5.2006 to hand over the charge to the 5th respondent. Since the applicant did not turn up

the 5th respondent assumed charge on 12.5.2006. They further averred that the transfer order was issued by the competent authority and since the direction was given by the Superintending Engineer that the applicant has to move first, he was directed to hand over charge to the 5th respondent and there was no pressure as alleged to transfer him. The applicant was absent from 12.5.06 to 15.5.06. Therefore the relieving order was served on him on 16.5.2006 and the respondents were not aware of the order of the Tribunal till 19.5.2006 and the relieving order was sent by registered post on 15.5.2006, hence the status quo order could not be carried out as the applicant had already been relieved on 12.5.2006. The applicant however, strongly refuted this contention submitting that he had applied for two days C.L. on 12th and 15th, clubbing the holidays on 13th and 14th and joined duty on 16.5.06. When he had left the office, his room was got locked and the relief papers signed by the Executive Engineer was pasted over the doors of his office room. He had informed about the interim order of this Tribunal to the 4th respondent and he had occupied another room in the office on 16.5.2006 and he had attended office on 17.5.2006 by which time the room initially occupied by him was opened and that he was still continuing in the same office and the keys and other relevant documents are still in his custody. He strongly denied that he has handed over the charge or has relinquished the office and averred that he had not stayed away from duty unauthorisedly. Since he was available in the office there was no need to send the relief orders by

post.

6 I have heard the learned counsel for both sides. It is contended strongly by the learned counsel for the applicant that transfer of the applicant was in clear violation of the norms and guidelines and it was further substantiated by the action of the respondents specifically by Annexure A-4 directing him to hand over the charge to the 5th respondent that the action of the respondents is motivated by extraneous consideration

7 The respondents have contended that interference of Courts/Tribunals is very limited in the matter of transfer which is a matter very much within the purview of the Administrative authorities and are not to be interfered with unless there is an extraneous element of arbitrariness capable of being discerned in the process. This OA was examined with reference to the records in the above context as throughout the pleadings and arguments, the applicant's side has alleged the presence of extraneous consideration and malafides. Admittedly the transfer policy holding the field envisaged a normal continuous tenure posting in stations in Kerala as four years with the normal continuous tenure of 8 years for the entire Kerala state. It was on this basis that the office order dated 29.12.2005 Annexure A-1/2 was issued enclosing the list of persons eligible for transfer. The applicant's name did not figure in the list. By Annexure A-2 office order No. 7/06 dated 16.3.06. a change was made to the policy fixing the period of two years only for posting at 'Peringom' and the 5th respondent figures at Sl. No. 5 on the list appended to

this order. Therefore by the time the transfer order of the applicant was issued on 2.5.2006, there was no particular reason for the applicant to think that he would face any order of transfer as he was not coming under the provisions of either the office order of 29.12.05 or revised norms in the office order dated 16.3.2006. The respondents have contended that another readiness list of AEs (Civil) had been issued by Annexure R-3 dated 31.1.06 in which the applicant figured at Sl. No. 48 i.e. the last person in the list. However, this contention is not found to be correct as this is only a readiness list of AEs who have completed the tenure in the Planning Division and asking for options whether they will be interested in continuing in the post in Planning Division or to be considered for field postings. According to the office order NO. 7/2006 the rotational transfer between the field and training unit would be after completion of the minimum period of two years and it is not to be made applicable in the case of AEs who indicate their willingness to continue in the Planning unit on their own volition. It is seen that the applicant had intimated his consent to continue in the Planning Unit and requested that he may be considered for field posting later.

8 It is obvious from the above that the applicant's transfer was not the result of a normal completion of tenure either at the station in which he was working or in the Planning unit and that in the normal course he should not have been transferred under the policy guidelines issued by the respondents' office.

9 Since the applicant has alleged that the respondents have shown undue haste in implementing the transfer order even in the face of the status quo direction of the Tribunal, this aspect has been gone into in detail. I have gone through the Miscellaneous Application as well as the reply made in the learned counsel's statement. The averments of the applicant that he had duly applied for leave on 12.5.06 with permission to club the holidays and therefore reported for duty on 16.5.06 after expiry of the leave sanctioned is borne out by the records produced by the respondents. On the face of these records I do not understand the need for the relief order hastily issued by the respondents in Annexure A-1 and the charge report which has been made unilaterally. I do not find any substance in the argument of the respondents that the orders of the Tribunal dated 16.5.2006 which was issued in the presence of the learned counsel for the respondents was not made known to the respondents. In the transfer order itself no substitute had been posted in the applicant's place, though it was mentioned that Sl. No. 22 (i.e. the applicant) along with some others will move first, no indication was given as to whom the charge should be handed over. The 5th respondent whose name was included in the readiness list of transfer, has not been transferred by the impugned orders but he has been directed by the OM dated 10.5.06 to take over the charge of the work of the applicant and this fact was not brought to the notice of the Tribunal and it is in this context the applicant has contended that the whole exercise of his transfer had been only to

show favour to the 5th respondent who has been working in the Peringom unit and had been trying to be accommodated at Payyannur. The applicant has also contended in this regard that by virtue of his posting in the Planning unit he has come across many irregularities committed by the Peringom unit in which the 5th respondent is working and the posting of the 5th respondent to the same unit was motivated to help the 5th respondent to conceal these facts and thus save him. The respondents have not contested this allegation. They have admitted the fact that the 5th respondent was not posted in the place of the applicant and had not been transferred at all. In view of the reduction of the tenure at Peringom, the applicant need not face transfer and it was never indicated that there was any intention of transferring him. It is not the function of this Tribunal to go into a roving enquiry on the allegations and counter allegations. However, the records produced and the submissions made before me would indicate that there is some element of arbitrariness shown against the applicant which is reflected in the undue haste with which, in spite of the interim orders of this Tribunal, the applicant had been unilaterally relieved without waiting for him to join after the sanctioned leave. Haste is also shown in the direction to the applicant to handover his work to the 5th respondent whereas in the normal course the handing over is indicated in the transfer order itself. If at all the intention was to see that the applicant moved first to get the orders implemented, he should have been directed to handover charge to the seniormost

officer in the Planning unit and there was no need to bring in the 5th respondent without posting him to the post and also after having made it clear that he was put in readiness for transfer out of Payyannur Division which includes Peringom also. According to the transfer guidelines given by the respondents, those AEs working in the Planning Division were allowed to continue beyond the minimum period of two years in case of willingness and in that respect also the applicant was not liable for transfer at this juncture as he had expressed his desire to continue on 9.2.2006.

10 In the conspectus of the facts and circumstances of the case, I am of the view that the transfer of the applicant is not justified at this juncture with reference to the guidelines of transfer issued by the respondents in Annexure A-1 and A-2. Annexure A-3 to the extent of the applicant and Annexure A-4 orders are quashed. The applicant shall be allowed to continue in the post in which he was working as AE Planning at Payyannur and shall be paid salary from 12.5.2006 the date from which he was on leave. However, this order shall not be a bar on the respondents to consider his transfer in future in accordance with the guidelines as and when he completes his normal tenure. The OA is allowed as above. No costs.

Dated 30-8-2006.

Sathi Nair
SATHI NAIR
VICE CHAIRMAN

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