

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
O.A.No.318/05
Monday this the 25th day of July, 2005.

CORAM:

HON'BLR MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

K.Josekutty, Senior Teacher,
Under Director General, Assam Rifles,
Shillong-11. Residing at flat No.410,
Army Welfare Housing Organization,
Prasanna vihar, Opp.High Court,
Kochi-31.

Applicant

(By Advocate Shri M.P.Krishnan Nair)

Vs.

1. Union of India rep. By Secretary,
Ministry of Home Affairs,
North block, New Delhi.
2. The Director General,
Assam Rifles, Shillong-11, Meghalaya,
3. Deputy Director,
Assam Rifles, Shillong-11,
Meghalaya.

Respondents.

(By Advocate Shri George Joseph, ACGSC)

The application having been heard on 25.7.05
the Tribunal on the same day delivered the following:

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant in this O.A. was working as a Senior Teacher under Director General, Assam Rifles, Shillong-11. When he was imposed the major penalty of compulsory retirement he challenged the enquiry proceedings as being without jurisdiction in O.A.660/02 which was allowed by this Tribunal vide judgment dated 17.9.2004 setting aside the enquiry proceedings and directing the respondents to reinstate the applicant and in any case not later than within two months from the date of issue of the orders and to grant him all consequential benefits retaining liberty for the

respondents to treat the period of unauthorised absence as per fundamental rules.

2. Respondents have now issued impugned orders A6 and A6(a) posting the applicant to 1 Assam Rifles which is an insurgency area bordering Burma. The applicant assails that order on the ground that there are no facilities available to stay there for the applicant and for his children for their education. He is a Senior Teacher directly recruited with B.Ed and Science qualification with five years experience, and therefore, he cannot be forced to teach in primary school where there is no post of Senior Teacher. The applicant has filed an M.A.No.652/05 pointing out the four places where the vacancies are available and the respondents were directed by this Tribunal to get instructions as to the availability of any vacancy in 11 Assam Rifles Unit.

3. The respondents have filed a reply statement to the O.A. as well as in response to the M.A.485/05 filed by the applicant in pursuance of the directions of this Tribunal. The elaborate arguments of the respondent's counsel have been heard. We could not find out anything from the reply statement or from the arguments of the respondents as to whether any vacancy exists in the four places as pointed out by the applicant for the post of Senior Teacher. Counsel for respondents also stated that at present the vacancy is available only in I Assam Rifles and according to the approval of the Ministry of Home Affairs vide their letter dated 19.8.2003, Assam Rifles battalion are authorized following category of teachers for schools under them: (a) Senior Teacher-01 (b) Junior Teacher -02 and (c) Hindi Teacher-03 (Total -06). The above categorization of teachers is not based on their seniority in service but in the category in which they are recruited/promoted, the basis being their educational qualification. Hence, no preference is made to any category while carrying out posting. It is further submitted that there is no vacancy in 4 Assam Rifles and 5 Assam Rifles. As per Peace Establishment, Assam and Rifles Training Centre, School, Dimapur and Directorate General Assam Rifles, Shillong are not authorised any government teachers. Hence, Government Teachers

and cannot be posted in the Assam Rifles Training ~~Centre~~ School and at the Directorate. The vacancies will arise in 4 Assam Rifles only in August, 2007 and in 5 Assam Rifles in February, 2008.

4. Learned counsel for the applicant stoutly denied this statement during the course of argument and also in the rejoinder he submitted that the Senior Teacher's post is very much available in the unit and at present that post is being held by a junior teacher who has been kept in charge of the post and that post has not been regularly filled up, considering that others are holding the post respondents are contending that there is no vacancy.

5. There is no direct reply to the question asked to the respondents as to whether a vacancy of Senior Teacher exists either in 11 Assam Rifles or in the place from which the applicant's services were terminated or in any of the other units. We are, therefore of the view that there is no point in further putting the same question to the respondents since the contentions in the reply statement only relate to the competency and track record of the applicant. Respondents submit that the Tribunal has directed for reinstatement of the applicant into service and not reinstatement to a particular unit since, the applicant is an Assam Rifles employee and he is a holder of the transferable job in a para military force and therefore he has no right to demand a posting in a particular place.

6. No doubt the orders reinstating the applicant did not contain any specific direction to post him to a particular place from where he was relieved and he is liable to join a post anywhere where the Assam Rifles units are located. While conceding the legal position the applicant has no right to be posted to the same place from where his services were terminated at the same time he cannot be forced to work in a lower post than the post from which he was terminated, to which he was duly selected under the

statutory rules. The applicant has also brought to our notice the Assam Rifles Teaching Staff Recruitment Rule, 1980 relating to the recruitment of Assam Rifles Teaching Staff, vide Notification dated 17.3.1981 (A11). According to these Rules, the post of Senior Teachers are to be filled up 50% by Direct Recruitment and 50% by promotion failing which by direct recruitment. It is not denied that the applicant was appointed under the 50% Direct Recruitment quota vide order dated 30.12.1983 in the scale Rs.1400-2600. The educational qualification prescribed for the post of Senior Teacher by Direct Recruitment is a Degree from a recognized University, a Degree in Teachers Training and at least 5 years teaching experience and proficiency in teaching through Hindi and English medium. The applicant fulfills all these qualifications. The applicant has sought in the earlier O.A.660/02 filed by him for a declaration that the applicant is entitled to be reinstated as Senior Teacher without any break, as if there is no compulsory retirement in pursuance of A-38, A-40 and A-43 in that O.A. and to get the entire consequential service benefits including monetary benefits. We found that the applicant is entitled to the reliefs sought for and accordingly, set aside the enquiry proceedings as being without jurisdiction and directed the respondents to reinstate the applicant as Senior Teacher to which he was recruited after following the regular recruitment procedure, and the argument of the respondents that, since there is no vacancy of Senior Teacher, he is liable to be posted anywhere, has no locus standi. He cannot be posted in any category other than that of a Senior Teacher in a High School. Moreover, the respondents are also denying the submission of the applicant that there are vacant post of Senior Teacher as clearly mentioned in the M.A.652/05 filed by the applicant which have not been regularly filled up and that there are other posts of Senior Teachers in 4 Assam Rifles and 5 Assam Rifles where the High Schools are located.

7. Under these circumstances, we are of the considered view that the respondents herein have been hedging the main issue and not considered the prayer of the applicant. They have not complied with the directions of this Tribunal to reinstate him in the

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proper spirit. Even though the directions of this Tribunal for reinstatement of the applicant was given in September 2004, the applicant could not join the service and he has been out of job for more than 4 years and is forced to stay in a residence at Cochin for the study of his two adolescent children who are studying in IXth and VIII th Std. in Kendriya Vidyalaya Naval Base, Cochin and to look after the aged ailing parents and therefore, has been subjected to considerable hardship. In the face of such attitude taken by the respondents, we are of the considered view that the above extenuating circumstances have to be taken into account and we quash the order(A6(a) issued by the 2nd respondent and direct the respondents to appoint the applicant to the post of Senior Teacher in any of the Assam Rifles Units, with reference to the specific vacancies pointed out by the applicant in para 2 of the M.A.652/05 and pass appropriate orders within a period of one month from the date of receipt of a copy of this order. Since the matter has already been delayed for almost one year we also direct that the copy of this order may be sent to the 1st respondent viz., Secretary, Ministry of Home Affairs in order to ensure that these directions are complied with within the time prescribed in this O.A.

8. O.A.is allowed with the above directions. No costs.

Dated the 25th July, 2005.



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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SATHI NAIR
VICE CHAIRMAN