

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.319/2007

Friday, this the 1st day of February, 2008.

CORAM :

HON'BLE SHRI GEORGE PARACKEN, JUDICIAL MEMBER

A Remeshkumar
Mechanic (Ice Plant),
Integrated Fisheries Project,
Cochin-16
Residing at IFP Staff Quarters,
Block-II, B-12,
St.Francis Church Road, Pullappady,
Cochin – 682 018.
By Advocate Mr.T.C.G.Swamy

... Applicant

V/s.

- 1 Union of India represented by
The Secretary to the Government of India,
Ministry of Agriculture
Dept. of Animal Husbandry & Dairying,
New Delhi
 - 2 The Director in charge
Office of the Director,
Integrated Fisheries Project,
Cochin-16
 - 3 Smt. S.Girija, Director-in-Charge,
Office of the Director,
Integrated Fisheries Project,
Cochin-16
 - 4 Under Secretary to the Government of India,
Ministry of Agriculture,
Dept. of Animal Husbandry & Dairying,
New Delhi
- ... Respondents.

By Advocate Shri Shaji V A for Mr.TPM Ibrahim Khan SCGSC



The application having been heard on 28.1.2008 the Tribunal delivered the following on 1.2.2008:

(ORDER)

Hon'ble Shri George Paracken, Judicial Member

The applicant who is a mechanic (Ice Plant) working at Cochin Unit of the Integrated Fisheries Project is aggrieved by the Annexure A-1 Office Order No.26/2007 dated 11.4.2007 by which he was transferred to the Vishakapatnam Unit. According to the applicant, his transfer order is arbitrary and in illegal exercise of powers resulting in substantial prejudice and damage to him. The applicant had earlier approached this Tribunal against the aforesaid transfer order dated 11.4.2007 and the same was disposed by Annexure A-2 order of this Tribunal in OA No.249/2007 dated 13.4.2007 giving an opportunity to the applicant to make a representation to the respondents so that the respondents would consider the same in accordance with the extant rules and instructions and dispose of it by a passing a reasoned and speaking order. The applicant was also given liberty to approach this Tribunal again if he is still aggrieved. Pursuant to the aforesaid direction of the Tribunal, the respondents have passed the aforesaid Annexure A-4 order dated 11.5.2007. His submission before the respondents were the following:-

- i If a post is transferred from Cochin to Vizag, the resultant effect is surplusage and if that is so, the general principle of law that the junior most has to be transferred will apply. He is neither the junior most nor the senior most. He was picked and chosen for a differential treatment.
- ii A year ago, two posts of Mechanic (Iceplant) at Vizag were rendered surplus by the Ministry of Agriculture (D/o AHD&F) and the posts along with the incumbents were transferred to FSI. Hence, there is no justification of the transfer of the present post from IFP Cochin to Vizag Unit.



- iii There is a binding agreement between workmen and the management of IFP under the Industrial Dispute Act to the effect that there will not be a transfer of a workman from Cochin to Vizag Unit except with the consent of the concerned workman. He has stated that he did not give any consent for such transfer."

2 The aforesaid submissions were examined by the respondents and informed the applicant as follows:-

"Since there is no sanctioned post of Mechanic (Iceplant) in Vizag Unit, in the exigency of work, it was decided to transfer one post of Mechanic (Iceplant) in the pay scale of Rs.3050-4590 operated at Headquarter along with the incumbent to IFP Vizag Unit without affecting the work at Cochin. The present transfer was effected in view of the above mentioned extreme exigencies and therefore the question of surplusage and transferring junior most does not arise.

The pay scale of Rs.4000-100-6000 as mentioned on the Transfer Order No.26/2007 dated 11.4.2007 was a typographical mistake, which was rectified by the IFP by indicating the correct pay scale of Rs.3050-4599 vide their Corrigendum No.A1/4-1/2005/467 dated 12.4.2007.

Transfer of two posts of Mechanic at Vizag to FSI was effected as a result of reorganisation of IFP wherein the workshop section as a whole along with posts, incumbents and machineries were transferred to FSI. The two mechanics transferred to FSI belonged to the workshop section. The transfer of certain units of IFP was the policy decision of Government, that too, along with post and staff and hence they were not rendered surplus.

The agreement between the workman and the management of IFP regarding transfer referred by the applicant are only the conciliation proceedings held in 1991 before the ALC on the strike notice of INPEA over a charter of demands and the main issue therein was the transfer on promotion of employees from Cochin to Vizag and transfers in the same category with regard to posts that already existed in IFP, Vizag. In any case, such conciliatory proceedings should not, once for all, stand in the way of exercising the powers and duties of the Head of Department. There are instances of several such transfers effected in the past years. Here in the present case, the situation is entirely different as there is no sanctioned post of Mechanic in IFP Vizag Unit and in view of the extreme exigencies, as explained in their letter dated 26/4/2007, the post of Mechanic (Iceplant) had to be transferred as a scientific re-deployment, in public interest.

The transfer of post along with incumbent has the approval of




Government."

2 Thereafter, the applicant was relieved by Annexure A-5 Office Order No.44/2007 dated 16.5.2007 and he had joined the Vishakapatnam Unit with effect from 4.6.2007.

3 The applicant has challenged the initial transfer order dated 11.4.2007, the corrigendum issued to it dated 12.4.2007, the order dated 11.5.2007 passed by the respondents pursuant to the direction of this Tribunal vide order dated 13.4.2007 in OA 249/2007; and his relieving order dated 16.5.2007 in the present OA raising various objections.

4 First of all, the applicant has submitted that the impugned Annexure A-4 order dated 11.5.2007 was not passed by the first respondent as directed by this Tribunal in its aforesaid order dated 13.4.2007. Secondly, he has submitted that the post transferred by Annexure A-1 is in the scale of Rs.4000-6000, whereas the applicant was only in the scale of Rs.3050-4590. Later on, it was corrected by the corrigendum dated 12.4.2007 without application of mind. As submitted by the applicant in his representation to the respondents, it was again reiterated in this OA that his transfer was as a result of surplusage at Cochin and in accordance with general principles of law, only the junior most person should have been transferred. Again he has submitted that since two years back, two posts of Mechanic (Iceplant) at Vizag Unit were rendered surplus by the first respondent, there was no justification for his transfer from IFP Cochin unit to IFP Vizag Unit.



5 Respondents in the reply has refuted all the grounds raised by the applicant in the OA. They have also categorically submitted that the impugned Annexure A-4 order dated 11.5.2007 was issued with the approval of the first respondent and with due application of mind

6 We have heard Advocate Mr.T.C.G.Swamy for the Applicant and Mr.Shaji VA for Mr.TPM Ibrahim Khan SCGSC for the Respondents. The respondents have explained the reasons for his transfer to Vizag Unit clearly in its order dated 11.5.2007. It is for the department to decide as to who should be posted at a particular unit. It is not for this Tribunal to interfere in such matters and to hold any enquiry in to the reasons for such transfer. I therefore do not find any merit in the submissions made by the applicant. Moreover, pursuant to the Annexure A-5 order dated 16.5.2007, the applicant had already been relieved and he joined Vishakapatnam Unit of the respondents on 4.6.2007.

7 In the above facts and circumstances of the case, OA is dismissed. There shall be no orders as to costs.


GEORGE PARACKEN
JUDICIAL MEMBER

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