

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 343
~~XXXXXX~~

1990

DATE OF DECISION 25-1-91

Krishnakumar Applicant (s)

Ms. K. Usha Advocate for the Applicant (s)

Versus

The Secretary, Ministry of Respondent (s)
Defence, New Delhi represents Union of India and 3 ors.

Mr. NN Sugnapalan, SCGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S. P. Mukerji, Vice Chairman

The Hon'ble Mr. N. Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

N. Dharmadan, Judicial Member

The applicant is a Senior Auditor working under the 4th respondent, the Deputy Controller of Defence Accounts (Navy) Area Accounts Office, Naval Base, Cochin. He is challenging Annexure A.1 order of transfer dated 19-3-1990 shifting him from Cochin to Goa.

He is challenging the order on the ground that it is against the norms laid down by the Ministry of Defence for the transfer and postings of Group-C staff,

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(Annexures A-II and A-III) and ^{issued by} without considering his choice station ^{nominated by} when asked for vide CDA(N) Memo Np.AN/1/39 Vol.XX dated 7-12-89 as mentioned in Annexure IV. He further submitted that this order is illegal because the applicant was chosen for transferring out of Kerala when number of other officers who are continuing in Kerala for about 15 to 20 years. He raised some of his personal problems which require sympathetic consideration for his continuance in Kerala for the time being.

3. The applicant filed Annexure-A.V and A.VI representation dated 1-1-90 and 3-4-90 respectively requesting the respondents to retain him in Kerala. The later representations has been filed after the transfer order Annexure-A.I. There was no response. Since the applicant's request was not considered by the respondents he filed this application under section 19 of the Administrative Tribunals Act 1985. We ~~have~~ admitted the application on 25-4-1990 and granted an interim relief allowing the applicant to continue in the present post at Cochin.

4. The respondents filed a reply statement denying all averments and opposing the application. They have stated that the transfer of the applicant and his posting at Goa is necessitated on account of the exigencies

of service and it has been made in public interest.

But the explanation ~~of the~~ given for the exigencies of service and public interest by the respondent in the reply statement is not satisfactory. They state that it is only "to accommodate volunteers to Kerala, who are larger in number as compared to less in number of DAD officers in Kerala State and who are serving outside Kerala State for many years as compared to individuals already serving in Kerala State", that the present transfer of the applicant had been ordered. They have also produced Annexure R-1 transfer policy of the Department contained in paragraphs 368 to 380 of Defence Accounts Department Office Mannual, Part-I.

5. The transfer policy as contained in the Defence Accounts Department Office Mannual, Part-I read with the norms of transfer mentioned in Annexure A-II and A-III indicates that Group-C employees should not be transferred except in the following cases:

"...e(i) adjustment of surpluses and deficiencies of personnel borne on common roster;

(ii) Promotions;

(iii) compassionate grounds/mutual basis,

(iv) exigencies of services or administrative requirements

f. The following criterion will be observed while issuing postings/transfers of group-C employees

(i) Non compulsion/turn-over of personnel from non-hard station will be effected, except

- (ii) There will be a fixed tenure for a hard station is prescribed from time to time. Requests for longer periods will be considered on merit.
- (iii) Every effort will be made to accommodate a person at any desired station after he has completed a tenure at a hard station. For this purpose such requests will be forwarded to this Directorate General if the choice station is not within your jurisdiction.
- (iv) Person attaining the age of 55 years or over will not be ordinarily transferred, except on their own requests to their stations of choice, unless the transfer is necessitated by promotion.
- (v) Compassionate postings including those of spouses of Government employees, in the desired stations morally be effected against clear vacancies, failing which against volunteers....."

Further in ordering the transfers of members of the department from one office to another, the respondents shall 'ensure equality of treatment for all, so far as it is possible to attain this'. Arbitrary and unprincipled transfers are prohibited by the above policy statements. The respondents are bound to follow a uniform and fixed policy and principle for ordering transfers of the officers out of the State.

5. The applicant submitted that without disturbing many of the auditors who have completed 15 to 20 years of service in the State of Kerala he had been transferred from Cochin to Goa. This is illegal and arbitrary and

against the equality clause contained in the transfer policy as mentioned in the provisions of Defence Accounts Department office Manual Part-I read with the norms for transfer contained in Annexure-A.II and A-III. He has given a list of such officers who have put in more than 15 to 20 years continuous service in this State. Even though the respondents submitted that the list of officers mentioned by the applicant in the re-joinder, namely M/s. P.R. Nambiar, P.P. Jacob, Smt. Geetha Chandran, D.R. Nair, G.P. Nair, Smt. Savithri have only put in less number of years of service ~~xxxxxxxx~~ at Cochin than the applicant it was denied by the applicant in the course of the arguments and asserted that the above officers completed 15 to 20 years continuous service in Kerala and only after transferring these officers, the applicant can be transferred out of Kerala.

6. Since disputed questions of fact arise due to the denial of the fact stated by the applicant it requires further examination by the competent authority. Hence, we think it would be proper to dispose of this application in the interest of justice with some directions particularly because of the pendency of Annexure A-VI representation

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submitted by the applicant objecting to the Annexure A-1 transfer order.

7. On the facts and circumstances of this case, it would be fair and proper for the respondents to prepare a scheme for the transfer of officers out of the State satisfying the equality clause contained in the policy statements in the Defence Accounts Department Office Manual Part-I and list of officers with their length of service and number of years they have put in Kerala and consider them for transfer, taking into account the number of years each of them served in Kerala for shifting to accommodate from outside volunteers who have represented for posting to Kerala as indicated in the counter affidavit so that the respondents can avoid arbitrariness in the matter of transferring officers out of Kerala. The applicant can also be transferred in such manner applying the scheme considering his seniority among others based on the length of the service he has put in Kerala and comparing the same with that of the service of others.

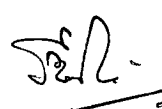
8. Accordingly, we dispose of the application with the directions that the respondents should dispose of Annexure A-VI representation in the light of the aforesaid principles and observations within a period

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of three months from the date of receipt of a copy of the judgment. Till then, the impugned order at Annexure-A.I shall be kept in abeyance by the respondents only in so far as the transfer of the applicant from Cochin to Goa.

9. In the result, the application is disposed of as indicated above. There will be no order as to costs.


(N. Dharmadan)
Judicial Member


(S.P. Mukerji)
Vice Chairman

25-1-1991