

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.350/98

Wednesday this, the 20th day of January, 1999.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

V.N.Purushothaman,
Peon, Defence Pension Disbursing Office,
Kottayam.

..Applicant

(By Advocate Mr.M.Rajagopalan)

vs.

1. Controller of Defence Accounts,
506 Anna Salai,
Madras -18.

2. Defence Pension Disbursing Officer,
Kottayam.

..Respondents

(By Advocate Mr.P.R.Ramachandra Menon, ACGSC)

O R D E R

The applicant is an ex-serviceman, reemployed as a Peon under the second respondent. When he was discharged from the Defence Force he was suffering 20% disability on account of breathing problems. He was initially re-employed in the Office of the Controller of Defence Accounts, New Delhi. While he was working in the office of the Deputy Controller of Defence Accounts, Airforce, New Delhi, on his request on compassionate grounds, he was transferred to the Defence Pension Disbursing Office, Kottayam in January, 1988. While the applicant was working there, an order was issued in November, 1994 transferring the applicant from Kottayam to the Zonal Office, Defence Pension Disbursement Office, Trivandrum. The applicant challenged the order in O.A.1666/94. There was an interim stay in that case. However on service of notice on the Application on the respondents, the transfer was cancelled. Again the applicant was by order

dated 12.1.1998 transferred to Cannanore. Alleging that the transfer of the applicant who was suffering from Asthma to Cannanore, a coastal area, was arbitrary and unjustified and on various other grounds the applicant filed O.A.No.84/98 challenging the order of his transfer. The above application was disposed of by this Tribunal with a direction to the second respondent to consider the representation submitted by the applicant taking into account the fact that the applicant was discharged from the Army as a disabled person, his present physical condition and his domestic circumstances in the light of the guidelines in regard to transfer and posting of Class IV employees and to give the applicant a speaking order within a period of one month from the date of receipt of copy of the order. Pursuant to the above order of the Tribunal, the second respondent has passed the order dated 19.2.98(Annexure-A4) turning down the request of the applicant for cancellation of the transfer on the ground that suffering from breathing trouble or Asthma does not entitle the applicant for exemption from transfer in accordance with provisions contained in paragraph 375 of Office Manual Part I, that the case of the applicant that he has got school-going children was no reason for cancellation of transfer and that as there is surplusage in Group-D at Kottayam and shortage of Group-D staff in Cannanore, he being the seniormost Group-D employee in Kottayam, was rightly chosen for transfer.

2. This order Annexure-A4 has been communicated to the applicant with a covering letter Annexure-A5 informing that the applicant would be relieved of his duties in the second respondent's office with effect from 27.2.98. It is

aggrieved by the above orders that the applicant has filed this application, challenging Annexures A4 and A5 orders and for a direction to the respondents not to transfer him from DPDO, Kottayam or to transfer him to DPDO, Pathanamthitta, where according to him a vacancy exists. The applicant assails the impugned orders on the ground that it is devoid of application of mind, that the transfer of the applicant is against the guidelines which prohibit transfer of Class IV employees except in very special circumstances like adjustment of surplus and deficiencies, promotions etc., that the hardship of the applicant suffering from Asthma in working in a coastal area like Cannanore was not taken note of while disposing of his representation and that the impugned order of transfer of the applicant has been held out of malafides.

3. The respondents in their reply contend that the representation submitted by the applicant was considered in obedience to the directions contained in the order of the Tribunal in O.A.No.84/98, that the applicant was discharged from Army not on medical grounds, but only on completion of his term, that the guidelines contained in Ministry of Defence O.M.No.32(4)/73/D(Appts) dated 21st May 1975 is not strictly applicable to the DAD, that in any view of the matter the same had not been violated in transferring the applicant, as the applicant was transferred on account of surplusage of Group-D employees at Kottayam in so far as there are three Group-D employees including the applicant working at Kottayam against a sanctioned strength of two and because there is acute shortage of Group-D employees at Cannanore where there are only two as against a sanctioned strength of thirteen, that the decision to transfer

the applicant was taken on the basis of a policy decision to strengthen the Group-D position in the office of PAO(ORs) DSC,Kannur and that as the impugned order was issued only in public interest, judicial interference is not called for. It has also been stated that the applicant is the seniormost among the Group-D employees serving in Kottayam and therefore, he was rightly chosen for transfer to Cannanore as there are no volunteers for a posting at Cannanore.

4. Sri Rajagopalan, the learned counsel appearing for the applicant with considerable tenacity argued that while passing the impugned order Annexure-A4, the first respondent did not bear in mind the direction contained in the order of the Tribunal in O.A. 84/98 to consider the representation taking into account the fact that the applicant was discharged from Army as a disabled person, his physical condition and domestic circumstances in the light of the guidelines in regard to transfer and posting of Class IV employees. The counsel stated that from the extract of Daily Order Part-II(Annexure-A1) and the Discharge Certificate(Annexure-R1) which show that the applicant was discharged on medical grounds, that the contention of the respondents that the applicant was not discharged on medical grounds but on the completion of the term is against fact. He argued that even in the face of a definite direction by this Tribunal in its order in O.A.84/98, the first respondent did not consider the fact that the applicant was discharged from the Army Service as a disabled person and the fact that the applicant suffering from Asthma would be put to great hardship if he is transferred to a coastal area like Cannanore. The counsel further argued that if the transfer of

the applicant was for adjustment of a surplus Group-D employee, according to the rules in regard to re-deployment or adjustment of surplus staff, it should be the juniormost in the cadre that is required to be redeployed or transferred and the applicant not being the juniormost even according to the respondents, the decision to transfer the applicant for adjustment of surplus Group-D employees, is not justified. The learned counsel further argued that the contention of the respondents that the applicant has the longest stay in Kottayam is against the facts because Sri V.K.Mohandas, another Group-D employee working at Kottayam, though has been regularly appointed with effect from 26.7.88, he has been working there as a casual labourer long prior to that date. The case of the respondents that there is a surplusage at Kottayam is also not borne out by record as admittedly one Group-D employee Sri Damodaran was transferred from Cannanore to Kottayam in 1994 and if there was no sanctioned post normally Sri Damodaran would not have been transferred to Kottayam, argued the learned counsel. The method in which the applicant has been singled out for transfer to Cannanore is arbitrary and irrational, argued the learned counsel.

5. The learned counsel appearing for the respondents on the other hand argued that the transfer being a incident of service and the applicant not being one either holding a non-transferable post or exempted from transfer, according to the provisions of paragraph 375 of Office Manual Part I, the challenge against the impugned order can succeed only in case the applicant is able to establish that the order is vitiated by malafides and that as the applicant has not been

able to establish that, the application is only to be dismissed.

6. Given the facts and circumstances of the case emerging from the pleadings and documents brought on record my anxious consideration, I am of the considered view that the order transferring the applicant from Kottayam to Cannanore, is arbitrary and that the first respondent has not taken into consideration the relevant matters while passing the impugned order Annexure-A4 even in spite of a specific direction in the order of the Tribunal in O.A.84/98 that while disposing of the representation, the fact that the applicant was discharged from Army as a disabled person and his present physical condition should be taken into account and the guidelines in regard to transfer of Group-D employees should be borne in mind. The contention of the respondents that the applicant was not discharged from Army on medical grounds, but was discharged on completion of the term, does not appear to be correct because in the extract of Daily Order Part II:EME Personnel(Annexure-A1) it is stated as follows:-

"SOS/SORS to EME Depot Bn Secunderabad for discharge from service on Medical Grounds ..."

From the document produced by the respondent, Annexure R1 also it is seen that the applicant was discharged being 'LMC'(Lower Medical Category). In the face of the admission of the respondents that the applicant had suffered 20% disability, it is idle to contend that the applicant was not discharged on medical grounds from Army, but on completion of the term. That the applicant was transferred from Delhi to

Kottayam on his request on compassionate grounds and that the applicant is suffering from Asthma are not disputed by the respondents. The contention of the applicant that the disease of Asthma would get aggravated in a coastal area like Cannanore and that this aspect has not been taken into consideration by the first respondent while disposing of his representation and that for this reason the Annexure-A4 order is devoid of application of mind in regard to relevant aspects, cannot be brushed aside as meritless. What the first respondent in the order Annexure-A4 has stated about the ground canvassed by the applicant for cancelling the order of transfer is that Asthma is not one of the diseases which would enable the applicant to claim exemption from transfer under paragraph 375 of Office Manual, Part I. The first respondent has lost sight of the fact that the applicant did not claim exemption from transfer but had only appealed to him that his hardship in the event of his being transferred to a coastal area should be taken into account. Obviously the first respondent has not taken that aspect into consideration at all. The respondents do not have a consistent case regarding the applicability of Annexure-A2 guidelines in regard to the transfer of the employes under them. In paragraph 4 of the reply statement, referring to this aspect, the respondents have stated that :

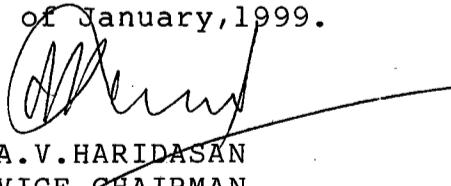
"It is also submitted that the transfer norms/guidelines issued by the Ministry of Defence vide Annexure A2 is not strictly applicable to D.A.D. and in any view of the matter the same has not been violated in any manner."

To show that there has been a surplusage of Group-D in Kottayam, no material has been produced by the respondents. Further if there are three Group-D working against a sanctioned strength of two, it is not made clear as to how the third Group-D employee Mr.V.K.Damodaran was transferred

from Cannanore to Kottayam in the year 1994 without there being a sanctioned post. It is not the seniormost who will have to be redeployed in the event of a surplusage and the rationale in picking up the applicant who is neither the seniormost nor the juniormost, is not explained. While considering the station seniority, the period of service rendered as a casual labourer in the station also cannot be left out of consideration. Thus it is evident from the materials on record, that there was no logical or rational yardstick in deciding to transfer the applicant from Kottayam to Cannanore. The decision to transfer the applicant, therefore, is manifestly arbitrary. Though transfer is an incident of service and judicial intervention with administrative orders like transfer and posting would be justified only in exceptional circumstances where the order is vitiated, once arbitrariness is established the action has to be interfered with. Further the first respondent did not consider the fact that the applicant a disabled ex-serviceman suffering from Asthma could be the worst choice for transfer to a coastal area like Cannanore.

7. In the light of what is stated above, I am of the considered view that the transfer of the applicant from Cannanore to Kottayam and the impugned order declining to cancel the order of transfer have to be set aside. In the result, the impugned orders are set aside. There is no order as to costs.

Dated this the 20th day of January, 1999.


A.V. HARIDASAN
VICE CHAIRMAN

LIST OF ANNEXURES

1. Annexure A-1 : True copy of the Daily Order Part-II EME Personnel dated 3-2-87.
2. Annexure A-2 : True copy of the OM No.32(4)/73/0/(RPPTS) dated 21-5-75 issued by Ministry of Defence.
3. Annexure A-4 : The impugned order No. AN/1/104/KTM dated 19-2-98 of the 1st respondent.
4. Annexure A-5 : The covering letter No.0P00/KTM/AN/Conf1/04 dated 26-2-98 of the 2nd respondent.
5. Annexure R-1 : True copy of the relevant pages of the Certificate of the Applicant which states that his medical category is C.E.E. and he is fit for Civil Employment.

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