

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 358 of 1990
~~KAXXMX~~

DATE OF DECISION 7-11-1990

P.N.R.Nair Applicant (x)

Mrs K Usha Advocate for the Applicant (x)

Versus

Union of India & 3 others Respondent (s)

Mr KA Cherian, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, 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? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes No*
4. To be circulated to all Benches of the Tribunal? *Yes No*

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

The applicant, a Senior Auditor working under the Deputy Controller of Defence Accounts(Navy), Area Accounts Office, Naval Base, Cochin, (the fourth respondent) has in this application filed under Section 19 of the Administrative Tribunals Act challenged the order at Annexure-I/^{issued}by the Deputy Controller of Defence Accounts transferring him from Cochin to Goa. In the application, the applicant has averred that during his service career for the last 27 years he has been working outside Kerala ^{at} distant places for 20 years against and that he has been discriminated/ ^{by} transferring ~~him~~ out of Kerala while persons who had never served out of Kerala and

have been working for 15 to 20 years at Cochin and ^{at} ~~in~~ other places in Kerala have been retained. It has been alleged that in the impugned order of transfer, the respondents have violated the guidelines contained in the Ministry of Defence orders dated 3.6.1983 and 21.5.1975. It has also been averred that picking out the applicant for transfer out of Kerala while retaining those who had served in Kerala for longer term is discriminatory and arbitrary. The applicant therefore prays that the impugned order of transfer may be quashed and the second respondent be directed to consider and dispose of his representation dated 4.4.1990 at Annexure-V in accordance with law, taking into account the facts and circumstances averred therein.

2. In the reply statement filed on behalf of the respondents, the impugned order of transfer has been justified on the ground that it is made in the interest of service. It has also been averred that the instructions at Annexure-II and III have no application for transfers in the Defence Accounts Department and that the transfer of staff in the Department is governed by the provisions contained in paragraphs 368 to 340 of Volume I Part 1 of the Defence Accounts Office Manual. It has also been averred that the representations made by the applicant have been considered fairly and objectively and that he has been informed of the result. According to the respondents, as no legal rights of the applicant have been violated, he is not entitled to the reliefs claimed.

3. We have heard the arguments of the learned counsel and have also carefully gone through the documents produced. The applicant has claimed that as per instructions contained in the memorandum of the Ministry of Defence dated 3.6.1983, Group 'C' employees are not to be transferred except in the circumstances enumerated in Clause(e) of the above memorandum. Clause(e) of the above memorandum(Annexure-2) reads as follows:

"Group C employees should not be transferred except in the following cases:-

- i) Adjustment of surpluses and deficiencies of personal base on common roster.
- ii) Promotions.
- iii) Compassionate grounds/mutual basis.
- iv) Exigencies of services or administrative requirements."

According to the applicant, his transfer under the impugned order at Annexure-I does not fall within any of these categories. Though in the reply statement it is stated that the transfer is necessitated in the exigencies of service, the impugned order of transfer does not show that any administrative exigency exist in ordering this transfer. Further, it has not been stated in the reply statement that the transfer is ordered because the services of the applicant is absolutely essential at Goa or that his continuance at Cochin is detrimental to the interest of service. Admittedly, the order of transfer does not fall within the first three categories mentioned in Clause(e) of the memorandum. The learned counsel for the respondents submitted that this memorandum does not relate to the transfer of staff in the General Defence Accounts. The caption of the memorandum itself

would make it clear that the memorandum was pertaining to transfer and posting of Group 'C' and D staff of the Defence Lands and Cantonments Service. The applicant is not a member of the Defence Lands and Cantonments Service as he belongs to the Defence Accounts Department. Therefore, obviously the applicant cannot claim the benefit of Annexure-2 memorandum. Similarly, the Annexure-III memorandum also contains a similar Clause as Clause(e) in Annexure-2, namely, Clause(4) wherein it has been mentioned that Class III personnels should not be transferred except in the circumstances mentioned in Clause(e) of Annexure-2. But this memorandum also is not applicable to the case of the applicant because it relates to transfer of Class III and IV employees of the Defence Installations. The applicant does not belong to the Defence Installation. Now the only question to be considered is whether the applicant has been discriminated against in transferring him while retaining other persons with longer stay at Cochin or in Kerala. Paragraph 370 of the Office Manual referred to in the reply statement of the respondents states as follows:-

"Transfers of individuals serving at popular stations will be effected generally on the basis of seniority of stay at those stations, barring compassionate cases, cases where the CDA considers the retention of an individual to be essential in the interests of work etc., to the extent necessary to accommodate members who have a legitimate claim to serve at such stations and those who are being repatriated, after a spell of service, at difficult stations."

In paragraph(v) of the application, the applicant has averred that many Senior Auditors, e.g. Mr PP Jacob, Mr.RP Nambiar and Mrs Geetha Chandran who have been serving continuously in

Kerala for more than 10 to 20 years have been retained in service in Kerala, while he who has already served for 20 years outside Kerala and has been in Kerala ^{only} for the last 7 years has been chosen to be transferred out. In Annexure-IV representation dated 29.12.1989, the applicant had mentioned that he has been working outside Kerala for 20 years, that persons who had already completed 15 to 20 years in Kerala are still serving in Kerala and that considering these circumstances, he might be allowed to continue at Cochin or in the alternative, be given a posting to any of the following stations, ^{viz.,} ~~xxxxxx~~ Alwaye, Trichur, Kottayam or Trivandrum. In Annexure-V representation dated 4.4.1990 made by the applicant after receipt of the impugned order of transfer, the applicant has given the names of 10 Senior Auditors who have been serving in Kerala for periods ranging from 10 to 20 years. Since it has not been stated in the reply statement that the service of the applicant is unavoidable in Goa or that his continuance in Cochin or any other stations in Kerala is detrimental to the interest of service, we are not convinced ^h that the exigencies of service require transferring the applicant out of Kerala. If the exigencies of service do not warrant such a transfer, then while selecting the applicant to be transferred out of Kerala, the respondents should have made an objective analysis of the data given by the applicant in his representations regarding the service tenure of other Senior Auditors in Kerala and seen whether it would be justifiable to transfer him out of Kerala while retaining them

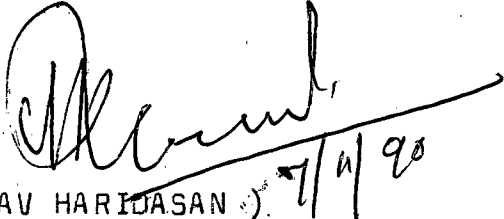
in Kerala. In the reply filed to the rejoinder, the respondents have stated that Shri GP Nair, who has been serving at Cochin from 1.4.1982 has been allowed to continue there on health grounds, that other persons mentioned in the application and the rejoinder have been working in Cochin only for lesser period than the applicant and that one Smt.Savithri has been transferred out of Cochin with effect from 15.5.1990. It has also been averred that the representation of the applicant was disposed of and the decision had been communicated to him on 15.5.1990. But it is admitted by the learned counsel for the respondents that Smt.Savithri has been transferred to some place within Kerala only. The averment in the application and the rejoinder that very many persons who have been serving in Kerala for 10 to 20 years have been retained in Kerala has not been controverted in the reply statement. The allegation in the application that the applicant out of 27 years of his service career has been serving outside Kerala for 20 years also is not disputed. It has also been admitted by the learned counsel for the respondents that there are vacancies of Senior Auditor in other stations in Kerala. It has also been admitted that no substitute has been posted in the place of the applicant. Though transfer in the case of an employee holding a transferable post is an incident of service and though the guidelines regarding transfers do not clothe the employee with any right, if manifest discrimination is seen in dealing with a particular

individual, judicial intervention becomes unavoidable and justified. Generally the Tribunal will not interfere in routine administrative matters of the Departments like transfers. But once it is seen that even in such matters there is glaring partiality and lack of objectivity, the judicial conscience will not permit to let the partiality and lack of objectivity to be perpetrated. We find that in this case the respondents have not given objective consideration to the facts mentioned by the applicant in his representations Annexure-IV and V. Since it is admitted that there are vacant posts of Senior Auditors at Cochin and other stations in Kerala, unless there is any compelling reason why the applicant should not be accommodated in any of these stations, we feel that the applicant should not be transferred to a station outside Kerala. In these circumstances, we are of the view that the impugned order^h of transfer has to be quashed and the respondents be directed to consider the retention of the applicant in Cochin or if that is not possible, to give him a posting to any of the stations in Kerala.

4. In the result, the impugned order of transfer at Annexure-I is set aside. The respondents are directed to retain the applicant at Cochin and if^r for any reason the retention of the applicant at Cochin is found to be impracticable, to give him a posting^{at} in any other stations^r in Kerala as^{was} ~~is~~ done by the respondents in the case of

Smt Savithri and similar other persons who have been serving in Kerala for longer time than the applicant.

5. We had by our order dated 8.5.1990 ordered that status quo should be maintained in regard to the relief of the applicant. The applicant was allowed to work in the office of the fourth respondent from 10th to 14th of May, 1990 but was not allowed to work thereafter. The days on which the applicant has worked should be treated as duty and the remaining days though the applicant was kept out by the fourth respondent not allowing him to work there on the ground that the relieving orders have already been issued should be regularised by grant of Extra Ordinary Leave. If the applicant is still not being allowed to work at Cochin, he should be allowed to join at Cochin immediately till a suitable posting at Cochin or anywhere else in Kerala is found for him. There is no order as to costs.


(AV HARI DASAN)
JUDICIAL MEMBER


(SP MUKERJI)
VICE CHAIRMAN

7-11-1990

trs

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH
RA-27/91 in

O. A. No. 358 of 1990

T. A. No.

199x

DATE OF DECISION 3-5-1991

PNR Nair Review Applicant (s)

Mrs K Usha Review
Advocate for the Applicant (s)

Versus

Union of India & 3 others Respondent (s)

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman
and

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

AV Haridasan, Judicial Member

There is no error apparent on the face of records in our order in the original application. The direction regarding grant of Extra Ordinary Leave was issued considering the facts and circumstances brought out during the hearing. No circumstances warranting a review of the order exists in this case. The order sought to be reviewed was passed on 7.11.1990 and even according to the averment in the M.P-400/91 filed along with the R.A., the R.A. should have been filed before 7.12.1990. But the application was filed only on 20.3.1991 after a delay of more than 3 months. The reasons for the

..2...

delay has not been properly explained. That the review applicant is working in Cannanore and that he could not meet his counsel at Ernakulam so far is no reason to condone the delay. Further, on merits there is no ground to allow the prayer for review. Therefore the M.P-400/91 for condonation of delay in filing the R.A. is dismissed and the Review Application is rejected.


(AV HARIDASAN)
JUDICIAL MEMBER


(SP MUKERJI)
VICE CHAIRMAN

3-5-1991

trs