

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.364 of 2011

Thursday, this the 25th day of August, 2011

CORAM:

Hon'ble Dr. K.B.S Rajan, Judicial Member

N John Chellappan
Processing cum Quality Assurance Supervisor
National Institute of Fisheries Post Harvest
Technology and Training, Kochi – 16
Residing at 31/1136-A, Bhuvaneswari Road,
Ponnurunni, Vytila P.O,
Kochi – 682 019

..... **Applicant**

(By Advocate – Mr.N Nagaresh)

V e r s u s

1. Director National Institute of Fisheries Post Harvest Technology and Training, Kochi -16	
2. Union of Indian represented by Secretary Ministry of Agriculture Govt. of India, New Delhi – 110 001	Respondents

(Bt advocate – Mrs.Deepthi Mary Varghese, ACGSC)

This Original Application having been heard on 19.08.2011, the Tribunal on
25.08.2011 delivered the following :

O R D E R

By Hon'ble Dr.K.B.S Rajan, Judicial Member -

1. The applicant in this case has challenged order dated 20.04.2011 as well as 06.05.2011 whereby he stood transferred from Kochi to Vizag and his representation for cancellation of transfer order was rejected.

2. The following facts are not in dispute:-

[Signature]

(a) The applicant was appointed as Processing cum Quality Control Assurance Supervisor (PQAS for short) at Integrated Fisheries Project, Kochi in 1980. This organisation was later on renamed as National Institute of Fisheries Post Harvest Technology & Training (NIFPHATT for short). Sometimes in 1992 when the applicant was transferred from Kochi to Vizag, he challenged the transfer order vide Original Application No.1901/92 and on rejection of his representation by the respondents which was also challenged vide O.A 186/93, his transfer order was set aside as he was to pursue his higher education at Kochi. According to the applicant, he has acute health problems and he is under continuous medical treatment in a reputed institute at Kochi.

(b) The applicant is neither seniormost nor juniormost of the 5 PQAS posted at Kochi. The seniormost candidate so far has not been transferred out through out his career.

(c) The incumbant in the place of the applicant has been transferred from Vizag to Kochi on transfer/compassionate grounds.

(d) Notification for selection to the post of PQAS at Vizag has been notified vide Annexure A-5.

3. The grievance of the applicant is that his transfer need not be effected if there is no delay in filling up of the posts at Vizag. Further, if the respondents could consider the compassionate grounds of the incumbant who is posted to Kochi from Vizag equally they should have consider the health grounds of the applicant as well.

4. Respondents have contested the O.A. According to them, the applicant has been at Kochi since 1988. His replacement has already served for 3 years at Vizag. As regards the senior most person not being shifted at Kochi, above the applicant one Dr.M.K Venu, has been retained on account of twin grounds:-

- (a) He is the Co-Consortium Principal Investigator in two projects funded by the World Bank to the tune of Rs.2 crores.
- (b) He is due for retirement in 2013 itself.

5. Counsel for the applicant argued that there are as many as 4 legal grounds on the basis of which he justified his retention at Kochi. Health ground is prominent among the four.

6. The applicant has been undergoing treatment in Amritha Institute of Medical Sciences and as such his visit to the Institute at frequent intervals would be necessary. The counsel also argued that if there be a set procedure for transfer, his seniormost should be shifted. In the instant case, the applicant not being the seniormost, need not have been shifted. The counsel for the applicant further argued that if there are good grounds of compassion are available with reference to the individual who has been transferred from Vizag, the same good grounds are available with reference to the applicant also.

7. Lastly, the counsel submitted that had the selection process being completed on time, there is no need for the applicant to move. Counsel for the respondents argued that the applicant has not taken any medical leave in the past few years. As such, his visit to the Amritha Institute of Medical Sciences at Kochi should be normally routine check up, for which adequate facilities are available at Vizag. As regards senior being retained, the counsel reiterated that

the other person senior to the applicant has to be retained at Kochi on account of administrative reasons and functional requirements. In addition to the fact that he has only few years to superannuate. As regards, the incumbent posted from Vizag, he has already served for more than three years and it is only justified that he be accommodated against the applicant who is staying at Kochi for more than 22 years. As regards delay in selection, counsel argued that the post at Vizag requires experienced hand and as such even early selection for which notification was issued vide Annexure A-5 would not be of much use since the new incumbent would be newly recruited. In his rejoinder counsel for the applicant submitted that the notification speaks of just two years experience and as such the contention of the respondents/their counsel in this regard that post warrants an experienced hand cannot hold water.

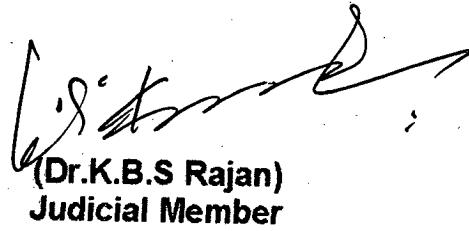
8. Arguments were heard and documents perused. Certain documents filed even after the hearing, were also taken into account. These are medical advices/prescriptions since 2004. Admittedly, the applicant has been at Kochi for more than 22 years. The incumbent who has been posted from Vizag to Kochi, it appears from the records, has been so posted to pursue his Ph.D and that individual has already served three years at Vizag. Earlier the applicant was retained at Kochi on account of such education, as such, the respondents are not in error when on the same lines they have recommended for the other individual who has now been posted from Vizag to Kochi. As regards health grounds, though he could have get his treatment from the same Institution, that alone cannot form a sole ground for his retention here. Respondent's contention has to be taken into account in this regard that the applicant has not taken any medical leave in the past few years. The requirement to visit the medical institute may be only as a matter of routine check up, for which facility should be available at Vizag as well. As regards, filling up of the post for which notification stands issued, obviously there cannot be a delay, keeping in view the transfer of

the applicant only. It is pertinent to mention here that in matters of transfer the scope of judicial review is limited. No malafide have been alleged, no prescribed or professed norms have been stultified. Violation of which alone would have given a right to challenge the transfer. Administrative grounds compelled the respondents to transfer the applicant and thus they are not unjustified in their decision to shift the applicant who has been here for the past 22 years. Retention of his senior is fully justified.

9. Thus, viewed from any angle, no good ground is seen to attack the impugned order of transfer. The applicant is due for superannuation only in 2015. As such, in case he applies after a reasonable period of stay at Vizag, respondents may consider his posting to Kochi, as normally within two years of retirement, individuals could apply for posting to their own choice. Subject to the exigency of service, such an application as and when filed, it is hoped, would be duly considered by the respondents.

10. With the above observation, the Original Application is dismissed.

(Dated this the 25th day of August, 2011)



(Dr.K.B.S Rajan)
Judicial Member

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