

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
T. A. No.

373/90

199-

14.9.90

DATE OF DECISION

P.N.M.Elayadam

Applicant (s)

M/s K.Usha & Advocate for the Applicant (s)
N.S.Aravindakshan

Versus

Union of India (represented Respondent (s)
by Secretary, Min. of Defence & 3 others.

Mr. N.N.Sugunapalan, S.C.GSC

Advocate for the Respondent (s)

CORAM:

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

The Hon'ble Mr. A.V. Haridasan, Judicial Member

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

JUDGEMENT

(Shri S.P.Mukerji, Vice Chairman)

In this application dated 14.5.90, filed under section 19 of the Administrative Tribunals Act, the applicant who is employed as Senior Auditor in the Area Accounts Office in the Naval Base at Cochin under the Controller General of Defence Accounts, has prayed that the impugned order dated 10.5.90 (Annexure-VI) transferring him from Cochin to Cannanore at his own expense should be set aside and that the respondents be directed to post him at Alwaye. The brief facts of the case are as follows:

2. The applicant has his wife employed in Kerala Government service as Dairy Farm Instructor at Mulanthuruthy in Ernakulam District. His two children are also studying in Malayalam medium school at Kakkanadu near Cochin. In accordance with the transfer policy adopted by the Department (Annexure-I), the

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spouse employed under the Central Government may apply to the competent authority to post him to the station where the other spouse is employed under the State Government, or if there is no post in that station, to post him to the State where the other spouse is posted. The applicant has also quoted from the order issued by the 1st respondent, i.e. Union of India (**Annexure-II**) indicating that Group C employees should not be transferred except under specified circumstances like adjustment of surpluses and deficiencies, promotion, compassionate ground, exigencies of service. It has also been stated therein that Class III and IV employees should not be transferred over to long distances. According to the applicant, on 17.4.89 he was informed that he is going to be transferred to Bangalore. The applicant filed an Application No. 250/89 before the Tribunal challenging the transfer order. During the pendency of the application, one vacancy of Senior Auditor arose at Alwaye and the applicant filed a Miscellaneous Petition before the Tribunal to reserve the vacancy till the disposal of that application. The Tribunal directed (**Annexure-IV**) (on 16th March, 1990) the respondents not to take any step to fill up the vacancy till 27.3.90 when the application had been listed for final hearing. That application was disposed of by the order of the Tribunal dated 27.3.90 (**Annexure-V**) with the following directions:

- "i. The respondents should transfer the applicant to PAO (ORs), Cannanore after cancelling the impugned order.
- ii. Before doing so, respondents should verify again as to whether a vacancy is existing at Alwaye as still averred by the counsel for the applicant and if there is one, the respondents should consider the applicant for transfer to that post at Alwaye."

3. The impugned order at **Annexure-VI** dated 10.5.90 was passed ostensibly in compliance with the aforesaid order of the Tribunal. In accordance with the impugned order, since the vacancy

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at Alwaye had been filled up by the seniormost eligible volunteer serving outside Kerala, the applicant was transferred to Cannanore within Kerala. The applicant's grievance is that in defiance of the order of the Tribunal he was not accommodated at Alwaye where according to him a post of Senior Auditor is still lying vacant. His representation dated 11.5.90 against the transfer order has remained unresponded. The applicant has challenged the impugned order on the ground that it is not only against the guidelines, but in violation of the directions of the Tribunal also. The fact that he had not been allowed any Joining Time or transfer expenses shows the malafide nature of the order.

4. According to the respondents, the guidelines have been complied with inasmuch as the applicant has been transferred within Kerala State where his wife is employed under the State Government. The applicant has an all-India transfer liability and was also due for transfer outside Kerala. They have also indicated that the transfer policy indicated at **Annexure-II** is not applicable to Defence Accounts Department to which the applicant belongs. The applicant is repeating the same grounds which he had taken in OA 250/89 which was disposed of by the Tribunal on 27.3.90. They have indicated that the applicant was posted to Cannanore only after verifying the fact that the vacancy at Alwaye had been filled up. They have denied any arbitrariness or malafides on the part of the respondents as alleged by the applicant and have stated that he has been posted at Cannanore on the basis of his own request dated 19.4.89 (**Annexure-R1**). They have also indicated that even if there is a vacancy at Alwaye, since Ernakulam, Cochin and Alwaye are nearby places, they are treated as one station for the purpose of transfer. They have further stated that the question of posting ^{the applicant} at Alwaye does not arise as he had already been posted at Cannanore at his own expense as requested by him. The posting of the applicant outside Cochin became inevitable in order to accommodate other staff who were working outside Kerala for a long period.

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5. In the Rejoinder, the applicant has argued that in accordance with the directions of the Tribunal, the vacancy at Alwaye was not to be filled up till 27.3.90 and that if there was a vacancy at Alwaye on 27.3.90, the respondents should consider the applicant for transfer to that post. The applicant avers that the respondents are suppressing facts and in violation of the interim directions of the Tribunal not to fill up the vacancy at Alwaye till 27.3.90, they relieved one Shri Vitaldas from Madras so that he could take charge of Senior Auditor at Alwaye. He has also referred to certain Senior Auditors who have been working at Cochin for 10 to 15 years. He has also challenged the averment made by the respondents that Cochin and Alwaye are taken to be the same station by stating that a number of Senior Auditors, after completing 19 years, 10 years etc., were posted to Alwaye and that persons transferred from Cochin to Alwaye and vice versa are granted ^{ed} _l Joining Time, Packing Allowance, etc., as on transfer. He has mentioned a case of Shri M.Thomas who was granted a lumpsum Packing Allowance of Rs. 1600/- on his transfer from Alwaye to Cochin. He has also referred to the reply statement made by the respondents on 17.7.90 that the vacancy of Auditor which arose on 19.3.90 was filled up on 22.3.90 by posting Shri Vitaldas working at Madras, that the interim order of the Tribunal dated 16.3.90 passed in O.A. 250/89 (Annex.IV) was received at the Headquarters on 25.3.90 and a telex order was issued to Madras directing to hold back Shri Vitaldas at Madras till further orders. The applicant has stated that the averment made by the respondents that the vacancy at Alwaye was filled up on 23.3.90 is misleading. The interim order was passed by the Tribunal on 16.3.90 in presence of the learned counsel for both the parties not to fill up the vacancy at Alwaye till 27.3.90 and thus the question of the vacancy at Alwaye being filled up on 23.3.90 should not have normally arisen. According to the applicant, Shri Vitaldas was relieved from Madras only on 31.05.1990 and he assumed charge at Alwaye on 01.06.1990 in violation of the directions of the Tribunal. The vacancy at Alwaye

was thus in existence till 1.6.90. Shri Vitaldas being a native of Madras could not have been posted to Alwaye on compassionate grounds. He has also explained that the circumstances under which he had requested for transfer to Cannanore in 1989 have changed as his brother-in-law has been transferred out of Cochin and his wife has to look after her aged mother. He has also stated that Shri Vitaldas is willing to be transferred to Cochin.

6. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The main question involved in this case is that of proper implementation of the order of this Tribunal dated 27.3.90 at **Annexure-V** passed in OA 250/89. The operative portion of that order reads as follows:

"4. In view of the statement of the counsel for the respondents, there is nothing that remains in this case. In the circumstances, we close the case with the following directions:

- i. The respondents should transfer the applicant to PAO (ORs), Cannanore after cancelling the impugned order.
- ii. Before doing so, respondents should verify again as to whether a vacancy is existing at Alwaye as still averred by the counsel for the applicant and if there is one, the respondents should consider the applicant for transfer to that post at Alwaye.
(emphasis added)

A perusal of the aforesaid order would show that the respondents were directed to post the Applicant to Cannanore as requested by him only after verifying whether there is a vacancy in existence at Alwaye and if there was such a vacancy, the respondents were directed to consider the applicant for transfer to that post at Alwaye. During the course of the hearing in that case, though the learned counsel for the respondents indicated on the basis of the information received by him that one vacancy that ~~had~~ arisen at Alwaye had already been filled up, the applicant had doubted that position. In order to dispel that doubt, the Tribunal directed the respondents to again verify whether the vacancy existing at Alwaye. The possibility of existence

of a vacancy at Alwaye on the date the judgement was passed could not be ruled out because the Tribunal in that very case, on 16th March 1990, had passed an interim order (**Annexure-IV**) as follows:

"Dy.No.1268/90 was mentioned before us and we have heard the counsel. The applicant had filed this MP and served copy on the respondents. It is alleged that there is one vacancy of Senior Auditor in the SNLA, Alwaye. Heard Counsel. In case such a vacancy is available at Alwaye as alleged in the MP, the respondents are directed not to take any step to fill up the vacancy till 27.3.90 to which date the O.A. has been fixed for final hearing.

7. It will thus be clear that if there was a vacancy in existence on 16.3.90 or on a later date, then that vacancy should not have been filled up till 27.3.90 in accordance with the interim order as quoted above. In the reply dated 17th July 1990 filed by the respondents against M.P.467/90 of the applicant, the respondents stated as follows:

"3. The vacancy of one Auditor arose at Alwaye on 19.3.90 which was filled up on 22.3.90 by Headquarters Office by posting Sri K.A.Vittal Das working at Madras out of the list of volunteers to Cochin. The telex message about the interim order of this Hon'ble Tribunal in M.P.No.225/90 in OA 250/89 was received in Headquarters Office on 23.3.90 In consonance with the order of this Hon'ble Tribunal a telex order was issued to the C.D.A. Madras directing to hold over the relieve of Shri K.A.Vittal Das from madras till further orders.

4. The Hon'ble Tribunal by its final order dated 27.3.90 received by the Headquarters on 12.4.90 was pleased to direct the respondents to transfer the applicant to Cannanore and before doing so, to verify again as to whether a vacancy is existing at Alwaye. Accordingly the vacancy position at Alwaye was considered. The vacancy at Alwaye was already filled up on 22.3.90. So Sri Elayadam's transfer to Cannanore was issued vide letter dated 23.4.90"

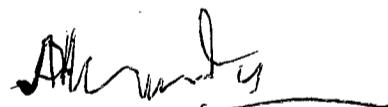
(emphasis added)

It is clear from the above that, according to the respondents themselves, a vacancy at Alwaye arose on 19.3.90 which was filled up on 22.3.90 by posting Shri Vittal Das from Madras to Alwaye. By virtue of the interim order dated 16.3.90 passed by the Tribunal which was received by the Headquarters Office on 23.3.90, a telex order was issued directing that Shri Vittal Das should not be relieved until further orders. Thus, it is clear that the vacancy which was to be filled up by Shri Vittal Das had ^{not} _{actually} been filled up by him and his transfer from Madras had been held over. Accordingly, on 27.3.90 when this Tribunal passed the final order (**Annexure-V**), the operative portion of which is quoted earlier, physically there was

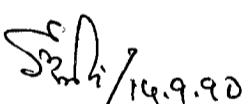
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a vacancy at Alwaye. In strict compliance of the order of the Tribunal, therefore, that vacancy should have been filled up by transferring the applicant before us. According to the applicant, Shri Vittal Das was relieved from Madras on 30.5.90 and he assumed charge at Alwaye on 1.6.90. It appears that Shri Vittal Das was relieved after the impugned order at **Annexure-VI** was passed transferring the applicant to Cannanore and making it appear that this is sufficiently in compliance of the order of the Tribunal dated 27.3.90.

8. In the facts and circumstances, we allow this application on the ground that on 27.3.90 the vacancy at Alwaye had not physically been filled up, and direct the respondents to consider the applicant for transfer to Alwaye in strict compliance of the order of the Tribunal dated 27.3.90 as if the vacancy has not been filled up. In case the respondents post the applicant at Alwaye, Shri Vittal Das who was posted to Alwaye, can be considered for posting at Cochin or any other suitable place keeping in view his consent dated 8.6.90 at **Annexure-X**. Action to consider the applicant's posting at Alwaye should be completed within a period of one month from the date of communication of this order. The impugned order at **Annexure-VI** transferring the applicant to Cannanore should be kept in abeyance till the completion of that action. There will be no order as to costs.



(A.V.Haridasan)
Judicial Member


S.P. Mukerji/14.9.90

(S.P.Mukerji)
Vice Chairman

SPM & AVH

11.12.90
(18)

Mr NN Sugunapalan, SCGSC by proxy for the Review Applicant.
Mrs K Usha for the respondents in the RA.

RA 124/90 & MP 927/90

The learned counsel for the review applicant and the ~~Ms~~ Petitioner does not wish to press these applications. Accordingly, RA 124/90 and MP 927/90 for stay are dismissed as not pressed.


11.12.90

13.11.90

C.C.P.No.45/90
in
O.A.373/90

Mrs.K.Usha-for applicant.
Mr.Madhusoodhanan-for SCGSC.

SPM & AVH

At the request of the learned counsel for the respondents list for further directions on CCP on 22.11.90.

M Shy
13.11.90

22.11.90

from AVH

Mr Sugunapalan
Mrs. K.Usha.

At the request of the learned counsel for the respondents (scasc) list for further hearing on 5.12.90.

M Shy
22-11-90

6-12-90

NVK & ND


Mrs.K Usha for the applicant
Mr. Sugunapalan

The counsel for the applicant has produced a letter informing him that in pursuance of the judgment in OA:373/90 of the Tribunal, the applicant has been relieved of his duties on 30-11-90 and was permitted to report for duty in the Office of SNLA, Alwaye.


In this view of the matter, we are satisfied with the order issued by the respondents in compliance with the judgment of the Tribunal.

Hence, CCP is closed.


5-12-1990

BCP