

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A. No. 38 of 2000.

Thursday this the 27th day of January 2000.

CORAM:

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

HON'BLE MR. J.L. NEGI, ADMINISTRATIVE MEMBER

Sunitha Haridas,
W/o P.K. Haridas,
Lower Division Clerk,
Office of the Chief Engineer,
Navy, Katari Bagh, Cochin,
residing at XL/42-700 Kottayil (H),
West of Ayyappankavu.
(By Advocate Smt. V.P. Seemanthini)

Applicant

Vs.

1. The Chief Engineer,
Military Engineering Service,
Head Quarters, Southern Command,
Pune-1.

2. Chief Engineer (Navy),
Katari Bagh, Kochi.

3. Union of India, represented by
the Secretary to Government of
India, Ministry of Defence,
New Delhi.

Respondents

(By Advocate Ms. P. Vani, ACGSC)

(The application having been heard on 27th January 2000
the Tribunal on the same day delivered the following:)

O R D E R

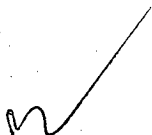
HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant commenced her career as LDC under the Southern Naval Command in the Office of the Chief Engineer (Navy) on 18th March 1981. By A4 order, dated 20.4.1988, of transfer and posting in public interest, the applicant was transferred from the office of the Chief Engineer, Kochi to the Office of the Chief Engineer Kochi GE(P) NE, Vasco. Aggrieved by the transfer to Vasco, the applicant filed O.A. 1017/99. The above O.A. was disposed of by order dated

15.9.99 directing the first respondent to consider the applicant's representation and to pass orders thereon. In obedience to the directions contained in the order of the Tribunal, the first respondent issued A1 order on 20.10.1999 rejecting the request for cancellation. Again aggrieved by that, the applicant filed O.A. 1190/99 which was disposed of by order dated 13.12.1999 (A3) directing the respondents to ascertain the correct vacancy position of LDCs in Cochin Complex and to pass appropriate orders as to whether the transfer of the applicant was necessitated. In obedience to the above directions the first respondent has issued the order dated 24.12.1999 (A5) whereby the claim of the applicant for cancellation of transfer was turned down on the ground that there is no vacancy in Kochi Complex as per manning policy issued by letter No. 132601/11/S/D/CM4/15/EIB/(s) dated 29.7.99. The applicant has been ordered to move by the movement order dated 4.1.2000 (A6). Till the issuance of this order the applicant has been continuing at Kochi on the basis of the interim orders issued by the Tribunal in the aforesaid two applications. Aggrieved by the rejection of her request for cancellation of transfer made in A5 and the movement order A6, the applicant has filed this application with the

following reliefs:

- i. "To set aside Annexure A1, A5 and A6 orders issued by respondents 1 and 2 since those orders are issued in violation of Annexure A7 transfer norms as also in violation of the specific directions issued by this Hon'ble Tribunal in Annexure A3 order.
- ii. To set aside Annexure A8 Manning Policy, since the same is issued without authority of law by the 1st respondent;
- iii. to direct the respondents 1 and 2 not to implement Annexure A1, A5 and A6 until a decision is taken by the 3rd respondent in Annexure A11 representation submitted by the applicant's Association in the matter of transfer of LDCs from Cochin Office;



.3.

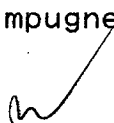
- iv. to direct the respondents 1 and 2 not to give effect to Annexure A-1, A5 and A6 orders before posting out all the senior LDCs working in the Cochin Complex;
- v. to declare that the applicant is not liable to transfer to Goa in terms of Annexure A-7 Transfer Policy."

2. The applicant has alleged that since she had not requested for a posting to Goa, she being a woman could not be as per transfer norms posted to Goa which is a tenure station. It has further been alleged that as sufficient deficiency is shared by Cochin complex, even going by that manning policy her transfer was not justified.

3. The respondents have filed a detailed reply statement in which after detailing the vacancy position and the need of the department it has been stated that as per the policy of manning it has been decided to keep the deficiency level at a minimum of 10% under Chief Engineer, Kochi Zone to avoid a heavy tilt in balance and therefore, Kochi Complex would have to function with a strength of 73 civilian LDCs whereas they were holding 80 as on date after one person having moved out. The respondents contend that as it was felt necessary for the purpose of smooth functioning that the applicant had to be transferred. The impugned order was issued in public interest and therefore they pray that the Tribunal may not interfere with the action.

4. The applicant has filed a rejoinder along with a copy of letter of the 2nd respondent addressed to the first respondent, dated 5.8.99 whereby retention of the applicant and one Shri V.M. George was favourably recommended.

5. We have heard the learned counsel on either side and also perused all the materials placed on record. Though the impugned order of transfer was issued in April 1998, the



applicant had been continuing in Kochi without giving effect to the order of transfer on account of the pendency of the application and the interim orders issued by the Tribunal. The learned counsel of the respondents argued that the transfer being an incidence of service and the first respondent being the competent authority, the deployment of the applicant from Kochi to Goa in public interest cannot be faulted for any reason. Learned counsel of the applicant argued that one Ms. Nalinakumari who is senior to the applicant and who would have been transferred out is still continuing at Kochi, that therefore, there is no consistent policy for the respondents and that the policy followed is of pick and choose. In reply to the argument of the learned counsel for the applicant, respondents' counsel states that when a movement order was issued to Ms. Nalinakumari and she made a representation to the first respondent which is under consideration and that explains the reason why Nalinakumari is still continuing at Kochi.

6. Pointing out the situation in Kochi Complex of sanctioned strength posting-in and posting-out, the learned counsel of the applicant states that still it can be seen that there is a vacancy on which the applicant can be accommodated and therefore, the first respondent should have cancelled the movement order. The transfer is an incidence of service and the employer has the competence and the right to decide where the service of an employee can be better utilised. So long as the order of transfer is not vitiated by malafides and the power to transfer is not exercised to achieve an oblique motive, we are of the considered view that judicial intervention with routine administrative matters like transfer cannot be justified. There is absolutely no averment of malafides against first respondent who was issued Annexure A1. It has not been stated that by

deciding to transfer the applicant out of Kochi, the power to transfer was utilised to achieve a purpose for which the power is not granted. We do not find therefore, any infirmity in the impugned orders to invite judicial intervention.

7. The case of the applicant that Goa being a tenure station, the applicant being a woman should not be posted there against her wish is also not tenable because it is evident from R1, the list of tenure stations, that Goa is not a tenure station. Being a lady and having remained in Kochi for nearly two decades the applicant may have a heart-burn when she is asked to move to Goa which is fairly a distant place. Such a transfer necessarily would cause some inconvenience. But a Government Servant has to put up with such inconveniences at times. Pitted against public interest, personal convenience has to yield. So long as the order does not suffer from any vitiating circumstance, the Tribunal would not interfere.

8. The application therefore is dismissed without any order as to costs.


(J .L.NEGI)
MEMBER(A)


(A.V.HARIDASAN)
VICE CHAIRMAN

/rv/ 8.

Contd. . . .

List of Annexures referred to in the order:

Annexure A1: True copy of Order No.109011/CEKZ/ S.Haridas/L.C. dt. 20.10.99 issued by the 1st respondent.

Annexure A3: True copy of Order dated 13.12.99 of Hon'ble Central Administrative Tribunal in O.A.No. 1190/99.

Annexure A4: True copy of the posting order No.132402/98/LDC/D1/EIB(S) dated 20.4.1998.

Annexure A5: True copy of the speaking order No.109011/CEKZ/S/Haridas/18/L.C. dated 24.12.99.

Annexure A6: True copy of movement order No. 06 dated 4.1.2000 issued by 2nd respondent.

Annexure A7: True copy of the transfer policy No. 79040/EIC(1) dated 31.8.1994 issued by the 3rd respondent.

Annexure A8: True copy of the Manning Policy No. 132601/11/S/D/CM4/15/EIB/(S) dated 29.7.1999 issued by the first respondent.

Annexure A11: True copy of representation dated 24.11.1999 filed by the applicant before the 3rd respondent.

Annexure R-1: True copy of the list of tenure stations issued by the Southern Command.