

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 38/2010

Dated this the 24th day of February, 2011

C O R A M

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

M. Krishna Kumar
S/o. P. Mohan, Assistant Engineer (Mechanical)
Department of Lighthouses & Lightships
(Ministry of Shipping, Road Transport & Highways)
"Deep Bhavan", Gandhi Nagar
Kadavanthara, Cochin - 682 020
Residing at Mathukayil House
Gandhi Nagar, Kaloor (P.O)
Cochin - 682 017. - Applicant

(By Advocate Mr. TCG Swamy)

Versus

1. Union of India represented by
The Secretary to Government of India
Ministry of Shipping, Road Transport & Highways
Department of Lighthouses & Lightships
No. 1, Parliament Street, New Delhi - 110 001.

2. The Director General of Lighthouses & Lightships
(Ministry of Shipping, Road Transport & Highways)
"Deep Bhavan", A-13, Sector - 24, Noida
Gautam Budh Nagar District, (U.P).

3. The Director - Regional
Department of Lighthouses & Lightships
(Ministry of Shipping, Road Transport & Highways)
"Deep Bhavan", Gandhi Nagar
Kadavanthara, Cochin - 682 020. - Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant, who is working as Assistant Engineer (Mechanical) in the Directorate of Light Houses & Light Ships, Cochin, is aggrieved by the inaction of the respondents to transfer him to Chennai despite several representations.

2 The applicant on promotion as Assistant Engineer was posted at Cochin. He seeks transfer and posting to his native place Chennai on humanitarian grounds. He has submitted several representations and a lawyer notice (A-10 and A-11). The main contentions of the applicant is that, he has been transferred from place to place in an arbitrary, discriminatory and illegal manner while persons like Sri Durga Prasad were retained at Chennai itself for the last 31 years and that there is no uniform policy of transfer except pick and choose by the respondents. Hence, he filed this O.A to direct the 2nd respondent to consider transfer of the applicant on humanitarian grounds, if necessary along with the post as indicated in A-12 or by creating a vacancy.

3 Per contra, the respondents stated that the applicant worked for 13 years at Chennai and was posted to Cochin on acceptance of his promotion to the post of Assistant Engineer and that he is supposed to serve anywhere in India as his service conditions includes All India transfer liability. They stated that posting of an individual depends upon the utility of his services and also administrative and operational requirement of the Directorate. They further submitted that as per the transfer policy, the minimum tenure of posting is three years and that for a transfer in public interest one has to wait for at least 7 years. They stated that there is no discrimination in the case of the applicant and that the applicant is not alone who has been transferred out of his native place as posting and transfer is always subject to the administrative requirements.

4 The applicant has filed rejoinder reiterating that Sri Durgaprasad who was continuing in Chennai for a long time was not transferred when he was promoted

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and was retained at Chennai itself.

5 The respondents filed additional reply statement contending that when Sri Durgaprasad was promoted, a vacancy was available at Chennai due to demise of the incumbent.

6 I have heard the parties and perused the documents.

7 In transfer matters, the scope of judicial intervention is very limited unless there is malafides or violation of any statutory provisions. The transfer guidelines are meant for upholding functional efficiency of the Government and are strictly based on the length of stay of the official at the station. The employees are liable to be transferred by the Government in public interest whenever required. The Apex Court has clearly laid down the law that the Courts/Tribunals are not appellate forum to decide on transfer on administrative grounds. In State of Madhya Pradesh and another Vs. Kourav and others (AIR 1995 SC 1056) the Apex Court held as follows:

"The Courts or Tribunal are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background/foundation. When as in this case the transfer order is issued on administrative grounds the court cannot go into the expediency of postings an officer at a particular place."

In another case in Union of India and others Vs. S.L. Abbas (AIR 1993SC 2444) the Apex Court held that:

"Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt the authority must keep in mind the guidelines issued by the government on the subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guidelines however does not confer upon the Government employee a legally enforceable right"

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8 In the light of the above decisions, I am of the view that the applicant has not made out a case warranting interference of the Tribunal. However, I do hope that the respondents would consider the request of the applicant for a transfer to Chennai and pass appropriate orders at the appropriate time. With this observation, I dismiss the Application. There shall be no order as to costs.

Dated 24th February, 2011.


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER

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