

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 381
T. A. No. 1992

DATE OF DECISION 16.9.92

K. Parvathy _____ Applicant (s)

Mr. M.R. Rajendran Nair _____ Advocate for the Applicant (s)

Versus.

The Chief Post Master General, Kerala Circle, Trivandrum and another Respondent (s)

Mr. George C.P. Tharakan, SCGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N. Dharmadan, Judicial Member

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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

Mr. N. Dharmadan, Judicial Member

Applicant ~~xx~~ at present working as Section Supervisor is aggrieved by Annexure-I and I-a orders by which she has been transferred from Trivandrum to Cochin and her representation was disposed of without granting the reliefs.

2. Applicant is approaching this Tribunal for the second time for quashing a transfer from Trivandrum to Cochin as per Annexure-I(a) dated 18.12.91. Earlier when she filed O.A. 1963/91, after hearing the parties, this Tribunal passed Annexure-V judgment dated 13.2.92. Relevant portion in the judgment are extracted below:

"... But it cannot be said that the transfer of the applicant from the post of Section Supervisor, Circle Office, Trivandrum to the Regional Office, Cochin was absolutely necessary for proper implementation of the directions contained in the order in

O.A. 822/90. There was no direction that while restoring the applicant in O.A. 822/90 to the post of Section Supervisor from which he was reverted accommodating the sixth respondent in that case Shri Renganatha Iyer in any other post, if necessary by reverting the junior most person holding the post of Section Supervisor on adhoc basis, the ~~z~~ junior most person in the Circle Office, Trivandrum, holding the post of Section Supervisor on adhoc basis should be transferred. When there are more persons than the number of posts available to accommodate them and when transfer of one becomes unavoidable the competent authority should take into consideration the guidelines regarding transfer and asfar as possible effect the transfer without violating the norms. That according to the guidelines an employee who has got less than 2 years to serve should as far as possible be posted to a station of his choice, is not disputed by the respondents. The fact that the applicant belongs to a SC and that she has only 20 months more to retire on superannuation are also facts undisputed. It is the policy of the Government of India that while ordering transfers, due consideration should be shown towards members of the SC/ST to give them posting in or near their native places. It appears that the first respondent has not taken into consideration the guidelines and the policy of the Government of India while transferring the applicant out of Trivandrum.

..X X X X

..I am of the view that interest of justice demands at least to give a direction to the first respondent to reconsider the representation submitted by the applicant at Annexure-IV applying his mind to the facts stated above and that till such time the final decision is taken and communicated, the applicant should be allowed to continue at Trivandrum."

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..In the light of the above discussion, the application is disposed of with the following directions:-

(1) The first respondent is directed to reconsider the representation submitted by the applicant on 19.12.91 at Annexure-IV in the light of the facts mentioned therein, applying the guidelines in regard to transfer and the policy of the Government of India in regard to transfers of Government servants belonging to SC and to the fact that whether there is any other person in the Circle Office, Trivandrum, holding the post of Section Supervisor who had longer stay in Trivandrum in the total service and to take a decision in accordance with law within a period of 15 days from the date of communication of this order and

(2) till such time the first respondent takes a final decision on the representation at Annexure-IV and communicates the same to the applicant, the applicant should be allowed to continue as Section Supervisor at Trivandrum and she should be paid pay and allowances

42

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3. It is in pursuance of Annexure-V judgment that further impugned order Annexure-I has been passed by the CPMG. The applicant is attacking Annexure-I on the ground that CPMG failed to consider the observations and directions contained in Annexure-V judgment.

4. At the time when the application came up for admission on 9.3.92, we directed respondents to keep in abeyance Annexure-I and I(a) and also directed respondents that the applicant shall be paid pay and allowances till 3.3.92 when the order ~~xx~~ disposing of her representation was passed at Ann.I. ~~xxxx~~. This order was later extended from time to time.

5. Respondents filed M.P. 511/92 for clarification of the Interim Order. It was heard and disposed of as per order dated 27.3.92, relevant portion is extracted below:

"This case is actually an offshoot of OA 1963/91. In the final order in that application rendered on 13.2.92 it was directed that the respondents should consider the representation submitted by the applicant and communicate the decision and that since such time as the representation is disposed of, the applicant should be allowed to continue as a Section Supervisor at Trivandrum and that she should be paid pay and allowances. It is not as if the Tribunal was not aware of the fact that there was no vacant post at Trivandrum on the date on which the OA was disposed of. The contention of the respondents that in that application it was also mentioned that the transfer of the applicant from Trivandrum was necessitated for want of vacancy to accommodate one Shri Raghuthaman Nair at Trivandrum. Though while the judgment in OA 1963/91 was passed, the Tribunal was conscious of the fact that there was no vacant post and in spite of that a direction was given that the applicant should be allowed to continue at Trivandrum. It is in the light of this circumstances that by the interim order dated 9.3.92 this Bench directed the respondents to pay the applicant pay and allowances till 3.3.92 and stayed the operation of the order of transfer. Therefore, if the respondents had taken care to go through the judgment at Annexure-V and the interim order, we are of the view that it would not have been necessary for them to file this MP for clarification. Anyway, if there is still any doubt in the minds of the respondents, it is cleared by stating that the respondents are bound by the interim order to pay the applicant pay and allowances till 3.3.92 and also to retain at Trivandrum until further direction is issued. The MP for clarification is disposed of as above."

4

6. Thereafter, the pleadings were completed and the O.A. came up for final hearing on 16.4.92. When the matter was taken up for final hearing, both sides agreed that the application need not be heard and disposed of on merits because there is a possibility of arising one vacancy of Section Supervisor at Trivandrum for which a request was already made by the CPMG to the appropriate authority and within three months necessary orders will be issued, in which case, the applicant could be posted at Trivandrum taking into consideration the fact that the applicant has less than two years to retire from service. Accordingly, learned counsel for the applicant fairly submitted that even in spite of xxxxxxxxxxxxxxxx the interim order passed by the Tribunal, applicant is willing to join at Cochin, / this Tribunal gave permission to the respondents to relieve the applicant from Trivandrum in modification of the interim order so as to enable her to join at Cochin pending implementation of the undertaking given by the learned counsel for the respondents. Even after expiry of three months nothing xxx happened and hence further time was granted as per order dated 3.7.92 for giving the applicant posting at Trivandrum in terms of the undertaking given by the respondents. Even after three further postings, when the case came up for final hearing today, learned counsel for respondents has expressed his inability to implement the undertaking given by him to post the applicant at Trivandrum on account of the failure of the competent authority to sanction addl. post for which a request was made.

7. In the above circumstances, learned counsel for the applicant argued the case on merits. His contention is based on Annexure-V judgment. He submitted that earlier when O.A. 822/90 was filed, the applicant was not a party and hence whatever observations and directions in that

judgment should not affect the applicant detrimentally in regard to her posting at Trivandrum. The applicant is to retire from service on 31.8.93. She ought not have been shifted from Trivandrum particularly when persons having longer stay are allowed to continue at Trivandrum. She being a member belonging to the S.C. community and to retire from service within a period of one year, she has got a right to continue at Trivandrum and the respondents should have taken into consideration these aspects particularly when this Tribunal has made sufficient observation/direction in the Annexure-V judgment.

8. Respondents filed detailed counter affidavit denying all the allegations and averments in the application. Learned counsel for the respondents strongly supported the impugned Annexure A-1 order on the ground that it has become necessary for the CPMG to transfer applicant from Trivandrum to Cochin in order to implement the direction of this Tribunal in O.A. 823/90.

9. I have carefully gone through Annexure-I order. The CPMG has not strictly complied with the direction contained in Annexure-V judgment. When the applicant filed O.A. 1963/91, she has only 20 months to retire from service and this Tribunal observed that the applicant's right based on Govt. policy should be protected to the extent possible. Since the directions in the judgment were not complied with this Tribunal while admitting the application directed continuance of the applicant at Trivandrum, even though there is no post to accommodate her, with all pay and allowances. When the respondents were embarrassed because of the interim order, they came with a clarification petition which was also rejected by giving a detailed order. It is in these

circumstances that the learned counsel for respondents came with the plea that the applicant would be given a ^{submitted with a} posting at Trivandrum and proposal for creation of a vacancy was sent to the higher authorities and sanction is likely to be received. However, no sanction was received so far.

Though the CPMG adverted to the fact that the applicant is a member belonging to S.C. community, he did not examine all the relevant orders and circulars issued by the Government regarding transfer of S.C. employees. It is the policy of the Govt. that members belonging to S.C. community should be given a posting in the native place to the extent possible. It is not the case of the respondents in Annexure-I that it is not possible to give the applicant a posting at Trivandrum taking into consideration the policy of the Government. The CPMG has also admitted in the impugned order Annexure-I that one Shri Muthayya, Sr. Section Supervisor in the Circle has the longest stay in Trivandrum. Nevertheless, he has not been transferred. The reason given is that if he is transferred it will be violative of the guidelines issued by the Government in this behalf. Annexure-VI is the order which contains ~~xxxx~~ the guidelines. Para 4 of the order is relevant. It is extracted below:

"Unwilling staff may be retained at Circle headquarters until such time they became willing, or willing staff become available. During the period of retention of such staff, at Circle headquarters, the operative and supervisory workload of such staff may also be retained at Circle headquarters under the control of the CPMG."

This order only states that unwilling staff will be retained in the Circle headquarters until such time they are willing or willing staff are available. This is ~~xxx~~ applicable to the applicant. The CPMG has not

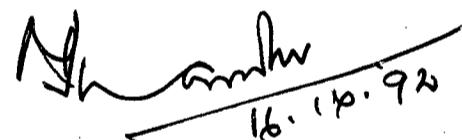
stated why the applicant should not be given the benefit of Annexure-VI circular in preference to Shri Muthayya who has got longest stay at Trivandrum.

10. Having considered the matter in detail, I am of the view that the reasons given by the CPMG in Annexure-I in support of the transfer that there are specific direction in O.A. 822/92 to transfer Smt. Parvathy, the juniormost Section Supervisor in order to comply with the directions of this Tribunal is unsupportable. Hence, according to me, this order cannot be sustained. Accordingly, I quash Annexure-I and I-(a).

11. Before leaving the case, I may express my dissatisfaction regarding the manner in which the CPMG has made representation before this Tribunal and compelled this Tribunal to pass orders on the basis of assurance. However, I am not making any further comment on this issue.

12. The application is allowed.

13. There will be no order as to costs.


16.9.92

(N. Dharmadan)
Judicial Member
16.9.92

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