

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.401/2005

Friday...., this the 6th...January 2006

C O R A M:

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

Devika P.P., D/o late K.K.Venugopal
Salesman, Integrated Fisheries Project, Cochin.
R/o Lakshmi, AKG Temple Road
Changampuzha Nagar P.O, Edappally, Cochin.

Applicant.

(By Sr. Advocate Mr.O.V.Radhakrishnan)

Vs.

- 1 Director-in-charge, Integrated Fisheries Project
Cochin – 16.
- 2 Deputy Director, Processing and Marketing,
Integrated Fisheries Project, Cochin-16.
- 3 Union of India, represented by its Secretary,
Ministry of Agriculture, Deptt. Of Animal Husbandry
and Dairying, Krishy Bhavan, New Delhi.
- 4 T.H.Retnavally, Salesman
Integrated Fisheries Project Fish Stall
Palai.

Respondents.

(By Advocate Mr.TPM Ibrahim Khan, SCGSC)

O R D E R

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant presently working as Salesman under Marketing Section in the Integrated Fisheries Project, Cochin, has applied for Extraordinary Leave from 1.6.2002 and vide letter dated 16.5.2001 she was informed that Extraordinary Leave can be sanctioned to her on certain conditions as per Anxx.A1. Thereafter she was served with memorandum dated 13.2.2002 (Anxx.A2) stating that if the conditions are acceptable she

W

may apply for the leave under the provisions of the CCS(Leave) Rules. Accordingly she applied for Extraordinary Leave for 365 days from 1.6.2002 to join her husband working abroad. On expiry of the period of 365 days she applied for extension of Extraordinary Leave for another 365 days from 1.6.2003 and again on expiry of the above period she applied for 365 days till 31.5.2005 which was sanctioned by the competent authority vide Anxx.A3 order. The applicant reported for duty on 1.6.2005 and was allowed to join in the office of the 1st respondent. It is stated that the applicant was entitled to be posted back as Salesman in the Fish Stall in the Office of the 1st respondent as no other person was posted in her place during the leave period on regular basis. However, she was posted to the Integrated Fisheries Project Fish Stall, Palai by transferring the 4th respondent in the Marketing Section at the Headquarters (Anxx.A4). She submitted representation dated 3.6.05 (Anxx.A5) to the 1st respondent pointing out her domestic problems and difficulties. It was averred in the O.A that the transfer is in contravention of the settlement arrived at in the conciliation proceedings held before the Assistant Labour Commissioner on 26.3.91(Anxx.A6) therefore the same is unreasonable arbitrary and hit by promissory estoppel and not in public interest or administrative necessity therefore Anxx.A4 cannot be operated to the prejudice and predicament of the applicant. Aggrieved by the inaction, she has filed this O.A for the following main reliefs:

- i. To call for the records leading to Anxx.A4 and to set aside the same.
- ii. To declare that the applicant is not liable to be transferred from the Headquarters at Cochin to any of the other Units outside Cochin in view of Anxx.A6 settlement.
- iii. To issue appropriate direction or order directing the 1st respondent to grant posting as Salesman in the office of the 1st respondent.

2 The respondents No.1 to 3 have filed a detailed reply statement contending that the applicant proceeded on Extraordinary Leave for a period of three years from 1.6.2002 to 31.5.2005 in order to join her husband working abroad. She reported for duty on 1.6.05 and was posted at Palai Fish Stall, as per Anxx.A4 order and respondent No.4 working in Palai Fish Stall who is the senior-most Salesman, drawing the scale of pay of Marketing Assistant, pursuant to the grant of ACP, was posted to the Marketing Section of the



Project against the vacant post of Marketing Assistant in view of the exigency of service. Earlier the Project had 4 Sales Outlets for fish and fish products in Kerala, namely at Ernakulam, Palai, Angamaly and Eloor. Presently two of the Fish Stalls at Angamaly and Eloor have been wound up and now there are only 2 stalls at Ernakulam and Palai. The Salesmen attached to the said four Fish Stalls earlier excluding the applicant were often transferred to other Stations as internal work arrangement. Other Salesmen have served in almost all the Stalls during various spells and the applicant has not been disturbed from Ernakulam Stall during almost her entire service except for a very short spell of two-three months posting at Palai Stall. She had served in Palai Stall during the period from 16.10.88 to 31.1.89 only. The 4th respondent, who is the senior-most Salesman and drawing the pay scale of Marketing Assistant, submitted a representation requesting to post her to the Headquarters as she had been working at Palai for several years and expressed her desire to work in Headquarters. Thus the request for posting her in the Headquarters was considered and the transfer order effected. It is also submitted that as per the offer of appointment issued to the applicant for the post of Salesman, item 3 of the terms of appointment stipulates, that the appointment carries with it the liability to serve in any part of India or outside, therefore, she cannot contend that she should be posted in the same place from where she proceeded on leave. The minutes of the Conciliation Proceedings are not agreement/settlement arrived at between the employer and workman wherein the main issue was the transfer and promotion of employees from Kochi Unit to Vishakapatnam Unit which cannot be made applicable in this case of posting of the applicant from Kochi to Palai and postings are done as and when they are deemed necessary and unavoidable for the smooth functioning of the establishment. The department is empowered to exercise the statutory powers under Rule 9(2)&12(2) of CCS (CCA) Rules, 1965 and also the administrative and financial powers delegated under DFPR. The employees working in the respondents' establishment have their own grievances. The applicant has availed leave for 3-4 years earlier also for going abroad and each time she was granted leave by making internal work arrangement by posting substitute. She cannot insist that she should be posted in the same place and cannot raise

any grievance against the transfer order which is an internal arrangement in exercise of powers conferred as Head of the Department and without any malafide. Annx.A6 cannot be made applicable in the case of posting of the applicant from Ernakulam to Palai. It is submitted that the case of the applicant can be considered for posting her back to Headquarter during the next transfers and postings.

3 The applicant has filed rejoinder reiterating the contention in the O.A and further adding that her child was admitted in Nava Nirman Senior Secondary School, Vazhakkala on her return from abroad on the basis of her legitimate expectation that she would continue the place of posting where from she proceeded on leave as per Annx.A3. The contention of the respondents that the junior most Salesman Smt.Lekha whose two children studying in Ernakulam and in case the applicant is allowed to join in Ernakulam Fish Stall would be an injustice to Smt.Lekha, is preposterous and whimsical. The junior most salesman who is normally liable to be transferred out for accommodating a senior hand like the applicant. This was deliberately suppressed. Smt.Rathnavally is a native of Palai and her daughter aged about 23 years is also working as Teacher in a College at Palai. The 4th respondent has no preference or weightage in the matter of transfer and therefore, the transfer of the 4th respondent to the office of the 1st respondent is not justified on any score.

4 The respondents had filed Additional reply statement contending that it is only common that when a person proceeds on long leave, the head of the office has to make alternate arrangements for the smooth functioning of office. Since the field of work of the applicant is related to the Fish Stall which is only available at Ernakulam and Palai. The matter for consideration in Annx.A9 judgment is transfer from Kochi to Vishakhapatnam unit of IFP and that too on promotion therefore the above case cannot in any way be compared with the present working arrangements of the Salesman.

5 We have heard Mr.O.V.Radhakrishnan, Sr.Advocate and Mr.Antony Mukkath Advocate for the applicant and Mr.TPM Ibrahim Khan, SCGSC, for the respondents. The counsel for the parties have taken me to various pleadings, materials and evidence on record.



6 The counsel for the applicant argued that the transfer of the applicant to the Fish Stall at Palai and the 4th respondent to Headquarters at Ernakulam is arbitrary, illegal, discriminatory and in violation of Articles 14 and 16(1) of the Constitution of India as it is not in public interest but to favour private individuals. The respondents on the other hand persuasively argued that the terms of appointment of the applicant stipulates that the appointment carries with it the liability to serve in any part of India or outside and after accepting the conditions she joined the post of Salesman. Her service conditions are governed by General Central Civil Service Rules and she should not insist to the place where she had been earlier posted. The respondent as an internal arrangement in exercise of the power conferred as Head of the Department has only passed the order in larger interest of the Institution and not meeting private interests.

7 I have given due consideration to the arguments and the material placed on record. It is an admitted fact that the applicant while working as Salesman in the office of the respondents proceeded on Extra Ordinary Leave for 3 years from 1.6.2002 to 31.5.2005 and the leave was sanctioned. On her joining duty, she was posted to the Palai Fish Stall as per Anxx.A4 order and the incumbent working at Palai was posted to the Market Section of Headquarters at Ernakulam to lookafter the work of Marketing Assistant. While sanctioning the leave certain conditions have been stipulated in Anxx.A1, which is reproduced as under:

"With reference to the above Smt.P.P.Devika is informed that EOL can be sanctioned to her on condition that (i) no substitute will be appointed on ad hoc basis from the Employment Exchange to fill her leave vacancy and (ii) while remaining on leave she shall not take up any service or employment elsewhere without obtaining the previous sanction of the competent authority, as specified in Rule 13 of the CCS(L) Rules, 1972. If Smt.P.P.Devika desires to avail EOL subject to the above condition, she may submit formal application for it, through proper channel."

In Anxx.A3 dated 1.4.04 it was made clear that EOL for 365 days from 1.6.04 to 31.5.05 has been sanctioned with the condition that the applicant would have continued to officiate as Salesman during the entire period of leave. It is certified that on return from leave Smt.P.P.Devika has to be posted to the same station from where she proceeded on leave. Therefore, the contention of the applicant is that even while sanctioning the leave there was a certification ensuring that the applicant will be posted at the same post and

✓

same station where from she was proceeded on leave. The contention of the applicant is that since there was a certification ensuring that the applicant will be posted in the same post at the same station therefore, any station different from where she has been posted is not in conformity with Annx.A3. Further, Annx.A6, which is the minutes of the Conciliation Proceedings held before the Assistant Labour Commissioner, Ernakulam on the strike notice over a charter of demands by the Employees Association and the Labour Commissioner. The demand No.4 reads as follows:

“4. In addition to what has already been stated in the last discussion dated 13.3.91, the Director, IFP further clarified that the transfers in the same category will be effected only on request from employees. However, it is further clarified that if Unions have got any other grievances with regard to any particular individual case, they can approach the management for their redressal.”

8 The counsel for the applicant argued that the respondents are duty bound to act within the frame work of the settlement as such they are not competent to make any unlawful departure from Annx.A6 without indicating any overriding public interest which is unreasonable and arbitrary. The respondents on the other hand submitted that Annx.A6 has been issued on transfer of employees from Kochi to Vishakapatnam therefore it is not binding in this case where internal arrangement has been done. The applicant has also produced Annx.A9 judgment in O.A No.401/91 dated 29.7.91 wherein it has been observed as follows:

“The learned counsel for the applicant produced before us the minutes of the conciliation proceedings held by the Asst.Labour Commissioner(Central) Ernakulam in which it was agreed between the respondents and the Employees Association of the Integreated Fisheries Project that employees of the Cochin Unit of the IFP will be transferred on promotion to Vishakapatnam Unit after calling for the willingness of the eligible employees for consideration by the DPC and if none of the employees is willing for such consideration, the second respondent will explore other possibilities to fill up the post at Vishakapatnam.”

In that case an employee had been posted to Vishakapatnam Unit on promotion as Marketing Assistant from Cochin who challenged the matter before this Tribunal.

9 The applicant states that by the aforesaid order the Tribunal accepted Annx.A6 in that case. On reading of Annx.A6 and findings of the Tribunal, it is clear that in the conciliation proceedings the main issue was transfer from Kochi to Vishakapatnam therefore the transfer referred to herein was not the subject matter of the conciliation. The

✓

transfer from Kochi to Vishakapattanam and Kochi to Palai are different from each other. Annx.A9 judgment does not disclose that this conciliation is applicable to all transfers but only specifying transfer from Kochi to Vishakapattanam, therefore, this document cannot come to the rescue of the applicant especially when the terms of appointment clearly stipulates that the appointment carries with it the liability to serve in any part of India or outside. The materials and documents produced before me also consistently point out that the Head of the Department is empowered to exercise the statutory powers under Rule 9 (2) and 12(2) of CCS(CCA) Rules 1965 and that the administrative and financial powers delegated under DFPR are not taken away by the conciliation proceedings. Annx.A2 makes it abundantly clear that the leave application will be considered 'subject to the provisions of the CCS(Leave) Rules, through proper channel'. Annx.A6(3) dated 13.3.91 clearly indicates that the demands were pertaining to transfer on promotion from Kochi to Vizag Unit of IFP and the conciliation proceedings have been adjourned to a later date which will be intimated the party in due course. Therefore, in the circumstances mentioned above, I am of the considered view that the powers under CCS(CCA) Rules cannot be taken away by a conciliation proceedings. First of all the said conciliation proceedings is not pertaining to such transfer which is the subject matter of this case but to a different and peculiar circumstances where employees are forcefully and unwillingly transferred to Vishakapattanam on promotion, were safeguarded. It cannot apply mutandis-mutandis to the given case since the facts are entirely different and I am afraid if such a declaration is given to the applicant in this case there will be superseding/ overriding effect of fundamental rules enunciated and applicable to the Central Govt employees and staff will come under mutual consent with the Unions. Such proceedings can flout and override the fundamental principles laid down in the CCS (CCA) Rules and will create a very adverse situation. Therefore, a direction that the applicant is not liable to be transferred from Kochi to any other Unit outside Kochi in view of Annx.A6 settlement cannot be granted. Therefore, the question of promissory estoppel does not arise.

10 Then the question comes, the transfer simplicitor within the frame work and

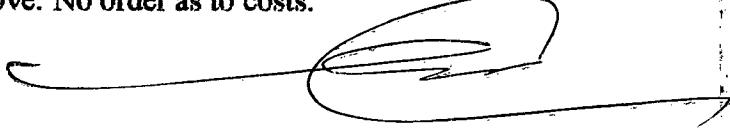
guidelines, whether the applicant could be transferred or not. The applicant was given an undertaking/assurance by Anxx.A3 that on her return from leave, the applicant will be posted in the same station from where she proceeded on leave. The case of the applicant is that her sudden transfer to Palai has created difficulties and family problems such as to get new admission to her child in a School at Palai during the mid of the academic session. Regarding the 4th respondent it was submitted that she is a resident of Palai and her children are grown up and she made a request for her transfer to Headquarters at Ernakulam and on the basis of that request she was transferred to Headquarters and the applicant was displaced. The balance of convenience denote that the applicant should have been retained at Kochi and the placement of respondent No.4 is not in public interest. The transfer order Anxx.A4, does not denote that the transfer was effected in public interest. Smt.Lekha who is the junior most employee has been retained in Kochi which shows malafide intention of the respondent to transfer the applicant without administrative reasons. The counsel for the applicant took me to the decision reported in State of Kerala Vs. Balakrishnan 1992(1) KLT 420 and canvased that the transfer order is silent about public interest. The transferring authority cannot put forward the justification on the premise of public interest. Subsequently also the case reported in AIR 1993 SC 1236 Rajendra Roy Vs. Union of India canvased the position that any order of transfer issued without proper justification can be interfered by the Court or the Tribunal. Further, the decision in 1994 Supp(2) SCC 666, Director of School Education, Madras & Ors Vs. O.Karuppa Thevan & Anr, held that transfer of an employee whose children are studying in school, during mid academic term, in absence of urgency, to be restrained from being effected till the end of that academic year. The counsel canvased for a position that the transfer order Anxx.A4 is violative of Articles 14 and 16 of the Constitution of India as she had made all arrangements for study of her child at Ernakulam and transferring her during the mid-academic session that too without public interest or administrative reasons is not in accordance with true spirit of the judgment cited above.

11 In the conspectus of the facts and circumstances I am of the view that the transfer of the applicant during the mid-academic year is not in true spirit of the judgment of the

h

Hon'ble Supreme Court, therefore, Annx.A4 is set aside to that extent and direct the respondents to issue appropriate orders in tune with the above observation retaining the applicant till the end of the current academic year.

The O.A is allowed as indicated above. No order as to costs.



(K.V.Sachidanandan)
Judicial Member.

kkj