

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXX~~

401/91

188

DATE OF DECISION 29.7.91

K.K.Mohammed Basheer Applicant (s)

Mr.P.Sivan Pillai Advocate for the Applicant (s)

Versus

Union of India through
The Secretary, Ministry of Agriculture,
(Dept. of Agriculture & Co-operation),
Krishi Bhavan, New Delhi and another Respondent (s)

Mr.V.Krishnakumar, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr.S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

In this application dated 10th March 1991 as amended on 31st May, 1991 the applicant who has been working as Processing Assistant and later ^{as} ~~as~~ Marketing Assistant under the Director of Integrated Fisheries Project has challenged the impugned order dated 20.3.91 at Annexure A6 rejecting his representation for transfer back from Vishakapatnam to Cochin and has prayed that the second respondent be directed to transfer him back to Cochin to join his substantive post of Processing Assistant. The brief facts of the case are as follows.

2. The applicant was appointed as Processing Assistant in the Integrated Fisheries Project, Cochin in December 1981 and later confirmed in that post at Cochin. A new unit of the Project was started at Vishakapatnam in 1989-90 and the applicant was transferred vide the order dated 27.7.90 (Annexure

AI) to the Vishakapatnam unit temporarily to hold the newly created post of Processing Assistant. He joined the post at Vishakapatnam on 10.8.90 and the second respondent vide another order dated 25.10.90 promoted the applicant from the post of Processing Assistant to that of Marketing Assistant on an adhoc basis with effect from 1.11.90. It was made clear in that order that he will continue to discharge the duties of Processing Assistant also till a substitute is posted. According to the applicant he objected to his promotion and requested the second respondent to retransfer him to Cochin as his transfer to Vishakapatnam was provisional. According to him the second respondent told him orally to first take over the post of Marketing Assistant and then make a representation. Accordingly he made a representation on 21.1.91(Annexure A3)pointing out his domestic difficulties which necessitated his presence at Cochin. When the sickness of his mother increased, the applicant took leave and returned to Cochin on 27.1.91. In the meantime the second respondent posted one Sri Varghese John as Processing Assistant to Vishakapatnam in which post the applicant had been temporarily transferred vide Annexure A1 order. The applicant again represented on 21.2.1991 for joining his own post at Cochin. His plea is that there are six posts of Processing Assistant at Cochin, of which four posts are vacant including the post in which the applicant's lien has been maintained. He is aggrieved by the rejection of his representation by the impugned order at Annexure-A6. In the counter affidavit the respondents have stated

that the applicant is liable to be posted anywhere in the country and he cannot refuse to serve in the Vishakapatnam unit where he was transferred in public interest. They have stated that the applicant was transferred to Vishakapatnam only on a temporary basis and not as ^a permanent _{an} arrangement. His promotion ^{an} as Marketing Assistant was only on adhoc basis and that his lien has been retained on the post of Processing Assistant. For setting up the unit at Vishakapatnam expeditiously the services of experienced Processing and Marketing Assistants were needed. Hence the applicant's services were transferred temporarily. The Vishakapatnam unit is involved in production of all types of diversified fish products and the services of experienced hands are required like those of the applicant. Fish marketing and processing are closely associated and hence the applicant's promotion as Marketing Assistant was not unnecessary. They have conceded that his transfer back to Cochin unit will be considered as and when it is administratively convenient. Conceding that another Processing Assistant has been posted in the Vishakapatnam unit, the respondents have still maintained that the applicant's presence as Marketing Assistant at Vishakapatnam is administratively necessary.

3. In the rejoinder the applicant has argued that Vishakapatnam being a new unit and since he was transferred there only on a temporary basis with a limitation of six months, he cannot be forced to work there after six months when a regular posting has been made to the post of Processing Assistant. He has further argued that the liability to serve anywhere

in the country as indicated in his appointment letter at Annexure-R1 pertains only to his appointment and work as a Processing Assistant and not for any higher post, say of Marketing Assistant. He has also argued that since he was promoted as Marketing Assistant on an adhoc basis, it shows that Marketing Assistant is not within the normal promotion channel of Processing Assistant. According to him there are many senior and more experienced Processing Assistants at Cochin, some of whom trained in foreign countries who could have been promoted as Marketing Assistant. The applicant has no experience as Marketing Assistant and has been working in the post for the first time whereas two Marketing Assistants have been retained in Cochin. The exigencies of service involving in his original temporary transfer to Vishakapatnam as Processing Assistant came to an end when a regular substitute had been posted there.

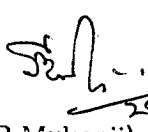
4. ^g~~We~~ have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The order transferring the applicant to Vishakapatnam at Annexure-A1 makes it clear that he was temporarily transferred to Vishakapatnam unit. The force of this transfer order ends as soon as, as conceded by the ^{respondent} applicant, a regular substitute is posted as Processing Assistant at Vishakapatnam. So far as the applicant's promotion as Marketing Assistant is concerned, the applicant accepted the promotion under protest and immediately after taking over the charge of the post, he submitted the representation at Annexure-A3 on 21.1.91. He made it clear therein that he was never exposed to fish marketing and other disciplines connected with marketing,

but on the other hand, had been trained in Japan on advanced methods of marine food processing. He brought out his personal problems also to be retained at Vishakapatnam. He also mentioned that he had taken over the charge of Marketing Assistant in obedience of the order cited. From these facts it is clear that the applicant was never happy about his posting as Marketing Assistant at Vishakapatnam and that also on an adhoc basis. It was also not in the public interest to waste a Processing Technician trained in Japan, ^{by posting him in} ~~on~~ marketing in which he had neither experience nor training. The fact that he was promoted on an adhoc basis shows that the respondents themselves were not sure about the suitability of the applicant for the post of Marketing Assistant. There ^{were} ~~was~~ others experienced and trained in marketing at Cochin for filling up the post of Marketing Assistant at Vishakapatnam.

5. I am not impressed by the argument of the respondents that the applicant by the order of his appointment at Annexure-R1 had an all India transfer liability. Annexure-R1 is the offer of appointment giving the terms of appointment to the applicant as Processing Assistant. ^{One} ~~One~~ of the terms says that "the appointment carries with it the liability to serve in any part of India or outside". Strictly speaking, therefore, the liability to serve anywhere in India goes with the work of Processing Assistant and not with his promotion as Marketing Assistant.

6. Since the post of Processing Assistant to which the applicant was transferred at Vishakapatnam has been filled up by a regular substi-

tute, while the applicant's post of Processing Assistant to which he was appointed at Cochin and on which he maintains his lien is still lying vacant and since he had been transferred to Vishakapatnam as Processing Asstt. on a temporary basis and since he cannot be forced to be promoted as Marketing Assistant which is not in his professional line and since he has been promoted only on an adhoc basis, I see considerable force in the application. 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 Integrated 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 D.P.C 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. Thus the applicant before us who ^{has never been} ~~is not~~ willing to be promoted as Marketing Assistant at Vishakapatnam cannot be forced to be retained there. Accordingly I allow the application, set aside the impugned order at Annexure A1 and direct the respondents to revert the applicant back to his original post of Processing Assistant at Cochin. There will be no order as to costs.


(S.P. Mukerji)
Vice Chairman