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CAT/J/12

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 569/89 198  
T.A. No.

DATE OF DECISION 6.12.1989

P. Nandakumar Petitioner

- Advocate for the Petitioner(s)

Versus

Garrison Engineer, Panaji, Goa. Respondent

Mr. G.R. Sharma Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.S. CHAUDHURI, MEMBER (A). 

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 ?
  3. Whether their Lordships wish to see the fair copy of the Judgement ?
  4. Whether it needs to be circulated to other Benches of the Tribunal ?
- ] No

(2)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.569/89.

P.Nandakumar

... Applicant

V/s.

Garrison Engineer,  
Panaji,  
Goa.

... Respondent.

Coram: Hon'ble Member(A), Shri P.S.Chaudhuri.

Appearances:

Applicant in person.  
Mr.G.R.Sharma, advocate  
for the respondent.

Oral Judgment:-

{Per Shri P.S.Chaudhuri, Member(A)} Dated: 6.12.1989

This application was filed on 11.8.1989 under section 19 of the Administrative Tribunals Act, 1985. In it the applicant has prayed for setting aside two orders, viz. (i) Garrison Engineer (for short, GE), Panaji's order dated 27.6.1989 by which he is posted from Barrack Stores Officer (for short, BSO), Panaji to Assistant Garrison Engineer Buildings/Roads (for short, AGE B/R) Verem; and (ii) Commander Works Engineers (for short, CWE), Panaji's order dated 2.8.1989 in which quarter No.16/1 at Altinho at present occupied by the applicant has been declared to be a type III Quarter and GE, Panaji has been requested to allot the applicant an alternative accommodation in lieu thereof and the applicant has been requested to vacate this quarter within 10 days of allotment of alternative accommodation by GE, Panaji.

2. In terms of this Tribunal's Chairman's order dt. 21.3.1988 both these prayers come within the jurisdiction of a Bench consisting of a Single Member. I have accordingly proceeded to hear and decide this application.

3. The facts regarding the first prayer may be briefly stated now. On 13.2.1984 the applicant was appointed as a Supervisor, Barrack/Stores Gr.II in the Military Engineering Service in the office of GE, Panaji. On 27.6.1989 by the impugned order he was posted to Verem. This order reads as follows:

" INTERNAL POSTINGS : SUBORDINATES

1. The following internal posting is hereby ordered in the interest of State:-

Sl. No.	MES No.	Name & Designation	Posted From	To	Move to be completed before
1.	141882	Shri P.NANDAKUMAR Supvt B/S Gde II	BSO Panaji	AGE B/R VEREM	30 JUN 89

2. The above individual will take over the charge of stores of AGE B/R Verem. Necessary handing/taking over report should be submitted to this office by 10 JUL 89."

On 29.6.1989 the applicant submitted a representation to GE, Panaji against this posting. On 30.6.1989 the applicant was informed by BSO, Panaji that GE, Panaji had intimated that the posting order had been issued in the interest of the State and on job requirement. On 30.6.1989 itself the applicant submitted a representation to the next higher authority, viz. CWE, Panaji. By letter dated 21.7.1989 CWE's reply dated 17.7.1989 to this representation was communicated to the applicant. The relevant reply reads as follows:

"2. The application dated 30 Jun 89 in respect of MES/141822 Shri P.Nandakumar, B/S Gde II of your Division has carefully been considered. AGE Verem is a premier trg institute for Offrs of the Navy as such it is operationally imperative that on appropriate B/S cadre personnel be posted forthwith to supervise the duties relating to furniture, stores of Verem sub-division.

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3. In view of the above, the representation of the individual is not agreed to. However, once the situation of the B/S cadre in the division improves, the case may be re-considered.

4. The individual may please be suitably informed.

5. This has the approval of CWE".

On 21.7.1989 and 24.7.1989 the applicant submitted two further representations to CWE. On 2.8.1989 the applicant was informed that both these representations had been rejected. This letter reads as follows:

"1. Reference your application No PNK/151/PS dt. 21 Jul'89 and PNK/152/PS dated 24 Jul'89.

2. Your case of posting has been examined in detail and due to exigency of service, your request is not agreed to at this stage. However, whenever the situation of Store Keepers improve, your case will be reconsidered.


3. This has the approval of the CWE."

4. In the meantime on 26.7.1989 the applicant had been served with movement order dt. 26.7.1989. On 27.7.1989 he made a representation against this order to BSO, Panaji. He submitted a further representation to BSO on 2.8.1989 stating that he had not been allowed to join his office at Panaji. He did not receive any reply to these representations.

5. Being aggrieved he filed the present application on 11.8.1989. The respondents have opposed the application by filing their written statements. The applicant presented his case in person and did so ably. I also heard Mr.G.R.Sharma, learned advocate for the respondents.

6. At the outset the applicant made a grievance that he had not been shown all the documents mentioned in the respondents' written statement. On my direction the respondents showed him all the documents and the applicant confirmed that he no longer had any grievance in this regard.

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7. The applicant's first submission was that there had been a violation of the instructions issued by Chief Engineer, Southern Command in para 2 of his letter dated 10.4.1984 (at page 17 of the application) to the effect that transfers should be carried out in the month of February/March with instructions to complete the move by May/June. I do not see any force in this submission as a plain reading of the instructions makes it clear that these are not mandatory.

8. The applicant's second submission was that by the impugned order he had been asked to perform a task which was that of personnel two steps lower in rank. It was his contention that thus the impugned order violated a number of provisions, viz. F.R.15 and Articles 16 and 311 of the Constitution. He cited E.P.Royappa's case - AIR 1974 S.C. 555 in support of his contention of hostile discrimination. I do not see any force in this submission also. I have quoted the impugned order earlier in full. It makes it clear that there is no change in either the designation or the pay scale or the pay of the applicant. In fact, during the preliminary stages of the hearing of this case the applicant himself fairly admitted that there would be no change in either his designation or his emoluments arising from his transfer to Verem. F.R. 15 would have been attracted only if he had been appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds a lien. On the contrary, Mr.Sharma cited Article 71(a) of the C.S.R. which reads as under:

"71(a) Unless in any particular case it be otherwise distinctly provided, the whole of a public officer must be held to be paid for by the State, and he may be employed in any manner required by proper authority with in his own branch of duty, without claim for additional remuneration, whether the services rendered are such as would ordinarily be paid for from the Consolidated Fund or a Local Fund."

Based on these discussions I also do not see any violation of Articles 16 and 311 of the Constitution.

9. The applicant's third submission was that the letter dated 2.8.1989, which I have quoted earlier, mentioned that his case would be reconsidered when the situation of Store Keepers improves. ~~It was when the situation of Store Keepers improves.~~ It was the applicant's contention that this coupled with the fact that the previous incumbent of the post was a Store Keeper established that he was being used as a Store Keeper, and this would adversely affect his chances of promotion and so this was a violation of Article 16 of the Constitution. I do not see any merit in these submissions of the applicant. I have already held that there has been no change in his designation or scale of pay or pay. CWE's letter dt. 17.7.1989 which I have quoted earlier clearly sets out the duties that the applicant will be performing at Verem. I do not see anything wrong in these duties and I do not see how having to perform these duties can possibly adversely affect the applicant's chances of promotion. Further, it is for the Government to decide what is the best way of deploying its available work force at any given time. I do not see anything wrong in their posting a Supervisor Barrack/Stores, Gr.II to an establishment where there was no such post before.

10. The applicant's fourth submission was that the impugned order violated the instructions issued by Chief Engineer, Southern Command in his letter

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dated 31.5.1984 (at page 16 of the application) which stipulated that all postings of personnel involving station changes should have the prior approval of the Command Chief Engineer and that GE's cannot post basic staff to an outstation sub-division without the prior approval of the Command Chief Engineer. It was his submission that in Rule 5(3) of the C.C.S. (Joining Time) Rules, the term "same station" has been interpreted to mean area falling within the jurisdiction of the Municipality or Corporation, etc. It was his further submission that the Chief Officer, Panjim Municipal Council had certified that I.N.S.Mandovi, Verem was not located within the jurisdiction of the Panjim Municipal Council. On the other hand, the Sarpanch of the Verem-Betim Reis Magos Grampanchayat had certified that I.N.S.Mandovi, Verem was situated within the jurisdiction of Verem Gram Panchayat. Mr.Sharma countered this by citing Chief Engineer, Southern Command's letter dated 24/27.8.1983 (listed as (f) in the list of documents attached to the reply). The relevant portions of this letter reads as follows:

"POSTING AND TRANSFERS : CLASS III BASIC ESTT

- 1) .....
- 2) The stations/station complexes for the purpose of posting are revised as under:
  - (A) .....
  - (B) .....
  - (C) .....
  - (D) CE COCHIN ZONE
    - i) .....
    - ii) .....
    - iii) Goa Complex - All formations in Goa including Panaji and Vasco.
  - (E) .....
  - (F) ....."

I do not see any merit in this submission of the

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applicant as the words "station changes" have to be interpreted in the manner detailed in this letter dated 24/27.8.1983 which specifically deals with subjects of posting and transfers and not in the manner prescribed in the CCS (Joining Time) Rules.

11. The applicant's fifth submission was that the impugned transfer order violated the instructions issued by Chief Engineer, in para 5(a) of his letter dated 10.4.1984 (at page 17 of the application). It was his contention that his transfer had been ordered by a GE and not by the CWE who was the lowest authority competent to do so in terms of these instructions. This subparagraph of this letter dated 10.4.1984 reads as follows:

"5. Adjustments within the same station can be ordered by the CE Command/CE Zone/CWE (Highest officer in the station). But Command CE will order postings outside the station. The following guidelines are suggested:-

- (a) Gde.IIs should be turned over from one division to another Division within the same station. If that is not possible because there is one division in that station, they should be transferred from one sub division to another sub division in case of B/E IIs and E/M G II and from one section to another section for Supvr B/S Gd.II and E/M II by the G.E."

Mr.Sharma countered this by submitting that there were six sections, under GE, Panaji including BSO, Panaji and AGE B/R. It was his case that the applicant had only been transferred from one sub-division to another sub-division in the same station and that this was within the same station as defined in the letter dt. 18.5.1989 quoted earlier and that this was within competence of a GE. I have already held that the term 'station' has to be defined in accordance with the letter dt. 18.5.1989 and I have no hesitation in holding that this transfer from one sub-division to another sub-division within the same station was within the competence of the GE, Panaji.

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12. The applicant's sixth submission was that there was no post of Supervisor Barrack/Stores, Gr.II under an AGE B/R. In support thereof he cited a MES Precis. Mr.Sharma countered this by submitting that the MES Precis was not an authoritative document. It was his contention that the relevant authority in this regard was the sanction for subordinate establishment(basic) issued by the Chief Engineer, Cochin Zone on 10.1.1989. In this sanction the lowest formation was a GE. In GE, Panaji's cadre there were two posts of Supervisor Barrack/Stores, Gr.II. It was Mr.Sharma's contention that it was open to the GE to allot these two posts at any place under his charge. It was his case that one such post had been allotted a long time ago under AGE B/R, Margao and that the second post had now been allotted under AGE B/R, Verem. I see nothing wrong in this.

13. The applicant's seventh submission was that he was a Member of the Works Committee. It was his case that by the Ministry of Defence's letter dated 2.4.1980 certain restrictions had been placed on the transfer of Members of Works Committees. The relevant portion of this letter is reproduced below:

"2. The matter has been considered in this Ministry in consultation with the service Headquarters. Since the Works Committees are formed under statutory Rules, it is felt that the elected representatives of works committee may be given PROTECTION against transfer during their tenure of membership in order to maintain harmonious relations. The transfer may also NOT be effected EVEN from one installation to another except on grounds of discipline, promotion, reduction establishment or operational requirements.

3. It is also suggested that for transferring the elected representatives of Works Committee on grounds of OPERATIONAL requirements and discipline the local management should be instructed to obtain or APPROVAL of the MINISTRY after explaining the reasons for the transfer. The approval is made only to eliminate the possibility of victimisation of any worker's



representatives by the local management through colourable exercise of power. The procedure, if adopted, would also remove suspicion in the minds of the elected representatives of the works committee and dispel any apprehensive of victimization."

Mr. Sharma countered this by submitting that the Works Committee of which the applicant was a Member had lapsed on 19.6.1989 and that fresh elections had been ordered by a letter dated 13.6.1989. The applicant countered this by submitting that a notice laying down the schedule for this election had been issued by BSO, Panaji. In terms of this notice nomination papers were required to be filed by 22.6.1989 and he had done so when he was in his previous appointment. Scrutiny of nominations was required to be completed by 24.6.1989 and withdrawal of nomination paper was to be done by 26.6.1989. His nomination paper had been forwarded by letter dt. 6.7.1989 by which time, however, the impugned transfer order had been issued. It was the applicant's contention that since he was the only nominee against two seats required to be filled he should be deemed to have been elected. It was his further contention that, therefore, <sup>GE's</sup> subsequent order dated 7.7.1989 in which it was stated that the applicant was posted to Verem and hence he cannot be nominated from BSO's sub-Division was bad and should be struck down. But neither is this election nor is GE's subsequent order dated 7.7.1989 in challenge before me. In any case, such a challenge would be outside the jurisdiction of a Bench consisting of a Single Member. It is therefore, not proper for me to go into the merits of any of the orders relating to the conduct of the election for which nomination papers were to be filed on 22.6.1989. I am required to confine myself to the position on 27.6.1989 in respect of the prayer before me which is within my jurisdiction.

Within this narrow framework there is no doubt that the applicant was not a member of the Works Committee on the date of the impugned order and therefore, the impugned order cannot be faulted on this ground. I would again make it clear that I have not gone into the merits of the election process mentioned by the applicant and the consequences thereof as these are outside my jurisdiction.

14. The applicant's eighth and final submission was that he was a Member of the Joint Consultative Machinery and his posting to Verem violated the instructions contained in the Ministry of Personnel, Public Grievances and Pensions Office Memorandum dated 19.8.1989. The relevant portion of this office memorandum reads as follows:

" The Staff Side in the Departmental Council of the Ministry of Personnel, Public Grievances and Pensions have requested that with a view to enable the Union Functionaries to follow up staff matters effectively, they should not be posted outside the main office of the Cadre/Ministry/Department. The matter has been considered and it is suggested that except for special reasons, Union functionaries should not be shifted from main administrative office to subordinate office (including other offices or buildings). "Union Functionaries" for this purpose would be the President and General Secretary of the Branch Unit of the recognised Union/Association who are members of Staff Council."

Mr.Sharma countered this by submitting that the Joint Consultative Machinery was organised at the level of CWE and that the applicant had not been transferred outside his jurisdiction. It was his further submission that the Union to which the applicant belonged was not a recognised Union and that, further, the applicant was not the General Secretary of the Branch Unit. It was his final submission that the applicant had never been posted in the main office of CWE and this position had not been altered by the transfer. These submissions were not disputed by the applicant. In view of this I do not see how the

applicant can seek the protection of this letter  
dt. 19.8.1989.

15. In this view of the matter I do not find any  
fault with the impugned transfer order and the applicant's  
prayer in this regard is dismissed.

16. We come now to the second prayer of the applicant,  
viz. his displacement from quarter No.16/1 at Altinho.  
The relevant facts may be stated here. This quarter had  
been allotted to the applicant by order dated 13.9.1984.  
This order did not have any condition or proviso regarding  
the allotment. Also no indication had been given regarding  
what type of quarter it was. Thereafter, the applicant  
received the impugned order dated 2.8.1989. This order  
reads as follows:

" ALLOTMENT OF ALTERNATIVE ACCOMMODATION

1. Quarter No 16/1 at Altinho is a type III  
quarter and is not to the entitlement of MES/  
141822 Shri P Nanda Kumar, Supvr B/s Gde II of  
your division who is at present occupying.
2. You are requested to allot him an alternative  
accommodation.

Sd/-  
(JK Khosla)  
Lt Col  
BSSO  
For Commander Works  
Engineers

Copy to:

Shri P.Nanda Kumar,  
Supvr B/S Gde II  
(Through BSO Panaji)

- You are requested to vacate  
the quarter No 16/1 at Altinho  
within ten days of allotment  
of an alternative accn by GE  
Panaji."

The applicant submitted a representation against this  
order on 31.8.1989. Mr.Sharma submitted that this  
representation abated as it had been filed after the  
original application. The applicant submitted that, none  
the less, a fresh allotment order had been issued on

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24.8.1989 which had been served on him only on 28.11.1989. This allotment order allots him alternative accommodation and directs him to vacate the quarter at Altinho by 9.12.1989.

17. It was the applicant's case that the sole reason set out in the impugned order dated 2.8.1989 asking him to vacate the quarter in which he was residing was that it was classified as type III. It was his submission that the subject quarter had originally been constructed as a laundry building and still remained classified as such. It was his contention that although the impugned order stated that the quarter had been classified as type III there had, in fact, been no such order. It was his final contention that he had been denied natural justice by not being given any opportunity of being heard before the final order had been passed seeking to displace him from the quarter in his possession. Mr.Sharma attempted to counter these arguments by submitting that the allotment of alternative accommodation to the applicant had nothing to do with his transfer. Mr.Sharma submitted that a recognised association had represented to CWE on 19.5.1989 pointing out that the living area of the quarter in the applicant's possession was more than as he was entitled to. This representation was forwarded to GE, Panaji for his comments. GE replied/stating that the quarter in question was a re-appropriated married quarter and that the circumstances under which the quarter was allotted to the applicant was being ascertained and if possible the individual would be accommodated in alternative accommodation. The recognised association was thereafter informed by CWE on 6.6.1989 that the individual would be asked to vacate once alternative accommodation

is available. The next part of Mr.Sharma's case is that the quarter in question had a 'living area' of 71.76 sq. mt. It was his contention that in terms of the Ministry of Defence's letter dated 18.12.1987 quarters having this area were to be classified as type III. It was his submission, which was not disputed that the applicant was entitled to only a type II quarter. It was Mr.Sharma's further contention that the building in question had been re-appropriated from at least as far back as 20.12.1982, if not earlier, as married accommodation for 4 JCOs and that this re-appropriation continued even at present. I do not see any merit in the contentions of the respondents. There is no doubt that a final decision to ask the applicant to vacate the quarter in his possession was taken without giving him any opportunity of being heard, thus denying him natural justice. This position is not altered by the fact that the applicant did submit a representation later because the impugned order was final and had been passed without hearing him. The relevant portions of the letter dt. 18.12.1987 are reproduced below:

"1. On acceptance of the recommendations of the Fourth Central Pay Commission relating to the charging of licence fee for Govt. Accm, it has been decided by the Central Govt to prescribe flat rates of licence fee for the residential accn available in General Pool and also under various Ministries/Department or Govt of India all over the country. Accordingly I am directed to convey the sanction of the President for the charging of licence fee from civilians paid from Defence Services Estimates who are in occupation of General Pool residential accn specifically constr for Defence civilians/surplus Defence pool accn allotted to the defence civilians on temp basis and for MES key personnel quarters all over the country as per rates and conditions laid down in the succeeding paras.

2. The flat rate of licence fee for different types of accn fixed by Govt. is given in Appendix I to this letter. The formula for calculating the living area of the accn is indicated in Appendix II. For common services like conservancy charges,

service tax, fire tax and scavenging tax payable for residences, no additional charges are to be recovered. The flat rate of licence fee is to be charged with effect from 01 Jul 87, i.e. from the salary for the month of July 87.

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5. The living area of the quarters indicated in Appendix II has been assessed on the basis of the living area of the bulk of General Pool Quarters, as these quarters have been constr over a long period of time. However, there may be cases where the living area of the quarters may be slightly less than the maximum specified. In such cases, licence fee may be recovered on the basis of the classification of the type of accn and based on the lowest or highest rates depending on the lower living area or higher living area of the quarter and in such cases, the licence fee may be fixed on provisional basis and such anomalies will be sorted out by the Station Board convened for the purpose and approved by the Station Commander.

6. ....

7. ....

8. .... "

A plain reading of this letter makes it clear that it deals with the fixation of flat rate of licence fee for different types of residential accommodation for civilians paid from Defence Service Estimates consequent on the recommendations of the IVth Pay Commission. It is clearly not an order directing that all existing buildings shall be automatically re-classified in pursuance thereof. Even if this order was considered to be a guideline, still it would be necessary to issue a formal order regarding re-classification of the quarter. In fact, under no circumstances could any such order have been issued on the basis of this letter because it clearly states that it shall be applicable to classified and standard accommodation only. A perusal of the the register of permanent military <sup>buildings</sup> shows that the said building was constructed as a laundry building and still remains classified as such. There is no doubt that it is not classified as any type of residential accommodation

and that it is not standard accommodation. There is no way in which this building comes within the purview of the letter dt. 18.12.1987. There is no order classifying the subject quarter as a type III quarter. The respondents contention regarding re-appropriation also does not help them. Even though re-appropriation was done as far back as 20.12.1982, if not earlier, the respondents did none the less allot the quarter to the applicant in 1984 and let him remain there undisturbed till the impugned order. No evidence has been led to show that the exigencies of service require that the subject quarter be vacated. In any case, this line of defence is not open to the respondents now as the reason given in the impugned order can not be supplemented by fresh reasons now - see Mohinder Singh Gill's case : AIR 1978 SC 851 (at 858). The applicant might well have brought all this to the notice of the competent authority had he been heard before the impugned order was passed.

17. In this view of the matter I have no difficulty in holding that the impugned order dt. 2.8.1989 deserves to be quashed and set aside. As a consequence of this the sequential order dt. 24.8.1989 which was served on the applicant on 28.11.1989, i.e. long after the initial order had been challenged, does not survive. The respondents are, however, at liberty to take such fresh action as is proper and in accordance with the law in respect of quarter No.16/1 at Altinho.

18. In the result the application partly succeeds. The impugned order dt. 27.6.1989 is upheld. The impugned order dated 2.8.1989 is quashed and set aside.

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19. In the circumstances of the case, there will be no order as to costs.

*P. S. Chaudhuri*

(P.S. CHAUDHURI)  
MEMBER (A).

Judgment dt. 6.12.89  
Send to parties  
on 16.2.90.

Abbas

Judgment - dt. 6.12.89  
Served on respondents  
on 19.2.90.

Abbas

Judgment dt. 6.12.89  
Served on applicant  
on 20/2/90.

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26/2/90