

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**Original Application No.180/00768/2017,
M.A 180/1217/17**

&

CP(C) 180/147/17

Tuesday, this the 3rd day of April 2018

CORAM:

**Hon'ble Mr. U. Sarathchandran, Judicial Member
Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member**

O.A 180/768/2017

Vinod Kumar.V.V

S/o.Vidyasagar

On promotion as Office Superintendent (Upper Division Clerk)

Office of the Command Civilian Personnel Office

Head Quarters Southern Naval Command

Naval Base, Kochi-682 004

Residing at: Vinod Bhavan

Naval Armaments Depot (NAD) P.O

Aluva – 683 563

.....

Applicant

(By Advocate – Mr.T.C.G Swamy)

V e r s u s

1. Union of India,
Represented by the Secretary to Government of India
Ministry of Defence (Navy)
New Delhi – 110 001
2. The Chief of Naval Staff
Integrated Head Quarters
Ministry of Defence (Navy)
New Delhi – 110 001
3. The Flag Officer Commanding-in-Chief
Head Quarters Southern Naval Command
Naval Base, Kochi-682 004
4. The Chief Staff Officer (P&A)
Head Quarters Southern Naval Command
Naval Base, Kochi – 682 004

..... **Respondents**

(By Advocate – Mr. T.C.Krishna,Sr.PCGC)

M.A 180/1217/2017

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(By Advocate – Mr. T.C.Krishna,Sr.PCGC)

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Respondent

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CP(C) 180/147/17

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Naval Base, Kochi-682 004
Residing at: Vinod Bhavan

Naval Armaments Depot (NAD) P.O
Aluva – 683 563

..... Petitioner

(By Advocate – Mr.T.C.G Swamy)

Versus

Commodore Joginder Chandna
The Chief Staff Officer (P&A)
Head Quarters Southern Naval Command
Naval Base Kochi – 682 004

.... **Respondent**

(By Advocate – Mr. T.C.Krishna,Sr.PCGC)

These Applications having been heard on 22.03.2018, the Tribunal on 3.4.2018 delivered the following:

O R D E R

Per MR. U. SARATHCHANDRAN, JUDICIAL MEMBER

Applicant is an Upper Division Clerk in the office of the Command Civilian Personnel Office (Legal Cell) in the Headquarters, Southern Naval Command, Naval Base Kochi. He was promoted to the post of Office Superintendent vide Annexure A-3 dated 28.6.2017 and is transferred to Naval Armament Inspectorate (NAI, for short), Alwaye. Knowing that he is being considered for promotion to the post of Office Superintendent, he had sent Annexure A-1 request dated 22.12.2016 to respondent no.3 for considering him for posting at NAI, Alwaye on the ground that such posting would help him to look after his family consisting of his aged mother, wife and two daughters and also to carry out his official responsibilities in a very effective manner. Accordingly, he was posted at NAI Alwaye vide Annexure A-3 order dated 28.6.2017. The applicant has now approached this Tribunal

stating that respondents are not relieving him from the Headquarters of the Southern Naval Command, Kochi to Alwaye to take over the promotional post at NAI, Alwaye. Hence, he has approached this Tribunal seeking relief as under:

“(i) To direct the respondents to relieve the applicant from Kochi to Alwaye and permit him to take over the promotion post of Office Superintendent at Naval Armament Inspectorate, Alwaye, forthwith;

(ii) To direct the respondents to grant all financial benefits of the promoted post of Office Superintendent with effect from 1.7.2017.

(iii) Award costs of and incidental to this application

(iv) Pass such other orders or directions as deemed just and fit and necessary in the facts and circumstances of the case. “

2. By way of an interim relief he has sought for a direction to the respondents to relieve him provisionally and permit him to take over the promoted post of Office Superintendent at NAI, Alwaye, subject to the final outcome of the Original Application.

3. When this case came up for admission hearing, it was submitted by learned Senior Central Government Standing counsel that as per the instructions he has received, applicant is retained at Headquarters of Southern Naval Command at Kochi by way of work arrangement to look after the work of legal matters till a successor is posted on regular basis for which it would take three months. It was also submitted by the Central Government counsel that orders relating to enhanced pay and allowances are awaited from the higher authorities and that as the applicant is treated as having assumed charge in the

higher post he would be eligible for pay and allowances of the promoted post from the date of assumption of duties i.e, from 1.7.2017.

4. However, on 6.11.2017 as the applicant pointed out that he was not relieved from Naval Base, Kochi and as no pleading to the contra was made by the respondents, after hearing both sides, this Tribunal granted interim the relief with a direction to comply with the order forthwith.

5. Subsequently, on 5.12.2017 applicant filed Contempt Petition CP© No.180/147/2017 alleging that the interim order was not complied with by the respondents wilfully and deliberately. On 7.12.2017, respondents filed M.A 180/1217/2017 praying for recalling and vacating the interim order passed by this Tribunal. In that Miscellaneous Application it is stated by the respondents that a detailed reply statement was filed in the matter explaining as to why the applicant could not be allowed to take over the promoted post of Office Superintendent at NAI, Alwaye. It is also stated that a suitable reliever in the place of the applicant in the O.A was not available. Further, the respondents state that Naval Armament Depot (NAD, for short) which is a sensitive organisation of the Indian Navy had reported that the presence of applicant at Alwaye will be detrimental to the interests of the Navy as a whole and that it has come out that the applicant through his wife and along with a group of people in the

vicinity of NAD, Alwaye has been making several frivolous representations including mass petition against higher officials to the Ministry of Defence alleging various scams and discriminatory restriction in the safety zone, corruption in issuing NOC and corruption in civil construction in NAD(Alwaye) etc. According to the respondents such allegations are aimed at maligning the image of the Navy and Defence forces at large and the makers of such allegations are working collectively to pressurize Defence Establishments to get the former's vested interests fulfilled. Thereupon the NAD has submitted a letter to the Headquarters Southern Naval Command indicating undesirability of applicant's posting at NAI which is a unit near to NAD Alwaye. In the above circumstances respondents seek recalling of the interim order reiterating that applicant's pay has been fixed at the pay he is entitled to in the promotional post.

6. A detailed reply statement was also filed by the respondents explaining the undesirability of posting the applicant at NAI which is adjacent to the sensitive organisation of Navy - NAD Alwaye. Details of the allegations raised by the applicant's wife along with some other local peoples making petitions and mass representations also have been stated in the reply. The respondents emphatically state that presence of the applicant in the close vicinity of NAD - yet another organisation of the Indian Navy - is prejudicial to the Navy as a whole. It is also alleged that applicant is considered to be a government servant with doubtful integrity. It is pointed out by the respondents

that the local Residents' Association vide Annexure R-2 letter has written complaint regarding the delay in transfer of the applicant to Alway and thereby the applicant has violated DoP&T O.M F.No.11013/08/2013-Estt(A-III) dated 31 August 2015 which prohibits Government Servants from bringing outside influence in respect of matter pertaining to his service matter. Respondents apprehend that if the applicant is posted at NAI - which is situated within the technical premises of NAD Alwaye - would aggravate the situation and the applicant would try to gain access to the confidential activities and would pass on to his local contacts which will be detrimental to the interest of Defence Forces as a whole.

7. A rejoinder was filed by the applicant producing Annexures A-8 to A-13 and stating the difficulties faced by the applicant's family housed near NAD on account of the notification of safety zone under Section 3 of Works of Defence Act 1903. It is further stated in the rejoinder that the residents of the locality had approached the High Court with Writ Petition WP© No.12412/2014 and connected cases wherein Annexure A-8 judgment was rendered by the High Court. The applicant has produced a copy of the representation made to the Prime Minister, information obtained by the residents under RTI Act and a copy of the letter sent by the Member of Parliament of that local constituency to the Defence Minister. It is further stated by the applicant that the applicant had been evaluated for his integrity and ability for the purpose of promotion based on his ACR/APAR and no

adverse remarks had been passed against him by the respondents.

8. We have heard both sides at length and perused the documents.

9. Shri.T.C.G Swamy, learned counsel for the applicant argued strenuously pointing out that the family of the applicant near NAD is suffering along with other members of the locality due to the restrictions imposed by the Defence authorities even for construction/repair of their houses, use of public path and even for fetching of drinking water. He submitted that it is in these contexts, the local residents and the Member of Parliament of the local constituency sent representations to the authorities. He submitted that the applicant's wife too joined the local residents in the aforesaid representations and protest. According to Shri.T.C.G Swamy such matters are not sufficient reasons for the respondent authorities in not relieving the applicant from the Naval Base, Kochi. He submitted that despite the interim order passed by this Tribunal to relieve the applicant forthwith, respondents have acted in contempt of this Tribunal's order by not relieving him.

10. Shri.T.C.Krishna, learned Senior PCGC submitted that it was only after the issuance of Annexure A-3 order of promotion to the applicant and his posting at NAI, Alwaye, the NAD came to know about it and subsequently vide Annexure R-1 the General Manager of

NAD sent a letter to the Flag Officer Commanding-in-Chief, Southern Naval Command pointing out that as NAI, Alwaye is situated within the technical premises of NAD, Alwaye, the posting of applicant at NAI would aggravate the situation and he would try to gain access into the confidential activities and pass on to his local contacts which will be detrimental to the interest of Defence Forces as a whole. Shri.T.C.Krishna submitted that a look at the records produced by the applicant and also a look at Annexure R-2 representation sent by the local residents on 11.10.2017 would show that applicant's wife is one of the protestors against the enforcement of safety zone by the Indian Navy. Referring to para 6 of Annexure R-2 representation addressed to the Prime Minister of India and to the officials of C.B.I, Shri.T.C.Krishna pointed out that it has been made a mention in Annexure R-2 that the respondents are harassing the applicant's wife by '*delaying promulgated promotion/transfer/posting of her husband*'.

11. According to Shri.T.C.Krishna, Sr.PCGC all these indicate that the applicant is closely connected with the agitations of the local people against the Navy and Defence establishment in NAD of the Indian Navy and that if he - who lives with his family in that locality - is posted at NAI, Alwaye which is within the close proximity of NAD would be prejudicial to the Indian Navy from the defence security point of view because he would be having opportunities for access into confidential information and to pass on to the local people for satisfying his vested interests.

12. Annexure A-12 is one of the documents produced by the applicant which is a copy of the proceedings of the Central Information Commissioner(for short, CIC) on an appeal filed by the applicant's wife alleging that complete information has not been received on the RTI application made by her. The information sought by her is obviously relating to the NAD, Alway. Annexure A-12 at page 61 of the paper book shows that at the time of hearing of the appeal by the CIC the '**Appellant represented by Vinod Kumar through VC**'. This fact recorded in Annexure A-12 was not disputed by the counsel for the applicant. The term **VC** indicates Video Conferencing. Annexure A12 shows that it was the applicant who represented his wife by video conferencing in the proceedings before the CIC, New Delhi.

13. Shri.T.C.Krishna, learned Sr.Central Government counsel submitted that the participation of the applicant in the proceedings before the Central Information Commissioner on behalf of his wife was not with the permission of the respondent authorities and hence his conduct is highly irregular and unbecoming of a government servant. He further submitted that Annexure A-12 will underscore the involvement of the applicant in the activities of the local residents targeted against the Defence establishment of Indian Navy at NAD, Alwaye. Shri.T.C.Krishna, Sr.PCGC further submitted that if the applicant is posted at NAI at Alwaye which is adjacent to NAD will provide him the advantage of doing 'insider' work (meaning thereby,

the local practice of trading on the stock exchange to once own advantage having access to confidential information - see Concise Oxford English Dictionary 10th Edition, 2002).

14. We are of the view that, in the light of the apprehensions expressed by the respondent defence authorities and the self speaking Annexure A-12 document produced by the applicant, if the applicant is posted at NAI, Alwaye it would be facilitating his cloak-and-dagger activities sharing the information privy to him relating to the Indian Defence Establishment of the Navy with the agitating local civilians. Therefore, we are of the view that the inaction on the part of the respondents in not implementing the interim order passed by this Tribunal and deciding to file M.A for lifting the interim order instead are only justified. It is worth mentioning that while passing the interim order this Tribunal was not informed about the involvement of the applicant in the agitations of the local public against the NAD, Alwaye. The applicant initially approached this Tribunal with an innocuous request of early posting at Alwaye for providing assistance to his aged mother and family members consisting of two girl children. Only after the lapse of sometime the real intention of the applicant was unfolded. The record produced by both sides subsequent to the interim order revealed that the haste exhibited by the applicant to join at NIA, Alwaye was aimed at rendering support to his wife who is fighting along with the local residents against the Defence authorities in enforcing the safety zone restriction.

15. Undoubtedly, the safety zone restrictions are imposed by the respondents taking into consideration of the overall interests of Defence of India. It is worth noting that in Annexure A-8 judgment in the Writ Petitions filed by the local residents against the safety zone restrictions, the High Court has directed the District Collector to ensure that no permission for constructions in safety zone is allowed, no application for house numbering to be admitted/accepted and notice to be issued to existing building owners in the safety zone to demolish them.

16. These facts show the concern of the High Court also in giving priority to the interests of the Defence establishment over and above the interests of the residents of the locality. It appears that involvement of the applicant's wife and his own involvement in support of the activities of protests by the local residents has come to knowledge of the respondent authorities only through Annexure R-1 letter sent by NAD. Taking into consideration of the above facts and circumstances of this case, we are of the view that the respondents were quite right in not relieving him to be posted at NAI, Alwaye. Therefore, we are of the view that M.A 1217/2017 for re-calling and vacating interim order is only to be allowed. We do so.

17. Resultantly, the CP© No.180/147/2017 has become infructuous and hence it is dismissed.

18. The Original Application is dismissed. It is made clear that respondents are free to post the applicant at any place they choose keeping in view of the larger interests of Defence Establishments. Parties shall suffer their own costs.

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

**(U.SARATHCHANDRAN)
JUDICIAL MEMBER**

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List of Annexures in O.A 180/768/2017

Annexure A1 - True copy of the representation dated 22.12.2016 submitted by the applicant to the 3rd respondent

Annexure A2 - True copy of the Memorandum No.CS 2779/1/2 dated 31st March, 2017 issued on behalf of the 3rd respondent

Annexure A3 - True copy of the order No.CS 2762/18 dated 28.6.2017 issued by the 4th respondent

Annexure A4 - True copy of the letter of assumption dated 1.7.2017 given to the 3rd respondent

Annexure A5 - True copy of the representation dated 1.9.2017 submitted by the applicant to the 3rd respondent

Annexure A6 - True copy of the request dated 13.9.2017 submitted by the applicant before the 3rd respondent

Annexure A7 - True copy of the applicant's pay slips of the months July 2017 and August 2017

Annexure R1 - True copy of letter from the office of Naval Armament Depot, Alwaye dated 21.11.2017

Annexure R2 - True copy of letter dated 21.4.2004 sent by Mythri Residents Association

Annexure R3 - Copy of list of Office Superintendents

Annexure A8 - A true copy of judgment of the Hon'ble High Court of Kerala dated 20 Jun 14 in WP(C) 12412/2014 and connected cases

Annexure A9 - A true copy of letter from Hon'ble MP Shri.Innocent

dated 7 Aug 17 addressed to Hon'ble Defence Minister

Annexure A10 - A true copy of RTI application dated 07 May 17

Annexure A11 - A true copy of the RTI reply dated 30 May 17

Annexure A12 - A true copy of the Order of Hon'ble Central Information Commission dated 6 Oct 17

Annexure A13 - A true copy of Payslip for the month of Nov 17

List of Annexures in M.A 180/1217/2017

Annexure MA-1 - True copy of order of this Tribunal dated 6.11.2017

List of Annexures in CP(C) 180/147/2017

Annexure P1 - A true copy of the interim order dated 6 Nov 2017 in O.A No.180/768/2017 rendered by this Tribunal

Annexure P2 - A true copy of representation dated 15/16 Nov 2017 addressed to the 3rd respondent in the OA, Flag Officer Commanding-in-Chief, Southern Naval Command, Kochi-682 004.
