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**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No.180/00386/2018**

**Thursday, this the 13<sup>th</sup> day of June, 2019**

**CORAM:**

<b>HON'BLE Mr.E.K.BHARAT BHUSHAN,</b>	<b>...ADMINISTRATIVE MEMBER</b>
<b>HON'BLE MR.ASHISH KALIA,</b>	<b>...JUDICIAL MEMBER</b>

Shri Kuttappan T.K., S/o P.V.Chothi, Aged 58 years, Executive Engineer (QS&C), CE (NW) Kochi, residing at Thombrakarote House, Ambalamedu PO, Ernakulam.	....Applicant
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**(By Advocate Mr.R.Sreeraj)**

**V e r s u s**

1. The Union of India,  
Rep. by its Secretary to Government of India,  
Ministry of Defence,  
New Delhi – 110 001.
2. The Engineer in Chief,  
Military Engineer Services,  
Integrated Head Quarters,  
Kashmir House,  
New Delhi – 110 001.
3. The Chief Engineer,  
Military Engineer Services,  
Head Quarters Southern Command,  
Pune.
4. The Chief Engineer (NW),  
Kochi,  
Military Engineer Services,

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Naval Base,  
Kochi – 682 004.

5. Shri P.N.Vijayan,  
Executive Engineer (QS&C),  
HQ CE (AF) Gandhinagar,  
under orders of transfer to HQ CE (NW),  
Kochi as Joint Director (Contract). ....Respondents

**(By Advocate Mr. N.Anil Kumar, SCGSC for Respondents)**

This application having been heard on 11<sup>th</sup> June, 2019, the Tribunal on 13<sup>th</sup> June, 2019 delivered the following :

### **ORDER**

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER**

OA No.386/2018 is filed by Shri T.K.Kuttappan, Executive Engineer (QS&C), CE(NW), Kochi, against the posting order No.MES/07/2018/EIB dated 12.04.2018 issued on behalf of the second Respondent by which the applicant stands transferred from CE(NW) Kochi to DG MAP New Delhi. The copy of the order is at Annexure A1. A true copy of the relevant portion of the Office Memorandum issued by the Ministry of Defence for Cadre Management MES Civilian Officers is at Annexure A2. The grievance of the applicant is that while he is entitled for 'last leg posting' at Kochi , he was denied this while the benefit was bestowed on less meritorious candidates. He submits that out of his 16 years of service as an Officer, he had served 14 years outside the home state. In his 37 years long career he has been

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subjected to 21 transfers. He belongs to Scheduled Caste community and exposure to hard climatic conditions has resulted in deterioration in his health and at present he is a chronic heart patient and also suffers from assorted disabilities. He was expecting to end his career in his home state and this hope has been struck a blow by the impugned order.

2. The applicant had commenced his service as SA II in MES on 04.12.1980 and had been promoted in stages. He had worked in different parts of the country and towards the end of his career he wanted to work in his home state. Thus on 03.09.2015 he had submitted a representation to the second Respondent for transfer to Kochi on extreme compassionate grounds. This was allowed by the posting order dated 15.03.2016 issued on behalf of the second Respondent (Annexure A4) and the applicant took charge at Kochi on 27.04.2016. However, before the expiry of the two years posting on compassionate grounds, Annexure A1 order of transfer was issued posting him from Kochi to Delhi. Well before the issuance of the said transfer order, the applicant had submitted a representation to the second Respondent requesting to retain him at Kochi treating his posting as 'last leg posting'. While his representation was pending, Annexure A1 order was issued. This was particularly discriminatory as at least two other persons, viz., Shri P.N.Vijayan and Shri T.Subhamony are seen posted at Kochi on the basis of last leg posting, despite the fact that they served at Kochi for longer period than the applicant. Yet another representation was made by the

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applicant on 21.04.2018 to the second Respondent (Annexure A6). But this remains unresponded to. Finally the representations at Annexure A5 and A6 stand rejected by order dated 31.05.2018, issued on behalf of the second Respondent, a copy of which is at Annexure A8. This does not offer any convincing answer as to how the applicant alone is being discriminated against. There is no provision in the policy at Annexure A2 which states that one cannot have the last leg posting at the same station in continuation of compassionate ground posting. One can have a maximum of two compassionate postings including last leg posting, if his residual service is less than 10 years. Having availed only one compassionate posting in his entire career, he is indeed eligible for 'last leg posting'.

3. The reliefs sought were to set aside Annexure A1 posting order and to quash Annexure A8. A direction was also sought to the respondents to consider the applicant for 'last leg posting' at Kochi. The OA was first heard on 01.05.2018, wherein this Tribunal directed Respondent-2 to consider and dispose of the representations at Annexure A5 and A6 and impugned order at Annexure A8 had been issued on 31.05.2018 in consequence. On 01.06.2018 this Tribunal was pleased to grant an order of *status quo* against the action pursuant to the Annexure A8 order. The respondents have filed a reply statement specifically stating that the cases of the persons referred to as colleagues and who have obtained the benefit which was denied to the applicant, were all similar cases. The main thrust of the reply is to the effect

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that compassionate ground postings tenure is limited to two years duration and the case of the applicant's attempt to club the compassionate ground posting with last leg posting is impermissible according to the guidelines. However, in the additional reply statement to the rejoinder, filed by the respondents it has been maintained that the Posting Policy of Cadre Management MES Civilian Officers states "Officer with ten years of less residual service can avail only one compassionate/last leg posting".

4. Heard Shri Sreeraj, learned Counsel for the applicant and the Senior Central Government Standing Counsel on behalf of the respondents. It is stated that now the applicant is left with only 10 more months of service and his pension papers are already under preparation. By Annexure A9 dated 22.01.2019 produced by the applicant along with the MA for production of document, the fourth Respondent is seen categorically stating that there is a dearth of officers at Kochi to handle the existing workload. It is also maintained by the respondents that by the said policy of the respondents for officers who have less than 10 years residual service, it will be open to claim one compassionate posting or a 'last leg posting' and not both. But this dictum appears to be more honoured in the breach than in the observance.

5. We have examined the policy which is at Annexure A2 with respect to compassionate/ last leg posting. What is laid down is the following:

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“The compassionate posting term shall be limited to two years duration and two such compassionate posting can be allowed in total service including one in lieu of last leg posting, foregoing right to avail last leg posting. ....

The applicant has availed only one compassionate posting and is now eligible for last leg posting, which he has claimed. There also does not appear to have any bar in clubbing last leg posting along with the compassionate posting. In any case this appears to have been done in the case of some other employees.

6. On an examination of the case, we conclude that the OA has merit on its side. The relief sought is granted. Orders in respect of the applicant issued as per Annexure A1 and A8 are hereby set aside. The applicant shall be allowed to continue in Kochi as his 'last leg posting'. OA is allowed. No costs.

**(ASHISH KALIA)**  
**JUDICIAL MEMBER**

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

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**List of Annexures in O.A. No.180/00386/2018**

- 1. Annexure A1:** True copy of the Posting Order MES/07/2018/EIB dated 12.04.2018 issued on behalf of the 2<sup>nd</sup> respondent.
  - 2. Annexure A2:** True copy of the relevant portions of the Office Memorandum F.No.6(12)/2015/D (Works II dated April, 2018) which contains the "Ministry of Defence, Works Division, Cadre Management of MES Civilian Officer: Guidelines".
  - 3. Annexure A3:** True copy of the representation dated 03.09.2015 submitted by the applicant to the 2<sup>nd</sup> respondent (without the Exhibits)
  - 4. Annexure A4:** True copy of the Posting Order MES/15/2016 dated 15.03.2016 issued on behalf of the 2<sup>nd</sup> respondent.
  - 5. Annexure A5:** True copy of the representation dated 19.03.2018 submitted by the applicant to the 2<sup>nd</sup> respondent.
  - 6. Annexure A6:** True copy of the representation dated 21.04.2018 submitted by the applicant to the 2<sup>nd</sup> respondent.
  - 7. Annexure A7:** True copy of the Movement Order dated 31.05.2018 issued on behalf of the 4<sup>th</sup> respondent.
  - 8. Annexure A8:** True copy of the letter No.B/17006/SW/5081/EIB(P&T-I) dated 31.05.2018 issued on behalf of the 2<sup>nd</sup> respondent.
  - 9. Annexure A9:** True copy of the Letter No.810005/7239/E8 dated 22 Jan 2019 sent by the 4<sup>th</sup> respondent to the Office of the 2<sup>nd</sup> respondent received by the applicant under the RTI Act as per Letter No.120001/RTI/1232EIC dated 06.03.2019.
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