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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00253/2018

Friday, this the 21st day of December, 2018

CORAM:

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

Vinisha A.V.,
Aged 32 years,
W/o Sandeep K.S.,
Junior Engineer (C),
O/o CE (NW), MES,
Kochi-4.
Residing at Koodaoarabil House,
Parapookara PO, Thrissur.

....Applicant

(By Advocate Mr.Sreeraj)

V e r s u s

1. Union of India
represented by its Secretary
to the Government of India,
Ministry of Defence,
New Delhi – 110 001.
2. The Engineer-in-Chief,
Military Engineer Services,
New Delhi – 110 001.
3. The Chief Engineer,
HQ Southern Command,
Military Engineer Services,
Pune -411 001.
4. The Chief Engineer (NW),
Military Engineer Services,
Kochi – 682 004.

....Respondents

(By, Mr.N.AnilKumar, Sr.CGSC and Mrs.Tanuja for Respondents)

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This application having been heard on 18th December 2018, the Tribunal on 21st December, 2018 delivered the following :

ORDER

HON'BLE MR.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

OA No.253/2018 is filed by Vinisha A.V., against her transfer from Kochi to Panaji issued on behalf of the 3rd respondent (Annexure A1). The applicant seeks the following reliefs:

- i) To quash Annexure A1 to the extent it relates to the applicant and Annexure A6 & Annexure A9 and direct the respondents to permit the applicant to continue to work at Kochi itself.
- ii) In the alternative, direct the respondents to defer the move of the applicant to Panaji for 2 years.
- iii) To declare that Annexure A2 Transfer Guidelines are illegal and ultravires the Statutory Rules to the extent it sub delegates the power to transfer to the 3rd respondent.
- iv) Such other relief as may be prayed for and this Hon'ble Tribunal may deem fit to grant.
- v) Grant the cost of this Original Application.

2. The applicant submits that she commenced her service as Junior Engineer on 13.10.2010 at Baroda. On 13.09.2013, she was transferred to the present place of posting at Kochi and she has completed four years plus at her present station. However in view of the fact that she was on maternity leave and child care leave from 26.11.2015 to 27.08.2017, her physical presence at Kochi had been much less.

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3. She cites the fact that she is the mother of prematurely born babies who need constant care, as the reason she may be allowed to continue at Kochi. Her husband who is working with the Kerala State Electricity Board, has a non-transferable job beyond Kerala State. Further, her father-in-law had undergone major heart surgery in November, 2017 and it is the duty of the applicant to look after him as well. Stating all these factors the applicant had represented before the 3rd respondent through a representation dated 17.11.2017 (Annexure A5). However, the same was rejected through a non speaking order (Annexure A6).

4. Thereupon, the applicant filed another representation stating that she has not completed six years at Kochi Complex as per the posting policy issued by DG letter dated 24.04.2015. She could continue for six years at the same station. A copy of the representation is at Annexure A8. This was also rejected as per communication at Annexure A9 dated 24.02.2018.

5. As grounds, it is maintained by the applicant that the impugned orders are against the transfer guidelines of the respondent organisation. She is entitled to complete a six year term at her present station and this is highly necessary in view of the condition of her babies. Further it is stated that there are four persons who are senior to her, continuing at Kochi.

6. By way of reply the respondents have disputed the contentions of the

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applicant. It is stated therein that the applicant's representation was thoroughly considered and for administrative reasons she has to be moved on completion of tenure at Kochi. The Kochi Complex is surplus in JE (Civil) category as per the Command Manning Level (CML) and the number of incumbents has to be reduced. It is in this context that persons who have completed the term are being posted out. Her contention that others who are senior to her are being left undisturbed is not true to facts and is denied.

7. We heard Shri Sreeraj, learned Counsel representing the applicant and Shri N.Anilkumar, learned Sr.SCGC on behalf of the respondents.

8. The applicant appears to have a genuine set of circumstances which require her retention for some time at least in Kochi. However, this cannot be at the cost of operational requirements. The contention that CML requirements dictate her move is not supported by Annexure A10 by which CML postings were kept in abeyance. The critical factor here is to ascertain how many years an incumbent can stay at a place in one posting. In this regard the extract of posting policy, 2007 produced at Annexure A2(a) is relevant. Para-42 of the same reads as follows:

“(I) No Gp 'B'(NG) employee shall spend more than 3 years in a unit and not more than 6 years continuously in a complex, in a sensitive appointment. On completion of continuous 6 years in a sensitive appointment, the employee shall be posted to a different complex in case of a sensitive appointment with the provision that he/she shall be considered for repatriation after three/two years to any of the three choice stations including the previous station subject to availability of a vacancy. In case a non-sensitive

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appointment is available in the same station, he/she also be accommodated in that appointment subject to priority of adjustment of employee coming back on repatriation.”

9. It is admitted that the Kochi is a complex station and hence six years stint appears to be a normal maximum tenure. The applicant has now completed nearly 4½ years of this period. We will have to necessarily include the time spent on maternity and child care leave, thus she still has over a year to complete her six years' tenure. We are of the view, in the interest of justice, that a direction need to be issued to the respondents to allow her to complete her tenure of six years at the present station. Annexure A1 qua applicant is set aside. OA is disposed of with the above directions. No costs.

(Dated this the 21st day of December 2018).

**(ASHISH KALIA)
JUDICIAL MEMBER**

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

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List of Annexures in O.A. No.180/00253/2018

1. **Annexure A1** – True copy of the PO No.99/2017 (132601/Adm-17/JE(Civ)/01/E1B(S)/A1(a) dated 15.11.2017 issued on behalf of the 3rd respondent.
2. **Annexure A2** – True copy of the 2007 Transfer Guidelines of the Military Engineer Services (Guidelines Management of Group 'C' & 'D' posts of MES)
3. **Annexure A2A** – True copy of the Directorate General letter No.B/20148/PP/FRI/EIC(I) dated 24.04.2015
4. **Annexure A3** – True copy of the Discharge Summary dated 18.05.2016, Medical Certificate dated 05.07.2017 and two other Certificates issued by Sabine Hospital & Research Care, Pezhakkapilly, Muvattupuzha.
5. **Annexure A4** – True copy of the Certificate dated 1.12.2016 issued by the Deputy Chief Engineer, Transmission Circle, Thrissur-4.
6. **Annexure A5** – True copy of the representation dated 17.11.2017 submitted by the applicant to the 3rd respondent.
7. **Annexure A6** – True copy of the Order No.132601/Admn-17/JE(Civ)/50/E1B(S)/A1(a) dated 08.01.2018 issued on behalf of the 3rd respondent.
8. **Annexure A7** – True copy of the ION EIO(E) Section letter No.140107/34/EIO(E) dated 25.01.2018 issued by the TO, AAD (Adm)
9. **Annexure A8** – True copy of the representation dated 23.01.2018 submitted by the applicant to the 3rd respondent.
10. **Annexure A9** – True copy of the Order No.132601/Admn-17/JE(Civ)/50/E1B(S)/A1(A) dated 24.02.2018 issued on behalf of the 3rd respondent and addressed to the 4th respondent.
11. **Annexure R1** – True copy of the letter dated 08.05.2018.
12. **Annexure A10** – True copy of the Letter No.B/20860/Clk/EIC(2) dated 21.06.2017 issued by the office of the 2nd respondent.
13. **Annexure A11** – True copy of the letter No.B/20148/PP/44/EIC(1) dated 11.05.2018 issued by the office of the 2nd respondent.

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14. **Annexure R2**– True copy of the No.B/20860/CL/EIC(2) dated 13.10.2017

15. **Annexure MA-1** – True copy of the Order No.MES/28/2018 dated 14.08.2018 issued on behalf of the 2nd respondent.

16. **Annexure MA-2** – True copy of the Letter No.B/20148/PP/94/EIC(1) dated 20.08.2018 issued on behalf of the 2nd respondent.
