

**Central Administrative Tribunal  
Ernakulam Bench**

**OA/180/01062/2017**

Friday, this the 8<sup>th</sup> day of March, 2019.

**CORAM**

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

**Hon'ble Mr.Ashish Kalia, Judicial Member**

M.G.Sreekumar, aged 48 years

S/o C.P. Govindan Nair

Assistant Engineer (Civil) (Personal-in-situ)

Office of the Executive Engineer (Civil)

Civil Construction Wing, All India Radio & Television

Kakkanad, Kochi-682 037.

Residing at: "Harisree", Bylane-8, Netaji Road

Aluva-683 101, Ernakulam District.

Applicant

[Advocate: Mr.T.C.Govindaswamy]

**versus**

1. The Director General  
All India Radio  
New Delhi-110 001.
2. The Chief Engineer (Civil)  
Civil Construction Wing  
All India Radio  
New Delhi-110 003.
3. The Superintending Surveyor of Works-1  
Civil Construction Wing  
All India Radio  
New Delhi-110 003.
4. The Superintending Engineer  
Civil Construction Wing  
All India Radio, Chennai-600 001.
5. The Executive Engineer (Civil)  
Civil Construction Wing, AIR & TV  
Kakkanad, Kochi-682 037.
6. Shri J.Bhagath  
Chief Engineer (Civil), Civil Construction Wing  
All India Radio, New Delhi-110 003.

7. Shri N.Raju  
 Assistant Engineer (C)(P)  
 Civil Construction Wing, Doordarsan Kendra HPT  
 Rameswaram-623 526  
 (Under Madurai Sub Division).

Respondents

[Advocate: Mr. T.C. Krishna, Sr.PCGC]

The OA having been heard on 27<sup>th</sup> February, 2019, this Tribunal delivered the following order on 08.03.2019:

### **ORDER**

**By E.K.Bharat Bhushan, Administrative Member**

This OA is filed by Sri M.G.Sreekumar, Assistant Engineer (Civil), All India Radio & Television, against his transfer to Madurai, ordered as per Annexure A1 dated 12.12.2017. This is the fourth occasion that the applicant is approaching this Tribunal and for this reason, it is necessary to recount the history relating to his grievance.

2. The applicant had joined the services of the respondents as a Junior Engineer on 31.1.1990. After initial posting in Arunachal Pradesh, he was transferred to Kerala where he joined on 3.9.1992. Kerala falls within the Southern Circle under the 4<sup>th</sup> respondent. As per an order issued on 12.5.2015, the applicant was transferred from Kochi to Port Blair and the same was challenged by the applicant before this Tribunal through OA No. 378 of 2015. He succeeded in obtaining a favourable order on 15.2.2016 by which this Tribunal set aside the transfer on the ground that he had already worked at a '*hard station*'. Copy of the order is at Annexure A2. Soon afterwards, by an order dated 10.5.2016, the applicant was posted to Hyderabad Division. He again approached this Tribunal through OA No.371/2016 and by its order dated 31.3.2017, this Tribunal overturned the transfer on the ground that the authority

issuing the order lacked competence to do so. The order in OA No.371/2016 is at Annexure A3. Then he stood transferred to Mehaboob Nagar by order dated 4.5.2017. This order was challenged before this Tribunal through OA No. 349/2017 and this was dismissed by order dated 29<sup>th</sup> August, 2017 (Annexure A5).

3. The dismissal of the OA was challenged by the applicant before the Hon. High Court by filing OP(CAT) No. 260/2017. A copy of the judgment of the Hon High Court dated 14<sup>th</sup> September, 2017 in the OP(CAT) is at Annexure A6. It concluded with the following direction:

*“13. In the above circumstances, we direct the 2<sup>nd</sup> respondent/competent authority to reconsider the matter with reference to the specific observations made herein-before, also considering whether any other vacancy is available in Kerala to accommodate the petitioner, who is to be shifted from Kochi and to be given a posting accordingly. If there is no other vacancy in Kerala, then the 2<sup>nd</sup> respondent will have to consider who is to move out from Kerala first and for that purpose, the total tenure in Kerala will be the deciding factor and not the station seniority. The orders above shall be passed at any rate within a period of one month. The petitioner will be permitted to continue in Kochi, till such orders are passed.”*

4. Then again by Annexure A1 order, the applicant finds himself transferred from Kochi to Madurai Division as part of a transfer order involving a few others as well. The applicant challenges the order as having been issued on the basis of malice and ill will, amounting to colourable exercise of power. He submits that two others who are ostensibly people with longer stay in Kerala have been transferred outside the State to give an impression that the order in OP(CAT) is being fully complied with. He contends that the work at Rameswarn Section under Madurai Sub Division is already over and there will be little work for him to attend at Madurai. It is alleged that the respondents have been continuously harassing the applicant through transfers which come one after the other. These

transfers have shown scant respect to the DoPT guidelines issued in compliance with Hon Apex Court order in T.S.R.Subramaniam's case.

5. It is averred that there are 10 posts under the 4<sup>th</sup> respondent in the cadre of Assistant Engineer (C) within Kerala State and two of these posts are lying vacant. In keeping with the directions of the Hon High Court, he ought to have been accommodated in one of these vacancies. In contrast, Chennai Circle has more officers than the sanctioned strength. Besides, the workload in Kochi Division is substantially higher than the workload in other Divisions, coming under the Chennai Circle.

6. The applicant also cites various personal reasons which necessitate his remaining in Kochi. His wife is a teacher in a Government Aided School at Kalady and their children are at the pivotal stage in their school education. Besides, he has elderly parents to look after. Further it is stated that the applicant is enrolled for Ph.D in Civil Engineering subjects under the Cochin University of Science & Technology for which he had been sponsored by the respondents themselves.

7. The respondents have filed a detailed reply statement wherein the facts as presented relating to his service history have been admitted. However, it is maintained that the transfer was necessitated entirely on account of operational requirements. Assistant Engineer (C) has All India transfer liability. While it is true that after joining service, the applicant had worked for over 2 years at Ziro (Arunachal Pradesh), he had remained in Kerala, his home State, since he moved here in 1992. He had been successful in OA No.371/2016 solely on the ground of lack of competency of the authority who issued the transfer order. This technicality had since been remedied with appropriate delegation being

bestowed on the authority concerned. This is seen from the fact that OA No.349/2017 by which the applicant challenged his subsequent transfer to Mehaboob Nagar, was dismissed. The Hon High Court had set aside the order of this Tribunal in OA No.349/2017 on two counts. Firstly the respondents were directed to examine whether there were others who have remained in Kerala for longer periods than the applicant. Secondly, the respondents were called upon to examine whether the applicant could be accommodated in one of the vacant slots, if they existed, within Kerala.

8. The respondents in their reply statement have described in detail the working of the department. It is explained that the vacancies are considered on Circle basis and the workload in Chennai Division is significantly more than that of Kochi Division. Two seniors who have been posted out along with the applicant had joined at their new station without any demur and the incoming officers transferred as per Annexure A1 were required for various duties other than in Civil Department. For example, the 7<sup>th</sup> respondent Sri N. Raju, Assistant Engineer (C)(P) is a specialist in RCC TV tower work. Having completed Rameswaram TV Tower Rehabilitation work, he is posted at Trivandrum for upcoming duties. The respondents counter the argument of the applicant that there is no work under Madurai Division as the work at Rameswam is about to be wound up, on the ground that the applicant is being posted to Madurai and not Rameswaram.

9. While personal reasons are important, this cannot be taken to mean that a person who has spent more than 25 years in one station is to be retained at the same station for ever. To another argument raised that as per sponsorship granted by the respondents, the applicant is mid-way through his Ph.D Programme and

has to remain in Kochi, it is replied that as per Annexure A5 document, the applicant had given an undertaking that he will not be raising this as a reason to remain in Kochi.

**10.** The applicant has filed a rejoinder reiterating the contentions raised in the OA. He primarily lays emphasis on the orders of the Hon. High Court in the OP (CAT). He also calls our attention to documents marked as Annexures A12 and A13 and the replies received under RTI wherein it is stated that there is one post vacant in Kochi Division. The respondents have filed an additional reply statement wherein they have strongly disputed the contention taken in the rejoinder also. Details of pending civil works in the disputed Divisions have been provided as Annexures to show that Chennai Division has significantly more workload than others.

**11.** Heard Sri T.C.Govindaswamy, learned counsel on behalf of the applicant and Sri T.C.Krishna, Sr.PCGC on behalf of the official respondents. Sri T.C.Govindaswamy argued at length that the very reason that in a short time the applicant has been subjected to four transfers shows malice and ill will the respondents harbour towards him. Despite a clear order which he obtained in the OP (CAT), thwarting the penultimate transfer, the respondents have continued with the policy of harassment. They have given scant regard to the directions of the Hon. High Court and refused to accommodate him despite vacancies available in Kerala State. The extenuating circumstances requiring him to remain in Kochi have been ignored by the respondents.

**12.** Sri T.C.Krishna, learned Sr.PCGC appearing on behalf of the respondents disputed the contentions made by Sri T.C.Govindaswamy. In an All India organization, such as the official respondents herein, transfer is an exigency of

service. The applicant has remained in Kerala for most of his service period and he is challenging his transfer to a place in the same Circle. Posts are maintained Circle-wise and people are deployed to various stations within the Circle under respective Divisions on need basis. The direction issued by the Hon. High Court has been adhered to in the impugned order Annexure A1 and no disobedience of the Court order can be alleged.

**13.** We have considered the rival contentions of the applicant and the respondents. As the last transfer order of the applicant had been interdicted by the Hon. High Court, it is necessary to examine in detail the Hon. High Court directions that are reproduced at page 4 of the order.

**14.** The respondents have included 2 persons who are the only two, working in Kerala Division who have remained within the State for longer period than the applicant (it is important to note that they had no grievance on this score). So one part of the order of the Hon. High Court is seen as entirely complied with. The second is with respect to the availability of vacancies in Kerala which could be utilized to accommodate the applicant. As can be discerned from the reply statement and the arguments of Mr.T.C.Krishna, learned counsel for the respondents, the posts of technical personnel such as Assistant Engineers are specialized and it is necessary to ensure that only a person with qualification and training in one area can be accommodated in that area alone. For example, the applicant is a Civil Engineer and he can only attend to work connected to maintenance of civil buildings and associated works. Thus even if there are vacancies present in a Division or Station, unless it relates to specific functions or tasks under one discipline, it cannot be assigned to another employee. Besides, the Hon. High Court has clearly averred that the applicant having

continued in Kochi for more than 10 years “has absolutely no vested right to contend that he shall be accommodated in Kochi forever”. Learned counsel for the respondents Mr.T.C.Krishna has sought to bring home the point that transfer of an employee falls within the domain of the employer and Courts or Tribunals should not interfere in the same unless there is proven malafide. The applicant has vaguely referred to ill will and malice on the part of the respondents which are not based on any facts. While he may have personal reasons to remain in Kochi, this cannot be taken to the extent of demanding that Kochi should be his only station of employment. After considering all factors, we come to the conclusion that the OA has no merit. Accordingly the OA is dismissed. No order as to costs.

**(Ashish Kalia)**  
**Judicial Member**

**(E.K.Bharat Bhushan)**  
**Administrative Member**

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**Annexures filed by the applicant:**

- Annexure A1: Copy of the order bearing No.SSW-1/25(56)/2015-Vol.II/1320 to 1333 dated 12.12.2017 issued on behalf of the 2<sup>nd</sup> respondent.
- Annexure A2: Copy of the order dated 15.2.2016 in OA No.378/2015 rendered by this Tribunal.
- Annexure A3: Copy of order dated 31.3.2017 in OA No.371/2016 rendered by this Tribunal.
- Annexure A4: Copy of order bearing No.SSW-1/25(2)/JE(C)/AE(C)-P/2017/483 dated 4.5.2017 issued by the 2<sup>nd</sup> /6<sup>th</sup> respondent.
- Annexure A5: Copy of order dated 29<sup>th</sup> August 2017 in OA No.349/2017 rendered by this Tribunal.
- Annexure A6: Copy of judgment dated 14<sup>th</sup> Sept 2017 in OP(CAT) No.260/2017 rendered by the Hon'ble High Court.
- Annexure A7: Copy of communication bearing No.EEC/Kochi/1(27)/2015(S)/286 dated 10.3.2016 issued from the office of the 5<sup>th</sup> respondent.
- Annexure A8: Copy of office order bearing No.51/2017-PPC dated 3.3.2017 issued from the office of the Prasar Bharati Broadcasting Corporation.
- Annexure A9: Copy of DG, AIR order No.F.No.A-35018/1/2006-CW-I/62 dated 11.1.2013.
- Annexure A10: Copy of DG, AIR order bearing No.16/2/2014S-III/976 dated 30.11.2015.
- Annexure A11: Copy of DG, AIR order bearing No.16/2/2014S-III/1080 dated 31.12.2015.
- Annexure A12: Copy of RTI reply indicating sanctioned strength of the AEP dated 4.5.2017.
- Annexure A13: Copy of deployment position dated 5.2.2018.
- Annexure A14: Copy of order bearing No.SE(CC)/M/4(89)/2018/42 dated 11.1.2018.
- Annexure A15: Copy of communication from 2<sup>nd</sup> respondent (File No.CE(C)/PA/CCW/2017) dated 10.2.2017.
- Annexure A16: Copy of document dated 1.3.2017.
- Annexure A17: Copy of communication bearing No.SE(C)/M-1(5)A/2017-18/792 dated 5.12.2017, proposal for transfer.
- Annexure A18: Copy of communication for approval of transfer dated 12.1.2.2017 from SSW to Chief Engineer (C).
- Annexure A19: Copy of On-line RTI request form bearing No. DG AIR/R/2017/50064.
- Annexure A20: Copy of the reply to the RTI request bearing No.F.No.08/20/2017-S.I (B) dated 23.5.2017.
- Annexure A21: Copy of All India work load Abstract received through RTI.

**Annexures filed by the respondents:**

- Annexure R5A: Copy of th proposal made by the recommending authority.
- Annexure R5B: Copy of the undertaking dated 4.3.2013 given by the applicant.
- Annexure R5C: Copy of the letter dated 2.4.2013 granting permission to the applicant.
- Annexure R5D: Copy of the Division wise details of work load for the financial years 2011-12 to 2016-17.
- Annexure R5E: Copy of the list of number of Doordarshan and All India Radio installations.