

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 180/00434 of 2019

Friday, this the 19th day of July, 2019

CORAM

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

Abhilash K.M, aged 34 years
S/o.Mohanan K.B
Upper Division Clerk
National Sample Survey (F.O.D)
Regional Office, Kozhikode, Kendriya Bhavan
4th Floor, Kallayi – 673 003
Residing at Sreesadhanam
Morikara, Kakodi,
Kozhikode – 673 611 (Phone: 9846067060) **... Applicant**

(By Advocate Mr.P.Ramakrishnan)

Versus

1. Union of India, represented by Secretary to Government, Ministry of Statistics and Programme Implementation, New Delhi – 110 001
2. The Additional Director General
National Statistical Office
(Field Operations Division)
New Delhi – 110 001
3. The Director, National Statistical Office
(Field Operations Division)
Kozhikode – 673 004
4. The Deputy Director General and Cadre Controlling Authority, National Statistical Office (FOD)
Regional Office, Thiruvananthapuram -695 001
5. Deputy Director General
National Statistical Office (FOD)

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2nd Floor B Wing, Kendriya Sadan
Koramangala, Bangalore – 34

6. Wilson Mathew, Lower Division Clerk
National Statistical Office
Regional Office, CGO Complex
Poonkulam, Vellayani
Thiruvananthapuram – 695 522 **Respondents**

(By Advocate Mr.Thomas Mathew Nellimoottil for R 1-5)

This application having been heard on 15th July, 2019, the Tribunal on 19th July, 2019 delivered the following :

ORDER

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

The brief facts of the case are as follows:

The applicant had entered service as Peon at Regional Office, National Sample Survey Office at Thrissur. On promotion as Lower Division Clerk, he was posted to the Regional Office at Thiruvananthapuram with effect from 01.07.2009 and again on promotion as Upper Division Clerk, was posted to Kozhikode office under the 3rd respondent, where he is presently working.

2. Citing various personal reasons, the applicant had requested for transfer to Thiruvananthapuram on 13.09.2018 against a vacancy of UDC, which arose on 11.03.2019 vide Annexure A2. As per Annexure A5, he was informed that his representation has been forwarded to 4th Respondent. The applicant apprehends that ignoring his own request for transfer to

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Thiruvananthapuram, the 6th Respondent, who is junior to the applicant and who is included in the list of promotion to UDC in the DPC conducted on 25.06.2019 will be accommodated at the available post at Thiruvananthapuram.

3. As grounds, the applicant points out that inspite of a clear vacancy in the Regional Office, Thiruvananthapuram, the respondents propose to fill up the vacancy by promoting the 6th respondent, who is till now only an LDC.

The reliefs prayed for in the OA are as follows:

- A) Issue an order directing respondents 2 to 5 to consider and pass orders on Annexure A-2 to A04 representations submitted by the applicant,
- B) Declare that the applicant herein is entitled to be posted as Upper Division Clerk at Thiruvananthapuram in preference to the 6th respondent
- C) Hold that the applicant's application for transfer to Thiruvananthapuram is liable to be considered sympathetically, and
- D) such other orders and directions as are deemed fit in the facts and circumstances of the case.

5. The respondents have filed their reply statement wherein it has been admitted that the applicant is presently working as UDC in the Regional Office of National Sample Survey Office, Kozhikode. It is stated that in the DPC held on 25.06.2019, Shri Wilson Mathew, LDC (6th Respondent herein) was found fit for promotion, but in view of the interim stay granted by this Tribunal on 24.06.2019, order for promoting him is yet to be issued. So far as the applicant is concerned he was promoted as UDC on 30.11.2017 joining

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at RO, Kozhikode on 15.12.2017 and is yet to complete even two years there.

It is further stated that the applicant had been subjected to disciplinary action during his tenure as LDC, Thiruvananthapuram for submitting forged medical reimbursement papers and he was awarded minimum penalty.

6. The applicant had been promoted as UDC on completion of eight years of service. The 6th Respondent was recommended for promotion by the DPC held on 29.11.2017, but he declined the same due to personal reasons. The applicant had been in the habit of submitting representation repeatedly and he has not spared even the Ministry of Statistics and Programme Implementation in this regard. For the last act, his explanation was sought by the Headquarters. His request for transfer was not forwarded owing to various inconsistencies observed in the documents.

7. The 6th respondent's particulars have also been detailed in the reply statement. He had been absorbed in NSO (FOD) as LDC on 25.12.2005 due to closure of NSO Office at Raipur and the official had to forgo his seniority under the circumstances. He had declined promotion on an earlier instance and this time had requested that on promotion he may be accommodated in Thiruvananthapuram owing to medical reasons of his wife and himself. On the whole, he has completed 35 years of service and he possesses an unblemished service record till date.

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8. We have heard Shri Prathap on behalf of Shri P.Ramakrishnan, learned Counsel for the applicant and Shri Thomas Mathew Nellimoottil for the respondents.

9. This is a dispute between two employees as who should be posted in a particular District and it is important to recall that the organization that they are working for, has all India transfer liability. The applicant presses his claim on the ground that he is senior to 6th Respondent. The official respondents seem to favour Respondent-6 on the ground that his service record is better. We feel that this Tribunal should not be dragged into weighing relative merits of the two candidates. It is clearly an administrative decision to be taken after considering all aspects relating to running of Thiruvananthapuram Regional Office. Under the circumstances, we dispose of the OA by directing Respondent-2 to summon all relevant documents to his office, duly consider the contesting claims and take a decision as to who should be posted to Thiruvananthapuram. This may be done as expeditiously as possible and in any case within 30 days of receipt of this order. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/00434/2019

1. Annexure A1 - True copy of office order dated 30.11.2017 promoting the applicant as UDC and posting him to the Regional Office, Kozhikode
2. Annexure A2 - True copy of representation dated 13.9.2018 along with a format submitted by the applicant
- 3.
4. Annexure A3 - True copy of representation dated 12.3.2019 submitted by the applicant
- 5.
6. Annexure A4 - True copy of representation dated 20.3.2019 submitted by the applicant
- 7.
8. Annexure A5 - True copy of letter dated 28.2.2019 from the 3rd respondent
- 9.
10. Annexure A6 - True copy of common order dated 16.3.2016 of this Tribunal in O.A No.85/2015 and O.A 416/2015
- 11.
12. Annexure R1 - True copy of penalty order vide No.23/7/12/Estt/Medi-claim-Tvm dated 8.11.2013
- 13.
14. Annexure R2 - True copy of the proceedings of the DPC held on 29.11.2017
- 15.
16. Annexure R3 - True copy of promotion order of the applicant dated 30.11.2017
- 17.
18. Annexure R4 - True copy of communication bearing No.A-1109/1/2011-E-III dated 28.3.19
- 19.
20. Annexure R5 - True copy of communication dated 16.5.2019 send from the Regional Office Kozhikode
- 21.
22. Annexure R6 - True copy of request of the 6th respondent dated 11.3.2019
- 23.
24. Annexure R7 - True copy of request of the 6th respondent dated 19.6.2019
- 25.
26. Annexure R8 - True copy of its letter no.20022/Ministerial/KLA/N/18-19/62 dated 10.4.2019///
