

**Central Administrative Tribunal  
Ernakulam Bench**

OA No.180/00011/2019

Wednesday, this the 20<sup>th</sup> day of November, 2019.

CORAM

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

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

Lincy Earnest, aged 58 years,  
S/o Harry Earnest,  
Office Superintendent (now re-designated as  
Assistant Administrative Officer), GE(M), Ezhimala,  
residing at "Khadeeja Quarters",  
Khilashi Temple, Near District Government Hospital,  
Kannur.

Applicant

(Advocate: Mr.R.Sreeraj)

**Versus**

1. Union of India represented by its Secretary to Government of India,  
Ministry of Defense, New Delhi-110 001.
2. The Engineer-in-Chief, Headquarters,  
Military Engineer Services, New Delhi-110 001.
3. The Chief Engineer, Southern Command,  
Headquarters, Military Engineer Services, Pune-411 001.
4. The Chief Engineer, (NW) Kochi,  
Military Engineer Services, Kochi-682 004,
5. The Garrison Engineer(M),  
Military Engineer Services, Ezhimala,  
Kannur-670 307.

Respondents

(Advocate: Mr.N.Anilkumar, SCGSC)

The OA having been heard on 18<sup>th</sup> November, 2019, this Tribunal delivered the following order on 20.11.2019:

**ORDER**

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

This OA is filed by Mr.Lincy Earnest, Office Superintendent, now re-designated as Assistant Administrative Officer, GE (M) Ezhimala, aggrieved by the action on the part of the 3<sup>rd</sup> respondent to implement the order dated 22.3.2017 issued by the office of the 3<sup>rd</sup> respondent, by which the applicant had been transferred from Ezhimala to Trivandrum. This is the third round of litigation before this Tribunal. On the first occasion, this Tribunal had considered the issue in OA No.673/17 and a direction had been issued to respondent No.3 to consider the grievance of the applicant and dispose it of through a speaking order. Respondent No.3 rejected his request and being aggrieved by the same, the applicant had approached this Tribunal again. Thereupon, this Tribunal had considered the fact that he had already enjoyed an uninterrupted tenure of 7 years at Ezhimala, had been benefited by three extensions and being part of a service with All India transfer liability, cannot avoid a posting out of his choice station as a matter of right. Taking these facts into consideration, the OA had been dismissed as devoid of merit. The applicant thereupon filed OP(CAT) 42 of 2018 before the Hon'ble High Court, which was allowed as per order dated 1<sup>st</sup> March 2018. It was ordered that the petitioner be allowed to continue at Ezhimala “until such time as all vacancies at Ezhimala are filled up through a proper procedure and until such time another person is ordered to be transferred in the place of the petitioner after filling up other vacancies at Ezhimala”.

2. However, after consideration of the judicial orders in this regard, respondent No.3 issued orders as at Annexure A6 on 5<sup>th</sup> October, 2018 posting one A.B. Kamble, SAA of GE (I) to Ezhimala under promotion cum posting with a further direction contained at Annexure 7 dated 15.12.2018 directing relief of Sri Lincy Earnest, AAO of GE(M) who was to proceed to Trivandrum as per Annexure A1 order. The applicant seeks the following reliefs:

*Quash Annexure A1 to the extent it relates to the applicant and Annexure A5 to A7 and direct the respondents to permit the applicant to continue to work at Ezhimalas itself.”*

3. The main contention of the applicant is that the Hon'ble High Court while ruling in his favour had stated that the applicant is to be considered for being posted to Trivandrum only after filling up of all vacancies at Ezhimala and posting of a substitute to take his place. It is maintained by the applicant that in a ploy to get over the orders of the Hon'ble High Court, the respondents have reduced the number of available vacancies through CML estimation ignoring the fact that the second respondent himself had banned transfer on CML as early as on 21.6.2017 (Annexure A8) and by a later communication dated 11.5.2018, made it clear that the ban still continues (Annexure A9). The Hon'ble High Court had passed Annexure A4 judgment taking into account the actual authorized vacancies and not the vacancy position based on CML and the 3<sup>rd</sup> respondent was illegally taking up CML estimation in order to deny the applicant the benefit that he has got from the Hon'ble High Court. The purpose appears to be to show that the applicant is surplus as CML justification is only for 2 posts and once the substitute of the applicant also joins, the working strength would go up to 3 unless the applicant moves out. The applicant

maintains that it is impermissible for the 3<sup>rd</sup> respondent to now rely on an altogether ground of CML which itself has been banned, in order to justify Annexure A1 transfer order.

4. As far as the category-wise position of basic staff at Ezhimala is concerned, out of a total of 7 civilian AAOs authorized, including 3 for CWE Ezhimala, 2 for GR (P) Ezhimala and 2 for GE (M), Ezhimala, there is only one incumbent at CWE at Ezhimala, none at GE(P) at Ezhimala and one which is the applicant at GE(M) Ezhimala. So the actual number of vacancies at Ezhimala would be 5. This position has been suppressed by the 3<sup>rd</sup> respondent by invoking CML statistics which are unauthorized.

5. In the reply statement filed, the respondents have maintained that on the basis of CML authorization, out of 7 authorized posts, only 2 are CML authorized and with the arrival of the substitute for the applicant, there would be 3, necessitating the applicant to move as per Annexure A1 order. It is maintained that the subordinate staff have All India Service liability and the applicant has been continuing at Ezhimala for the last 7 years without a break. He has already got the benefit of three extensions of tenure and anything further would not be in the interest of the employer organization.

6. In the rejoinder filed by the applicant, the contentions raised in the OA have been reiterated. Assuming that a reduction in authorized strength was called for in accordance with CML estimation, the applicant maintains that it should have been 50% of 7 whereby 4 would have been the required strength. In this regard, our attention is drawn to Annexure A10 & A11 issued by the respondent organization. There are only 2 incumbents and even assuming that a

substitute for the applicant joins, there is still one post available for the applicant to be retained.

7. Heard Sri R.Sreeraj, learned counsel for the applicant and Sri N.Anilkumar, SCGSC on behalf of the respondents.

8. The respondents have chosen to defend the case on the basis of CML estimation which they themselves appear to have kept in abeyance as per Annexure A8 & A9. Even assuming that the 50% reduction is allowed in the authorized strength, there would have been room for retaining the applicant at his present station. The Hon'ble High Court had clearly ordered that his transfer as per Annexure A1 is to be given effect to only “after filling up all vacancies at Ezhimala through a proper procedure”. In the final hearing conducted on 18.11.2019, it was admitted that even assuming reduction as per CML, there will be one post left at Ezhimala where the applicant could be retained. This also appears to be a necessary gesture on the part of the respondents as admittedly the applicant has only about 8 months more to superannuate from service. Accordingly, OA is allowed and Annexure A1 is quashed.

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

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

aa.

**Annexures filed by the applicant:**

- Annexure A1: Copy of the PO No.31/2017 (132402/2016/OS/01/EIB(S)/A2 dated 22.3.2017 issued by the office of the 3<sup>rd</sup> respondent.
- Annexure A2: Copy of the 2007 Transfer Guidelines of the Military Engineer Services (Guidelines Management of Group 'C' & 'D' posts of MES).
- Annexure A3: Copy of the final order dated 19.2.2018 in OA 838/2017 on the file of this Tribunal.
- Annexure A4: Copy of the judgment dated 1.3.2018 in OP (CAT) 42/2018 on the file of the Hon'ble High Court of Kerala.
- Annexure A5: True extract of the letter No.132402/2017/Lincy Earnest/44/EIB(S)/A2 dated 12.12.2018 issued on behalf of the 3<sup>rd</sup> respondent.
- Annexure A6: True extract of the letter No.132402/2017/Lincy Earnest/39/EIB(S)/A2 dated 5.10.2018 issued on behalf of the 3<sup>rd</sup> respondent.
- Annexure A7: Copy of the extract of the letter No.120006/AAO/LE/31/EIB(S) dated 15.12.2018 issued on behalf of the 4<sup>th</sup> respondent.
- Annexure A8: Copy of the letter No.B/20860/Clk/EIC(2) dated 21.6.2017 issued by the office of the 2<sup>nd</sup> respondent.
- Annexure A9: Copy of the letter No.B/20148/PP/44/EIC(1) dated 11.5.2018 issued by the office of the 2<sup>nd</sup> respondent.
- Annexure A10: Copy of the relevant portions of the HQ CE SC Pune letter No.132401/Est/San/925/EIB/A-4 dated 24.5.2018.
- Annexure A11: Copy of the letter No.132401/EST/SAN/727/EIB(S)/A-4 dated 5.5.2017 issued on behalf of the 3<sup>rd</sup> respondent.
- Annexure A12: Copy of the letter No.132401/2/EIB(S) dated 10.3.73 issued on behalf of the 3<sup>rd</sup> respondent and co0mmunicated by Chief Engineer, Southern Zone, madras as per letter No.10858/789/EIB(S) dated 28.3.1973.