

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**OA No.180/00383/2020**

**Thursday, this the 1<sup>st</sup> day of October, 2020**

**C O R A M:**

**Hon'ble Mr.P.Madhavan, Judicial Member**

**Hon'ble Mr.K.V.Eeapen, Administrative Member**

T.B. Abdul Jabbar, aged 54 years,  
S/o. Bhava,  
Sepoy, O/o. Superintendent,  
Narcotics Control Bureau, Sub Zone,  
Kakkanad, Kochi.  
Residing at Thirunilath House,  
Edaya Kunnam, South Chittoor,  
Ernakulam.

Applicant

( Advocate : M/s. Sanjay & Parvathy)

**v e r s u s**

1. The Director General, Narcotics Control Bureau,  
R.K. Puram, New Delhi, Pin – 110 066.
2. The Deputy Director, Narcotics Control Bureau,  
R.K. Puram, New Delhi – 110 066.
3. Superintendent, Narcotics Control Bureau,  
Sub Zone, Kakkanad, Kochi – 682 037.
4. Zonal Director, Narcotics Control Bureau,  
Chennai Zonal Unit, Chennai, Pin – 600 077.

Respondents

(Advocate: Mr. N. Anilkumar, SCGSC)

This application having been heard on 22<sup>nd</sup> September, 2020, the Tribunal delivered the following order on 01.10.2020:

**ORDER**

**P. Madhavan, Administrative Member**

This is an OA filed seeking the following reliefs:

- (i) Quash Annexure A1 and A4 to the extent they relate to transfer of the applicant.*
- (ii) Direct the respondents to keep Annexure A10 transfer order in abeyance in light of the Annexure A8 order of this Bench.*
- (iii) Direct the respondents to consider the application of the applicant for earned leave on merits.*

2. The applicant's case is that the applicant is working as Sepoy in Narcotics Control Bureau, Sub Zone Kochi, which comes under the Ministry of Home Affairs. The applicant was initially appointed as Sepoy in the year 2005 and after serving at Chennai and Mumbai, he was transferred to the present office at Kakkanad. There is no periodical transfer implemented in the Department. The applicant is also one of the senior most in the grade of Sepoy and he is within the zone of consideration for promotion. According to the applicant, on 28.5.2020, as per order marked as Annexure A1, he was transferred to Sub Zone, Goa. Thereafter, the respondents had also issued a letter on 8.6.2020 stating that if any official in the transfer list is aggrieved by the transfer, he/she can give a representation through proper channel on or before 11.6.2020. The said letter is produced as Annexure A2. He gave a representation on 9.6.2020 but the respondents rejected the same and it was not granted. The final order of transfer is produced as Annexure A4. The applicant is at S.No.32. It is mentioned in Annexure A4 that officials who have been posted/transferred to a place where motorable transport facilities are available or posted locally will be

relieved immediately. On 5.8.2020, the applicant submitted a request for casual leave to the respondents, but he was asked by his superiors to apply for earned leave instead of casual leave. A copy of the email received asking for submission of earned leave is produced as Annexure A5. The applicant also requested for some time to join at Goa considering the pandemic situation. A true copy of the representation given by him on 13.7.2020 is produced as Annexure A6. According to him, his daughter is suffering from some medical condition and he wants to continue at Kochi for treatment of his daughter. His wife is also not able to manage on her own. A copy of the medical certificate is produced as Annexure A7. Since his representations were not considered, the applicant filed OA No.360/2020 before this Tribunal and this Tribunal on 7.8.2020 passed an order for disposal of the representation of the applicant and also to keep the status quo till transport facilities are restarted and a decision is taken on the representations. A copy of the order of CAT in OA No.360/20 is produced as Annexure A8. But to his surprise, the respondents relieved him on 10.8.2020 in violation of the order of the Tribunal. A copy of the email containing the relieving order dated 5.8.2020 is produced as Annexure A9. According to him, the transfer made in his case is prejudicial to the applicant and it is highly illegal. There are no proper transfer facilities for interstate travel and there is no public interest in the transfer made in his case. There exist other vacancies also to accommodate the applicant at Cochin and the respondents are not doing the same. Even though the Tribunal had granted a status quo, the respondents did not consider the same and relieved him from duty. So he prays for the reliefs as mentioned above.

3. The official respondents filed a detailed reply statement denying the allegations in the OA. According to them, Annexure A1 transfer order is perfectly legal and there is no malafide or illegality against the said order. The applicant is having an all India transfer liability and posting and distribution of manpower has to be decided by the administrative authority and the applicant has no right to have any say in these matters. The applicant had filed OA No.360/2020 and on 7.8.2020 and the Tribunal had directed the respondents to dispose of Annexure A5 representation. The respondents had considered the Annexure A5 representation and passed a speaking order rejecting the representation. According to them, there exists train facility for undertaking travel to Goa from Kerala. On 5.8.2020 the applicant was asked to take earned leave only because he was relieved from duty. There is no illegality in the relieving order issued to the applicant, which is dated 5.8.2020. The applicant had worked in Kochi for about 13 years and there is no merit in the contentions put forward by the applicant. The respondents had relied upon the decision of the Hon'ble Kerala High Court in **Sreekumar S. vs. Union of India and others, reported in 2014 (4) KHC 621**, wherein it was held that *“an order of transfer invites interference if it is passed by an incompetent Authority or is made in violation of any statutory provision – Right to distribute manpower available with a particular department is vested with the Competent Authority and has to be exercised in exigencies of administration”*. They also relied upon the decision of the Hon'ble Supreme Court in **Union of India and others Vs. S.L.Abbas, reported in 1993 KHC 986** wherein it was held that *“an order of transfer cannot be interfered with by Court*

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*unless it is vitiated by malafides or is made in violation of statutory provision*”. So, according to the respondents, there is no merit in the contentions put forward by the applicant.

4. The applicant has filed a rejoinder reaffirming the contentions made in the OA. According to him, Annexure A10 relieving order was pre-dated to defeat the order of the Tribunal in the earlier OA filed. According to him, owing to heavy rain, train services through Konkan Rail were disrupted from August 10 onwards till August 20, due to landslides and the cancellations were extended till September 10. Many of the transfer orders issued by the Department were not implemented due to the Covid-19 pandemic and there is no reason why the same facility is not extended to the applicant.

5. We have heard the counsel appearing for the applicant and the respondents. We have also gone through the various annexures produced in this case by the applicant as well as by the respondents. The main contention put forward by the applicant is that owing to the Covid-19 pandemic, he is not in a position to go and join at Goa. The applicant had filed an earlier OA No.360/2020 and the Tribunal had directed the respondents to consider his representation to retain him here itself and pass a speaking order. It was also ordered by the Tribunal that in case the applicant was not relieved, status quo shall be maintained till the representation is disposed of. According to the counsel for the applicant, the respondents had relieved him in violation of the order of the Tribunal and they had not properly considered the representation of the applicant. The relieving order impugned is produced as Annexure A10. Annexure A4

is the impugned order dated 8.7.2020 passed by the competent authority on the representations of the applicant.

6. On a perusal of the various annexures, we find that the applicant was one among the officers transferred as per Annexure A1 transfer order dated 28.5.2020. Thereafter the respondents had given an opportunity to the transferred persons to make a representation if there exists any grievance for them. The applicant had given a representation and it was considered, but was rejected by the respondents. Accordingly, he came with the first OA No.360/2020. The respondents were directed to consider the matter again and status quo was ordered if the applicant was not relieved from duty. On a perusal of the order of relieving, it seems that the order of relieving was issued on 5.8.2020 and not on 10.8.2020 as stated by the applicant. There is nothing to doubt the correctness of the relieving order as it is clearly dated 5.8.2020. There is no reason to doubt the correctness of the said relieving order and the same order was communicated to the applicant via email. So we do not find any reason to disbelieve the pleadings of the respondents that the applicant was relieved even before the status quo order was pronounced by this Tribunal. On a perusal of the various decisions produced by the respondents, it can be seen that transfer is an incidence of service and it cannot be interfered without sufficient reasons by the Tribunal. Unless the transfer order is made with malafide intention or in violation of statutory provision or by an incompetent authority, the Tribunal is not entitled to interfere in such transfer orders. Admittedly the post of the applicant is having an All India transfer liability. The Administrative Tribunals are not appellate authority to sit in judgment over the orders of transfer. It cannot

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substitute its own judgments for that of the authority competent to transfer. It is for the authority to decide how to distribute the manpower for doing various duties at various locations. None of the above reasons are attributed to the transfers issued by the respondents in this case. There is no allegation of malafides or incompetence on the part of the respondents in issuing the above transfer order. Owing to these circumstances, we find that the applicant has failed in making out a case for quashing Annexure A4 and A10 issued by the respondents in this case.

7. On a perusal of the pleadings and records produced by the applicant, it is seen that the applicant has given a representation again to the competent authority for considering his transfer on 12.9.2020. The said request is pending before the Director General of Narcotics Control Bureau.

**8. In consideration of the interim order passed by this Tribunal when the OA was admitted, the respondents are directed to grant eligible leave to the applicant for his absence from duty and also direct that no disciplinary proceedings shall be initiated against him in furtherance of the filing of the OA. The interim order of status quo is vacated forthwith. This OA is devoid of merit and is dismissed without any order as to costs.**

**(K.V. Eapen)**  
**Administrative Member**

**(P. Madhavan)**  
**Judicial Member**

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**List of Annexures filed by the applicant:**

1. **Annexure A1:** A copy of the office order No. /11/27(11)/2020/Estt./-674, dated 28.5.2020 issued by the 2<sup>nd</sup> respondent.
2. **Annexure A2:** A copy of the letter F.No. 11/27(11)/2020 Estt-724 dated 8.6.2020 issued by the 2<sup>nd</sup> respondent.
3. **Annexure A3:** A copy of the representation dated 9.6.2020 submitted to the 1<sup>st</sup> respondent.
4. **Annexure A4:** A copy of the office order F. No. 11/27(11)/2020/Estt-876 issued by the second respondent dated 8.7.2020.
5. **Annexure A5:** A copy of the email dated 5.8.2020 directing the applicant to submit an application for earned leave.
6. **Annexure A6:** A copy of the representation to the 1<sup>st</sup> respondent dated 13.7.2020.
7. **Annexure A7:** A copy of the medical certificate stating that the applicant's daughter is undergoing treatment for scoliosis dated 14.8.2020.
8. **Annexure A8:** A copy of the order of the Central Administrative Tribunal, Ernakulam Bench in OA No. 180/00360/2020 dated 7.8.2020.
9. **Annexure A9:** True copy of the email dated 10.8.2020 relieving him from NCB Kochi w.e.f. 5.8.2020.
10. **Annexure A10:** True copy of the relieving order dated 3.8.2020 bearing number N.C.B.F.No. 11/3/02/Relief Report/2019/1220.
11. **Annexure A11:** True copy of the office order bearing number NCB F. No. 21/Estt/20/NCB/SZ/COK/1354 dated 13.8.2020.
12. **Annexure A12:** True copy of the representation to the 4<sup>th</sup> respondent dated 14.8.2020.
13. **Annexure A13:** True copy of the applicant's bank statement of State Bank of India for the month of July and August, 2020.
14. **Annexure A14:** True copy of the newspaper report on the cancellations/rerouting of the said trains dated 20.8.2020.
15. **Annexure A15:** True copy of the order dated 8.7.2020 bearing F. No. II/27(11)/2020/Estt-874 by which several transfers stood cancelled.
16. **Annexure A16:** True copy of the order bearing F. No. II/27(11)/2020/Estt-877 by which several transfers have been deferred/kept in abeyance dated 8.7.2020.
17. **Annexure A17:** True copy of the transfer order bearing F. No. 11/27(3)/2014/Estt/186 dated 17.1.2020.
18. **Annexure A18:** True copy of the representation submitted by the applicant dated 12.9.2020 along with its postal receipt.