

**Central Administrative Tribunal
Ernakulam Bench**

OA No.180/00404/2020

Thursday, this the 15th day of October, 2020

CORUM

**Hon'ble Mr.P.Madhavan, Judicial Member
Hon'ble Mr.K.V.Eapen, Administrative Member**

Sreeraj B Kartha, aged 34 years,
S/o K.P. Balachandran Kartha,
Assistant Central Intelligence Officer-1/G(PIS No. 130717),
Thrissur Unit, (residing at 21, KSHB Colony,
Behind Working Women's Hostel,
Pullazhi, Thrissur District-680 012).

Ph No. 8700110669. Applicant

(Advocate: Mr.Manu Govind)

Versus

1. Union of India, represented by
the Secretary, Government of India,
Ministry of Home Affairs, North Block,
New Delhi -110 001.
2. The Joint Director,
Subsidiary Intelligence Bureau (SIB) -
Trivandrum, MHA, Government of India,
572, Mount Fort House, Thycaudu,
Thiruvananthapuram -33.
3. The Deputy Director,
Subsidiary Intelligence Bureau (SIB),
Thiruvananthapuram, MHA,
Government of India, 572,
Mount Fort House, Thiruvananthapuram -33.
4. The Joint Deputy Director,
Subsidiary Intelligence Bureau (SIB),
Thiruvananthapuram, MHA,
Government of India, 572,
Mount Fort House, Thycaudu,
Thiruvananthapuram-33. Respondents

(Advocate: Mr.Anil Ravi, ACGSC)

The OA having been heard on 1st October, 2020, this Tribunal delivered the following order on 15.10.2020:

ORDER

By P.Madhavan, Judicial Member

This is an OA filed seeking the following reliefs:

- (i) *Set aside Annexure A4 order passed by the 4th respondent relieving the applicant from his duties at Thrissur and directing him to join at Minicoy, Lakshdadweep, as illegal in light of Annexure A3 office memorandum and allow him to continue at the Thrissur Unit.*
- (ii) *Direct the 2nd respondent to re-consider transfer of the applicant to Minicoy, Lakshadweep on humanitarian grounds after affording him an opportunity of being heard in the matter and without taking into account irrelevant considerations like place of birth/residence/language etc.*

2. The applicant is working as Assistant Central Intelligence Officer-I/G, PIS No.130717 at Thrissur under Subsidiary Intelligence Bureau (SIB), Thiruvananthapuram Unit. The applicant was transferred to Minicoy Unit as per impugned order dated 5.3.2020. The respondents, by order dated 20.8.2020, had issued a relieving order which is the impugned order in this case (Annexure A4). The applicant seeks to quash A4 relieving order as well as to direct 2nd respondent to re-consider the transfer of the applicant on humanitarian grounds. According to the applicant, he has to be permitted to continue at Thrissur as per O.M. dated 17.7.2020 stating that officers under transfer may not be relieved till October 31st, if they wish to continue at their current places.

3. According to the counsel for the applicant, he was shifted to Minicoy within 14 months of his posting at Thrissur, which is highly illegal and arbitrary. The order of transfer to Minicoy was passed without hearing the applicant. According to him, the procedure in the Department was to

transfer officers only after they complete 3 to 5 years at a station. There is no reason mentioned in the order. The applicant's wife is working as an Application Developer in a private firm at Kochi. There is a policy for the Department to post employees with spouses at the same station. The applicant had earlier filed OA No.208/2020 and the Tribunal, after considering the rival contentions, had directed the respondents to permit the applicant to continue in the present station for a further period of three months owing to the pandemic and directed the applicant to join at the new place after that period without delay (Annexures A2/A3).

4. The respondents filed a reply stating that the applicant was posted to Minicoy as an internal arrangement within the SIB Unit of Trivandrum. This was done to meet operational requirements of the SIB. The applicant herein had met the Joint Director, SIB with a request to cancel his transfer to Minicoy. But it was not acceded to on operational grounds. The applicant filed OA No.208/2020 to set aside the transfer order and to re-consider his representation. The Tribunal, after hearing both sides, had directed the respondents to permit him to continue in the present station for 3 months and directed the applicant to join at the new place thereafter. The said period was over in September, 2020. Annexure A3 order dated 17.7.2020 issued by the IB is relating to Annual General Transfer and it has no application to the internal postings as done in this case. Only Annual General Transfers were put on hold till 31.10.2020. There is no merit in the OA and it is liable to be dismissed, argued the respondents.

5. We have heard the counsels appearing on both sides. The applicant had earlier approached this Tribunal with OA No.208/2020 to quash the A6

transfer/posting order dated 5.3.2020. This Tribunal had considered the rival contentions and granted the applicant 3 months' time to continue at same place considering the Covid-19 circumstances. That period is over by 5.9.2020. The applicant has now filed this OA against his relieving order dated 20.8.2020 on completion of the period as directed by the Tribunal. The main contention put forward against the relieving order is that the Intelligence Bureau had issued A3 order dated 17.7.2020 and directed that *"in view of the increasing incidence of COVID cases in the country, Officers under transfer may not be relieved till 31Oct 2020"*. Now the applicant's case is that he is entitled to get the benefit of A3 order issued by the I.B., on 17.7.2020 and hence his relieving order dated 20.8.2020 w.e.f.4.9.2020 is illegal and liable to be set aside. The counsel for the applicant relies on the decision of the Apex Court in **Commissioner of Police, Bombay vs Gordhandas Bhanji, reported in AIR 1952 KHC 291.** According to him, the Hon'ble Supreme Court has held in para 9 thus:

"We are clear that public orders, publicly made, in exercise of a statutory authority, cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself".

6. According to the counsel, the OM issued by IB as Annexure A3 applies to all transfers and cannot be interpreted as one applicable to general

transfers only.

7. We have gone through Annexure A3 produced by the applicant. The subject for which the OM was issued is clearly mentioned in the OM. *“Relieving of personnel under order of transfer during AGT/Review AGT-2020, in view of spread of COVID-19 – reg. ”*. The said noting clearly shows that the OM was issued relating to Annual General Transfer and nothing else. On a perusal of the pleadings, we find that the applicant was granted three months' time to join at the new placed by this Tribunal on 5.6.2020. Now the applicant wants to take the benefit of OM dated 17.7.2020 (Annexure A3) and get the relieving order quashed, and continue at Thrissur. A4 relieving order was actually issued by the respondents in obedience to the direction of this Tribunal in OA No.208/2020.

8. There is no merit in the contentions put forward by the applicant. Hence we hereby dismiss the OA. No order as to costs.

(K.V.Eapen)
Administrative Member

(P.Madhavan)
Judicial Member

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Annexures filed by the applicant:

Annexure A1: Copy of OA No.180/00208/2020 along with all annexures.

Annexure A2: Copy of the order dated 5.6.2020 passed by this Tribunal in OA No.180/00208/2020.

Annexure A3: Copy of office memorandum dated 17.7.2020 issued as per the directions of the Director of Intelligence, New Delhi along with its retyped copy.

Annexure A4: Copy of order No.337/2020 dated 20.8.2020 issued by the 4th respondent relieving the applicant from duties at Thrissur Unit and directing him to report at Minicoy, Lakshadweep along with its retyped copy.