

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No.180/00620/2019

Monday, this the 28th day of September, 2020

CORAM:

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

Manoj Kumar Patel,
Assistant Central Intelligence Officer-I/G (PIS No.130936),
Presently working in Palakkad Unit
Now residing at 27/340, SIB Complex,
Near Civil Station,
Palakkad District - 678 001.

Applicant

(Advocate: Mr.Manzoor Ali K.A.)

Versus

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

Respondents

(Advocate: Mr.S.Ramesh, ACGSC)

This OA having been heard on 24th September, 2020, the Tribunal delivered the following order on 28.09.2020:

ORDER

P.Madhavan, Judicial Member

This is an OA filed seeking the following reliefs:

(i) Set aside the Annexure A4, A7, A13, A13 (A) transfer orders of the applicant in the interest of justice.

(ii) Direct the 2nd respondent to grant posting to the applicant in SIB-Raipur in Chhattisgarh on the basis of the Annexure A8 and also on the undertaking made by the respondents in A10, in the interest of justice.

2. Applicant in this case is challenging the orders of transfer issued against him as Annexures A4, A7, A13 & A13(a). The brief facts of the case are as follows:

3. The applicant is working as Assistant Central Intelligence Officer-I/G and he joined the service on 14.12.2009. Initially he was posted at SIB, Itanagar in Arunachal Pradesh. Thereafter he was transferred to SIB, Raipur in the year 2013-2016. From there, he was transferred to BOI, Trivandrum before completing the tenure. Thereafter, he was transferred to BOI, Cochin and he worked there from October, 2016 to January, 2017. He worked at Ernakulam Unit from January, 2017 to February, 2018. Thereafter, he was transferred to Palakkad and he continued to work there till the filing of the case. While the applicant was working at Palakkad Unit, he was suddenly transferred by the 4th respondent from Palakkad Unit to Androth Unit in Lakshadweep. The said transfer order is produced as Annexure A4. Immediately, he gave a representation to 3rd respondent requesting to reconsider his transfer. The said representation is produced as Annexure A5. He, thereafter, filed OA No.807/2018 before this Tribunal against the order of transfer to Androth. The Tribunal directed the respondents to consider his request and pass an order. The said order is produced as Annexure A6. The 3rd respondent, thereafter, considered his request as directed by the Tribunal but the 3rd respondent rejected his request by order dated 17.10.2018. The said order is marked as Annexure A7. According to the

applicant, the above order of transfer is with malafide intention and against the procedure followed by the Department in transfer and posting.

4. According to him, usually an officer is permitted to continue in a particular station for a period of 3 to 5 years. The applicant is transferred to various stations four times within a period of 22 months. The posting of Intelligence Officers is mainly for gathering intelligence from the locality in a covert manner and to avoid any kind of exposure. So, knowledge of local language is always very important to an officer for gathering intelligence information from locality. He is not conversant with the language of the Androth Island. According to him, the transfer is made out of malafide and he seeks the intervention of this Tribunal. According to him, as per DoPT circular, if a spouse is employed under the Central Government and the other spouse is employed with the State Government, he should be posted near to the station of his spouse who is serving under the State Government. In the meanwhile, the applicant gave a representation to be considered by the 2nd respondent during the general transfer. He sought for a transfer to SIB Raipur through his representation.

5. On 26.6.2019, the respondents published the general transfer list and the applicant was not considered for transfer and his representation was rejected. The Memorandum received by him is marked as Annexure A13 and 13A. According to him, the denial of transfer to Raipur is against the undertaking given by the respondents in Annexure A10. The reason stated for denying the transfer is that he had not completed his tenure at Trivandrum Unit. So, according to the applicant, the transfer orders produced as A4, A7, A13 and A13(a) were issued malafidely and against the procedure of transfer in the Department.

6. The respondents entered appearance and filed a detailed reply statement. They admitted the service particulars of the applicant and the transfer of the

applicant from Raipur to Trivandrum Unit and thereafter his shifting to Ernakulam and then to Palakkad and also from Palakkad to Androth. According to the respondents, while the applicant was working at SIB Raipur, allegations came up stating that he had paid lesser wages to the part time contingency staff there and he had also shown records of engagement without actually deploying them. A departmental inquiry was initiated and he was awarded with a penalty of reduction of pay by two stages for a period of one year without cumulative effect. The penalty was subsequently reduced to censure by the appellate authority. A true copy of the order of the appellate authority is produced as Annexure R1. Since the Department found that it is undesirable to post an official with such a background to a Unit like Bureau of Immigration, where there is public dealings, the applicant was shifted from BOI, Cochin and posted him to Ernakulam Unit under SIB Trivandrum. Accordingly, he joined the Ernakulam Unit on 11.1.2017. While the applicant was serving at Ernakulam Unit, there arose two complaints dated 19.2.2018 and 26.2.2018 regarding harassment of female officials working in the same office. Copies of the complaints are marked as Annexure R2 and R3. The said complaints were dealt with as per guidelines issued by the Government and the Internal Complaints Committee conducted an inquiry. Since it was found that it will not be proper to permit the applicant to continue at Ernakulam, the respondents shifted the applicant to Palakkad Office to facilitate the inquiry. Subsequently, the applicant was ordered to be transferred to Androth as stated in the OA. According to the respondents, the applicant is working in the executive cadre of the Intelligence Bureau and he has all India transfer liability. It is not possible for IB officers to get posting to their place of choice. The 3rd respondent had given even a personal hearing to the applicant after the issuance of A4 order. The Tribunal had directed the 3rd respondent to consider the representation filed by the applicant in

the meanwhile by order dated 28.9.2018 and directed the respondents to keep the order of transfer in abeyance till disposal of the representation. The respondents disposed of the said representation and Annexure A5 order was issued rejecting his claim. The applicant was transferred to Androth Unit considering all aspects and also the operational requirements of the respondent Department. The Lakshadweep Island also comes within the jurisdiction of SIB Unit of Trivandrum.

7. The deployment of intelligence officers is the prerogative of the Department. Considering the operational requirement, knowledge of the language of the place where he is posted cannot be taken as a ground for not posting an employee in a particular locality. Being a security organization, the officials of the Bureau are transferred on the basis of requirements all over India. Keeping in view of the requirement of the organization, it is always not possible to post spouses at the same station as per DoPT Office Memorandum at Annexure A8. The representation filed by the applicant was forwarded to the Headquarters for consideration in the annual general transfer of 2019. However, the request could not be acceded by the Headquarters as it is premature, because he has not completed 3 years in the Trivandrum SIB Unit. There is no malafide in the transfer as alleged. Deployment of the officers of the Intelligence Department should be left to the discretion of the Department. So there is no merit in the allegation made by the applicant.

8. We have heard the counsel appearing for the applicant and the respondents. We have also perused the various annexures produced by the applicant as well as the respondents.

9. It has come out during the hearing that the applicant while working at Raipur, had committed some irregularities like misappropriation and an inquiry was instituted and consequently he was transferred to SIB Unit, Trivandrum and was posted at BOI Ernakulam. While he was working there, the Department found that

since there are allegations against him, it will not be proper to keep him in places where there is lot of public contact. Hence without changing the station, the applicant was accommodated at Ernakulam office. But there also, complaints of harassment arose and he had to be shifted to Palakkad. So, on a perusal of the above facts stated in the pleadings, we find that the respondents have clearly stated the reasons for the transfer of the applicant from Raipur, then to BOI Ernakulam, and to SIB Ernakulam and thereafter to Palakkad.

10. The applicant in this case had filed an OA 807/ 2018 while his representation against transfer was pending before the competent authority. The Tribunal directed the 3rd respondent to dispose of the representation in the light of relevant rules and regulations and pass a speaking order. The respondents disposed of the said representation and rejected his request to keep him in Palakkad. The Tribunal had also directed the respondents to keep in abeyance A4 order till disposal of the representation. When the representation was disposed of, the applicant filed OA No.894/2018 challenging A4 and other orders. When the above matter came up for consideration before the Tribunal, it appeared that the applicant had already filed a representation for transfer to Raipur in the coming general transfer and the Tribunal disposed of OA No.894/2018 stating that the case of the applicant be considered in the general transfer of the year 2019 and also directed the respondents to permit him to continue in Palakkad till the disposal of the representation for general transfer. It seems that the applicant could not get a transfer as desired in the general transfer and he was informed of the same by the Department. So he again filed OA No.620/2019 challenging the orders referred above.

11. We have considered all the averments made by the applicant as well as the respondents in this case. It is the settled principle that it is the prerogative of the Department to decide where an officer has to be posted. The posting at Androth is

within the SIB Unit of Trivandrum. According to the respondents, the SIB of Trivandrum has Units across the State and also in Lakshadweep Island. According to them, it would not be possible to retain a person posted at SIB Trivandrum at a particular station alone during his tenure due to administrative constraints and job requirements. Being a security organization, the officials of the Bureau are transferred on requirement basis all over India. There was no undertaking given by the Department that the applicant will be transferred for a posting at Raipur in the general transfer. According to them, the transfer to Androth is purely on administrative reasons and there is no merit in the contentions put forward by the applicant. Facts being so, we find that there is no merit in the contentions put forward by the applicant. A transfer order issued in September 2018 could not be implemented owing to the filing of cases one after the other and obtaining stay from the Tribunal.

12. In view of the lack of merits in the OA, we hereby cancel all the 'keeping in abeyance' orders and dismiss the OA. The applicant is directed to join at the place of posting and he will be at liberty to seek transfer during the general transfer of 2021.

(K.V.Eapen)
Administrative Member

(P.Madhavan)
Judicial Member

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Annexures filed by the applicant:

Annexure A1: True of the order No.2/Est(T)2016(2)329 dated 01.04.2016.

Annexure A2: True copy of the order No.2/Est(T) 2016(3)128 dated 09.12.2016.

Annexure A3: True copy of the memorandum No.20/EKM/2018/Est-146 dated 28.02.2018.

Annexure A4: True copy of the order No.2/Est(T)/2018(2) II-1413 dated 13.09.18.

Annexure A5: True copy of the representation dated nil given to the 3rd respondent.

Annexure A6: True copy of the order dated 28.09.2018 in OA No. 807 of 2018 passed by this Tribunal.

Annexure A7: True copy of the order No.PF(T)2017(01)-1600 dated 17.10.2018.

Annexure A8: True copy of the office memorandum the No.28034/2009-Estt(A) issued by the Ministry of of Personnel, Public Grievances and pensions .

Annexure A9: True copy of the application dated 29.10.2018 submitted by the applicant.

Annexure A10: True copy of the reply statement filed by the respondent before this Tribunal in OA 180/894/2018.

Annexure A11: True copy of the judgment in OA 180/894/2018, dated 22.01.2019.

Annexure A12: True copy of the representation dated 5.7.2019 filed by the applicant.

Annexure A13: True copy of the memorandum No. 7C- 4/2010(42)-4655 dated 8.8.2019.

Annexure A13(a): True copy of the officer No.245/2018 dated 13.08.19.

Annexures filed by the respondents:

Annexure R1: True copy of Order No.RPF/Estt/1107/2013(507)-7046-57 from the Appellate Authority dated 21/09/2016.

Annexure R-2 & R-3. True copy of the Complaints dated 19/2/2018 and 26/02/2018 received from a female official working in the same office, alleging misbehavior from the part of the Applicant.

Annexure with rejoinder:

Annexure A14: True copy of the Review report with respect to 3/10/2016 to 10/1/2017.