

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00874/2019

Friday, this the 19th day of February 2021

C O R A M :

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

Dr.Renju Ravi, S/o.N.Ravi,
Aged 35 years, Marketing Assistant,
National Institute of Fisheries Post-Harvest Technology & Training,
P.B.No.1801, Cochin – 682 016.
Having permanent residence at Kakkanparambil House,
Mathoor P.O., Chenneerkara Village,
Pathanamthitta District – 689 647. ...Applicant

(By Advocate M/s.Elvin Peter Associates)

v e r s u s

1. The National Institute of Fisheries Post-Harvest Technology & Training, represented by its Director, P.B.No.1801, Cochin- 682 016.
2. The Director,
National Institute of Fisheries Post-Harvest Technology & Training, represented by its Director, P.B.No.1801, Cochin- 682 016. ...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 17th February 2021, the Tribunal on 19th February 2021 delivered the following :

O R D E R

Per : Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER

The applicant is a Marketing Assistant in the National Institute of Fisheries Post-Harvest Technology & Training (NIFPHATT). He was recruited as Marketing Assistant (G.C.S - Group B – Non-gazetted - Non-

Ministerial) with effect from 04.07.2014. The NIFPHATT is headquartered at Cochin with a unit at Vizag. The applicant has been working at NIFPHATT, Cochin since 2014. Vide the order produced at Annexure A-5 dated 06.12.2019 he has been transferred from NIFPHATT, Cochin to NIFPHATT, Vizag Unit. He was also relieved from the duties of NIFPHATT, Cochin on the afternoon of 10.12.2019 by the same order. The transfer was ordered in public interest and it was indicated that the applicant would be entitled to TA/Joining Time as per rules. The applicant immediately filed this O.A on 09.12.2019. When it came up for hearing, an interim order to retain the status quo was issued. This was supposed to be till 11.12.2019. However, the interim order of status quo has been extended on subsequent dates of hearing. In effect, therefore, more than one year and two months have passed since the order of maintaining status quo was issued.

2. The applicant is aggrieved by the said Annexure A-5 order. He submits that no reason whatsoever has been stated as to why he is being transferred to Vizag Unit, except stated as public interest. He submits that it is a settled law that transfer of an employee should not be effected mid academic year since 'incumbents would be put to difficulties to adjust to domestic affairs'. He also submits that his wife is a doctor by profession and she is working as Medical Officer at Omallur Grama Panchayath on a contract basis in the Homoeo Dispensary run by the Panchayath. His two children are in school and his mother-in-law who is aged and ailing is being

taken care of by himself and his wife. He claims that Annexure A-5 order would cause serious prejudice to him. He submits that if he is transferred to the Vizag Unit, his domestic needs would be put to difficulty and his family and school going children would suffer. He has drawn attention to Hon'ble Supreme Court decision in **Director of School Education, Madras & Ors. v. O.Karuppa Thevan & Anr. 1994 Supp. (2) SCC 666** in which the Hon'ble Apex Court expressed the view that, in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of services are not urgent. He claims that this decision would squarely apply to the facts of his case as Annexure A-5 order has been issued in mid academic year and it seriously affects him as well as his family and children. Besides that, the physical ailment of his mother-in-law also has to be taken into account.

3. The applicant also states that one Shri.P.Baiju who is working as Marketing Assistant in NIFPHATT, Vizag was ordered to be transferred to NIFPHATT, Cochin office as per his own request vide order dated 18.04.2018 produced at Annexure A-4. Shri.P.Baiju was transferred to Cochin from Vizag Unit since there are two sanctioned posts of Marketing Assistant in Cochin office of the NIFPHATT. From that time Shri.P.Baiju and the applicant have been working as Marketing Assistants in NIFPHATT, Cochin. He claims that the averment of the respondents in the reply statement that there is an extreme exigency of service in the Marketing Section of Vizag Unit is baseless. He claims that there have been no

repeated requests (unlike what has been mentioned in the reply statement as stated by the Officer-in-Charge of Vizag Unit) to spare the service of an experienced hand for functioning of the Unit. After Shri.P.Baiju was transferred to Kochi, the post of Marketing Assistant at Vizag has been vacant for more than one year and eight months. This itself would make it clear that the case put forward by the respondents with respect to 'exigency in service' is false and baseless. He submits that volume of business in Vizag Unit is low and that was the reason for transfer of Shri.P.Baiju from the Vizag Unit to Kochi. Further, the allegations made by the respondents that the marketing of fish and fishery products at Vizag Unit have been considerably affected due to lack of Marketing Assistant there is also baseless, as the business carried out in the Vizag Unit from 2014 onwards would make it clear that the activities in Vizag Unit are meager and hence the service of a Marketing Assistant is not necessary. In fact in the year 2017-18, the total sale of fish in Vizag Unit was 2123 kg. After the transfer of Shri.P.Baiju and in the absence of any Marketing Assistant during 2018-19, the total sale in Vizag Unit went up to 4138 kg. Thus, there is no reason for a Marketing Assistant there.

4. Further, the averment by the respondents that the post of Marketing Assistant at Vizag Unit could not be filled up inspite of issue of advertisements on 24.08.2019 and 06.09.2019, as no candidate possessing the essential qualification has applied for employment and as such the respondents are put to difficulty is not correct. The applicant submits that it

is unbelievable that no candidate applied for the post of Marketing Assistant in the Vizag Unit and the said statement should be taken with a pinch of salt. The averments, therefore, that the service of an experienced Marketing Assistant at Vizag Unit is essential to carry out the work to achieve the target is not correct. The amount of business which is being carried out at Vizag would itself make it clear that there is no target as stated in the reply statement.

5. The applicant also submits that he is the only son who is available to look after his parents as his brother is working abroad. The respondents had submitted that his children and wife are residing in Adoor and he is working in Kochi. However, this does not take into consideration that the applicant can reach Adoor from Kochi within 2-3 hours and he, therefore, goes to Adoor once in 2-3 days. His absence from Kochi would cause serious prejudice to his family as he is the only person who is available in the station to look after the affairs of his immediate family as well as his old parents.

6. Per contra the respondents had submitted that the transfer of the applicant to NIFPHATT, Vizag Unit has been effected, due to extreme exigency of service in the Marketing Section of the Vizag Unit. There have been repeated requests of the Officer-in-Charge, NIFPHATT, Vizag Unit to spare the services of an experienced hand for the smooth functioning of the Unit for the last many months. The Vizag Unit has a sole post of Marketing

Assistant. NIFPHATT, Vizag Unit performs activities like procurement of fish from the landings of Departmental vessels and sister organizations and also through Fishermen Co-operative Societies, where an experienced Marketing Assistant is essential. The Unit also performs activities like marketing of fish and fishery products through fish stalls to the public and also through mobile marketing of fish products in rural areas and small towns of Andhra Pradesh. This has been hampered due to lack of a Marketing Assistant. The Unit also conducts various exhibitions and trade fairs and the same has also been hampered due to the lack of Marketing Assistant.

7. The respondents further submit that the plant at Vizag Unit was under renovation for the last one and a half years and thus the unit was not able to process the targeted amount of fish as well as conduct training programmes. Hence, the production and marketing statistics provided are not to be accounted for. Now the renovation works have been completed and the Unit is expected to work in full swing. Efforts had been made to fill up the vacant post of Marketing Assistant, but so far the vacancy could not be filled due to technical reasons, though it was advertised in Employment News twice in 2018 and 2019. Shri.P.Baiju, Marketing Assistant was transferred from Vizag Unit and posted to headquarters after having put in eight years of service at Vizag Unit. This was done on his own request for looking after his old parents. On the other hand, the applicant was appointed as Marketing Assistant in the headquarters at Kochi in 2014. The

offer of appointment served to him contains certain terms and conditions, which includes, the liability to serve in any part of India. He was transferred to Vizag after putting in five years of service. His averment that his transfer to Vizag Unit would cause difficulties for his domestic needs as well as cause suffering to his school going children can only be considered as a minor issue, since, in the present scenario his family, including his children, are residing in Adoor while he was staying in the Institute's quarters at Pullepady, Kochi.

8. The respondents have quoted a series of judgments to indicate that the transfer from one place to another is a condition of service and the employee has no choice in the matter. Even in the very judgment quoted by the applicant in **Director of School Education Madras and Ors. v. O.Karuppa Thevan 1994 Suppl. (2) SCC 666** the Apex Court held that "*the fact that children of the employee are studying should be given due weight, if the exigencies of the service are not urgent.*" In that case the appellant was allowed time only till the end of the current academic session. Besides this judgment of the Hon'ble Supreme Court, the respondents have also relied on **Gujarat Electricity Board & Anr. v. Atmaram Sungomal Poshani, 1989 (2) SCC 602, Union of India & Ors. v. H.N.Kirtania, 1989 (3) SCC 447, Addisons Paints and Chemicals Ltd. v. Workman AIR 2001 SC 436** and **Dr.Krishna Chandra Dubey v. Union of India 2005 (6) AWC 6017.** These have together settled the fact that the transfer of a public servant made on administrative grounds or in public interest, is a condition

of service and should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on the ground of malafides. The employee should carry out the transfer first and then prefer to raise any matter for redressal of grievances. Further, it is not permissible for the court to go into relative hardships of the employee. The respondents, therefore, have asked for dismissal of the O.A as devoid of merit. Further in M.A.No.180/00087/2021 filed for early hearing the respondents have submitted that the Officer-in-Charge, Vizag Unit has intimated that the processing plant is functioning fully in operational conditions and therefore the services of Marketing Assistant is highly required for fish procurement and for processing activities in the unit as well as for unloading of fish from Departmental vessels along with sales and various marketing activities like maintaining registers and looking after financial matters concerned with marketing. The Processing Supervisor is looking after the duties of Marketing Assistant at present, in addition to his usual duties such as attending processing works, training and QC activities.

9. We have gone through the records and documents provided and also have heard Shri.Ganesh.K.R, learned counsel for the applicant and Shri.Thomas Mathew Nellimoottil, Sr.PCGC. We make it clear that we do not think that a case has been built by the applicant which justifies intervention by this Tribunal in the transfer. On the other hand, the applicant has been able to get the benefit of an interim status quo order for

over a year and two months. He has had a continuous stay in NIFPHATT, Kochi since 2014. It is a settled law that transfer is a condition of service and the employees have little choice in the matter. This was time and time again been reiterated through judgments of the Hon'ble Apex Court as well as Hon'ble High Courts. No Government servant or employee has a legal right for being posted at any particular place. The employee is expected to join in the transferred place of posting and then raise issues for redressal of his grievance. Further, difficulties such as education of children or looking after the parents or posting of spouse etc. are issues that have been gone into many times. Service conditions have been laid down as to when these are to be considered. In the case of this applicant, it has been explained that his wife and children are located at Adoor and are not with him. Even if he is not able to attend to them at the same level of frequency as would have been possible when he was in Kochi, this specifically does not give him any right to remain forever at Kochi. In any case, the Hon'ble Apex Court has laid down that it is not permissible for Courts to go into relative hardships of employees and it is for the administration to consider the facts of a given case and mitigate real hardship to bring into account the interest of good and efficient administration.

10. It is also settled law that the Courts and Tribunals can entertain applications against transfers only if there is a clear malafide exercise of power or if it is in violation of statutory provisions or against a transfer policy. The Respondents have drawn our attention to the orders of the

Hon'ble Supreme Court in the case of **State of Madhya Pradesh & Ors. v. Sri.S.S.Kourav & Ors.** 1995 (3) SCC 270 wherein it has been stated in

para 4 that "*The Courts and Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the Courts or Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decision shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background foundation.*" In addition, the Respondents have pointed to Apex Court ruling in **Shilpi Bose & Ors. v. S.L.Abbas** (1993) 4 SCC 357 which, inter-alia, held that "*....A Government servant holding a transferable post has no vested right to remain posted at one place or the other; he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the Order instead affected party should approach the higher authorities in the Department.....*"

11. Given all the above directions, as well as, taking into account the conditions of this case, we are unable to grant reliefs as prayed for by the applicant in the O.A. We do not find that there has been any malafide or arbitrariness in the issuance of the transfer order in public interest. The case

for posting a Marketing Assistant at Vizag Unit has been clearly made out by the respondents. In addition, the personal difficulties brought out by the applicant are not of the extent that they can be used to interdict the transfer order. In any case, as has been brought out by the Court Orders cited, it is for the concerned administrative hierarchy to take a decision relating to such difficulties. Hence, we direct that the applicant join in the new place of posting immediately and in case if he so desires, he is at liberty to file a representation to the concerned authorities for consideration of his prayer for a transfer back to Kochi. If such a representation is received by the respondents, the respondents may consider the same as per extant rules and regulations relating to such transfers.

12. For all these reasons, the O.A does not succeed and we, accordingly, we dismiss the O.A on lack of merit No order as to costs.

(Dated this the 19th day of February 2021)

K.V.EAPEN
ADMINISTRATIVE MEMBER

P.MADHAVAN
JUDICIAL MEMBER

asp

List of Annexures in O.A.No.180/00874/2019

1. **Annexure A-1** – A copy of the Order No.41/2014 dated 04.07.2014 issued by the 2nd respondent to the applicant.
2. **Annexure A-2** – A copy of the Order No.48/2018 dated 02.11.2018 issued by the 2nd respondent.
3. **Annexure A-3** – A copy of the Order No.01/2019 dated 02.01.2019 issued by the 2nd respondent.
4. **Annexure A-4** – A copy of the Order No.9/2018 dated 18.04.2018 issued by the 2nd respondent.
5. **Annexure A-5** – A copy of the Order No.44/2019 dated 06.12.2019 issued by the 2nd respondent.
