

**Central Administrative Tribunal
Ernakulam Bench**

OA No.180/00262/2020

Tuesday, this the 1st day of June, 2021

CORAM

Hon'ble Mr.P.Madhavan, Judicial Member

Hon'ble Mr.K.V.Eapen, Administrative Member

K.R. Krishnakumar (Employee Code No. 4142), aged 50 years,
Assistant Director Grade-11, M.S.M.E Development Institute,
Kanjani Road, Thrissur-680 003.

Residing at Kallingal House, Vakkat Road,
Vennala, Cochin-682 028
Mobile No.9446343116.

Applicant

(Advocate: Mr.N.Unnikrishnan)

Versus

1. The Union of India represented by the Secretary to Government of India, Ministry of Personnel and Public Grievances, Department of Personnel and Training, North Block, New Delhi -110 001.
2. The Secretary to the Government of India, Ministry of Statistics and Programme Implementation, Subordinate Statistical Service, Room No. 528, Sardar Patel Bhavan, Sansad Marg, New Delhi-110 001.
3. The Director General, Subordinate Statistical Service (SSS), National Sample Survey Organization, Union of India, New Delhi-110 001.
4. The Chairman, Screening Committee, Central Service Board, Ministry of Statistics and Programme Implementation, Sardar Patel Bhavan, Sansad Marg. New Delhi- 110 001.
5. The Development Commissioner, Micro, Small and Medium Enterprises A-Wing, 7th Floor, Nirman Bhavan, New Delhi-110 011.
6. The Director, Micro, Small and Medium Enterprises, Development Institute, Kanjani Road, Ayyanthole, Thrissur-680 003.

7. Smt. Deepa Raj, Senior Statistical Officer,
National Sample Survey Organization, Field Operation Division,
Plot No.60, 5 Cross Road, Sundaram Nagar,
Medical College Road, Thanjavur,
Tamil Nadu-613 004.

8. Smt. Maneesha, B., Senior Statistical Officer,
National Sample Survey Organization,
Field Operation Division, Door No.114/3/A4,
Katcheri Road NH-7, 4 Way Road, Opp.
TNSTC, Virudnagar-P.O., Tamil Nadu-626 001. Respondents

Advocate:

Mr.C.P.Ravikumar, ACGSC for R1-6
Mr.T.C.Govindaswamy for R7&8.

The OA having been heard on 30th March, 2021, this Tribunal delivered the following order on 01.06.2021.

O R D E R

By P.Madhavan, Judicial Member

The applicant is working as Assistant Director Grade II, MSME Development Institute, Thrissur. He has filed the OA seeking the following reliefs:

- (i) *Call for the records leading to the issuance of Annexures A6 and A11.*
- (ii) *Declare that the applicant is entitled to be posted at Kochi on medical grounds as found out in Annexure A8 order and in view of Annexures A1 to A4.*
- (iii) *Declare that transfer of respondents No.7 & 8 to Kochi in Annexure A6 overlooking the applicant's claim is bad in law.*
- (iv) *Declare that Annexure A11 is unsustainable in the eyes of law.*
- (v) *Issue appropriate order quashing the transfer of respondents 7 & 8 to Kochi in Annexure A6 and A11 orders now issued in contradiction of Annexure A8 order.*
- (vi) *Issue appropriate order or direction to release transfer order of the applicant to Kochi afresh within a reasonable time and to communicate a copy of the same to the applicant.*

2. The applicant in this case is aggrieved by the denial of his request for a transfer to Ernakulam on medical grounds of himself and his wife. The applicant joined the service of National Sample Survey Organization (NSSO) on 1.9.1996 as an Investigator. He was later transferred to Indian Bureau of Mines, Nagpur, on 24.6.2012. Thereafter, he was promoted and transferred to Coimbatore and he joined duty at Coimbatore on 16.4.2013. On 1.9.2014, he was transferred from Coimbatore and posted at Thrissur under the 6th respondent. More than 5 years is over and he wants to get a transfer to Ernakulam. The party respondent Nos. 7 & 8 are far junior to the applicant and even though they had no medical grounds, they were given transfer as per Annexure A6 order.

3. The applicant is a patient of Coronary Artery Disease, Acute Anterior Wall MI, Mild LV Systolic Dysfunction, CAG-Single vessel disease and he had to undergo Angioplasty at Renai Medicity at Palarivattom. He was under treatment for the same in between 1.10.2016 and to 5.10.2016. He is still continuing treatment under the Consultant Interventional Cardiologist of the said hospital. He has produced his discharge summary as Annexure A1. He also has diabetics and high blood pressure. He has produced a copy of the latest certificate from the hospital dated 2.6.2020 as Annexure A2. The applicant's wife is working as Superintendent in the Central Goods and Service Tax and Central Excise at Ernakulam. She is an end stage kidney patient and she has to undergo haemodialysis at least three days in a week. A true copy of the certificate relating to the treatment of the employee has been produced as Annexure A4. His son is studying for B.Sc Computer Application at Edappally and his daughter is studying in the 12th standard at Ernakulam. The applicant has to travel 150 kms up and down every day and he finds it very difficult to reach Ernakulam in time to take his wife for dialysis etc. Even though the applicant had sent an application for transfer to

Ernakulam, 2nd respondent did not consider the same. Now his juniors are transferred to Ernakulam. On 29.4.2019, he filed another application for transfer from Thrissur to Ernakulam through proper channel to the 2nd respondent. The representation was forwarded by 5th and 6th respondents in time and there is no reason to believe that it has not reached respondent No.2. As per the transfer norms of Central Government, it is necessary to post husband and wife at the same station and they should also consider the medical condition of the applicant and his wife etc, when a request transfer is considered. But according to his information, the applicant's application was not placed before the Civil Services Board (CSB) and the transfer orders of respondents 7&8 were issued as Annexure A6. Respondents 7&8 are juniors to the applicant and they have not even completed the minimum tenure of 3 years in their respective places.

4. Aggrieved by the transfer order Annexure A6, the applicant filed OA No.877/2019 before the CAT at Ernakulam. The Tribunal disposed of the above OA directing 2nd respondent to consider the application filed by the applicant afresh and pass a speaking order on the same. The transfer of the party respondents was also stayed by the said order on 16.12.2019. On 4.2.2021, this Tribunal had clarified that there is no stay on the transfer order as such and respondents can proceed with the transfer order. Even though the Tribunal had directed the 2nd respondent to pass a speaking order, the said respondent has not passed a speaking order. Instead, he referred the matter to CSB and the CSB returned the same by endorsing it to defer the matter. It does not contain any reason for not submitting the application before CSB and it also does not contain anything regarding the medical grounds which the applicant had put forward in his application. Deferring the case for future cannot be considered as a compliance of A8 order passed by the Tribunal. Annexure A11 is liable to be set aside on that ground alone.

5. The applicant has also produced a copy of the application filed by respondent No.7 as Annexure A12 & 13. In the said representation, she stated that she belongs to Kollam District and she sought a transfer to Kollam so as to enable her to discharge her duty more effectively and efficiently. She says that her younger daughter is aged only 140 days and elder baby is only 5 years and they are staying with their parents. She also submits that her husband is working in Southern Railway, Kerala Region and she also seeks a transfer to Kollam, Thiruvananthapuram, Kottayam or Kochi on the ground of her husband working in Kerala and also considering the welfare of the children.

6. The applicant also submits that the 8th respondent who is working at Virudnagar, Tamil Nadu was also given a transfer to Kochi on the basis of her application, even though she is junior to him. The CSB recommended Smt.Deepa Raj for transfer on spouse grounds and care of her children to Kochi as per the Minutes dated 28.11.2019. The CSB had also recommended the transfer of 8th respondent to Kochi stating education of children and property matters. According to the applicant, the husband of 7th respondent is working at Meenakshipuram in Palakkad Division. If the applicant wanted to have a transfer on spouse grounds, she could have applied for Palakkad which is a near place. Instead she applied for Kollam, Kottayam, Kochi and Thiruvananthapuram. She has clearly suppressed the place of working of her husband in the transfer application. She did not specify the place where he is working in Kerala. There is no medical ground shown for transfer of the 8th respondent. If we go through the Minutes of the CSB, the criteria for seeking transfer request on priority basis should be as follows:

- (i) Medically certified physically handicapped officer
- (ii) Spouse to be posted at same station or nearby station
- (iii) Evident genuine requests of illness of mother, father, spouse, child or self.

(iv) Unmarried lady officer staying alone or with parents/relatives or married lady officer with school going children (upto 12th standard).

7. It is also clearly mentioned in Clause 7 that batch-wise seniority should be given preference. It is also mentioned that within a batch, longer tenure of stay at the present station has to be given preference. So the applicant states that he is discriminated arbitrarily and even without placing his transfer request before the CSB and the action of the respondents is vitiated.

8. Official respondents entered appearance and filed a detailed reply and additional reply. According to the respondents, the applicant in this case had worked in his home state substantially for about 23 years and has served outside only for 9 months. He was given a transfer to Thrissur on his own choice. They have produced the order of transfer to Thrissur as Annexure R2. According to them, the applicant has got a frame of mind where he feels that the Government of India ought to run according to his requirement. They completely denied the allegation of the applicant that the order passed by the 2nd respondent as Annexure A11 is vogue and arbitrary in nature and contrary to the directions of the Tribunal. The CSB had only deferred the transfer of the applicant. It is not denied by the CSB. Annexure A11 is a detailed speaking order passed in the light of the directions of the Tribunal. No government employee or servant has a legal right for being posted at any particular place. Transfer from one place to another is generally a condition of service and the employee has no choice in the matter. As per Fundamental Rule 11, the whole time of the government servant is at the disposal of the Government and he may be employed in any manner required by the proper authority. The applicant ought to have refrained from stating that other officers were granted transfer on flimsy reasons. According to them, all transfer applications of the applicant upto

20.2.2020 had been considered by the CSB and were deferred. The said decision was taken by CSB comprising a group of senior officers after giving due consideration and weightage to the request made by the applicant along with others. There is no reason to presume that the group of officers considering the request of the applicant would not act bonafide or would not consider the same dispassionately. By filing the present OA, the applicant is trying to hold the government hostage to suit his requirements.

9. The Board of the Government would not be swayed by one or two factors, rather, they would form an opinion on the complete representation. The applicant is not expected to compare his transfer request with other employees as the circumstances in case of every request are different and grounds of request of such employees who are mostly at different stages in life vis-a-vis the applicant would obviously differ from the request of the applicant. There is no merit in the contention of the applicant that 7th respondent Smt. Deepa Raj has not forwarded the applicant through proper channel. It is also averred that the Government instructions on transfer are mere guidelines without any statutory force and Courts or Tribunal cannot interfere with orders of transfer unless the said order is alleged to have been passed by malice or where it is made in violation of statutory provisions.

10. In *Bank of India vs. Jagjit Singh Mehta case*, the Supreme Court has observed that the terms Incorporated in the transfer policy for posting of both the spouses in service at the same station are required to be considered by the authority along with exigencies of administration and without any detriment to the administrative need and claim of other employees. The respondents have also produced copy of the Minutes of CSB dated 28.11.2019 which gave transfer to the respondents 7 & 8 as Annexure R3.

11. The applicant has filed a rejoinder more or less in the same line in the OA. It was contended that the word "consider" means to think over. It cannot be said that there should be an active application of mind. In other words, the term 'consider' postulates consideration of all relevant aspects of the matter.

12. An additional reply statement was also filed by the respondents emphasizing the same grounds and also stating that as per the administrative structure of the department, Deputy Director, NSO (FOD), Regional Office, Trivandrum can file a reply and there is no lacuna in it.

13. We have heard the counsel appearing for the applicant as well as for the respondents in this case. Respondents 7 & 8 have not filed a separate statement but raised the same contentions as the officials respondents have taken.

14. On a perusal of the pleadings, we find that 7th respondent Smt. Deepa Raj was granted a transfer from Thanjavoor to Kochi and the 8th respondent Smt. Maneesha B was given a transfer from Virudnagar to Kochi vide Annexure A6 transfer order. According to the applicant, he is more senior than these two respondents and his case ought to have been considered as per the guidelines issued by the Government on request transfer. The applicant is a heart patient and his wife is suffering from renal failure and she had to undergo haemodialysis thrice in a week. The applicant applied for a transfer along with documents on 29.4.2019 in time and the same was forwarded by respondents 5 & 6 to respondent No.2. He has narrated all these difficulties in the request transfer application. He has produced a copy of the transfer application filed by 7th respondent Smt. Deepa Raj as Annexure A12. The main reason for transfer sought by Smt. Deepa Raj is that her younger baby is only 140 days old and elder child is only 5 years old and they are staying at Kollam. She cannot look after these children and their education. Another reason put forward is that her spouse is working as a Station Master in Southern Railway

in Kerala Region and he alone cannot manage the children's need and welfare. Further, she also states that she has ailing parents to look after and they entirely depend on her for medical needs. As per her first application dated 14.2.2019, she sought for a transfer to Kollam SRO or Thiruvananthapuram RO or Kottayam or Kochi SRO. She subsequently filed another application for a transfer on 24.6.2019 on following grounds:

- (i) Spouse working station (Indian Railway, Trivandrum Division)
- (ii) Primary Education, health and welfare of my 5 year old child
- (iii) Opportunity to grow under joint family for my 9 month old baby
- (iv) Looking after my old aged dependent parents.

15. She mainly sought a transfer to the vacancy existing in Kollam or in Kottayam SRO in the second application.

16. As per the records produced in this case, husband of respondent No.7 is working as Station Master at Meenakshipuram in Palakkad Division from 7.11.2005 till the date of issuance of the certificate i.e. 10.10.2019 vide Annexure A16. So it is crystal clear that the 7th respondent has not clearly stated where the applicant's husband is working in her application. She merely stated in her first application that her husband is working in Southern Railway, Kerala Region. In the second application, she only mentioned that her husband is working in the Railway in Trivandrum Division, which is not correct. So there is suppression of material facts in the application submitted by 7th respondent regarding her claim for transfer on spouse grounds. If the applicant's husband was working at Meenakshipuram, she could have applied for a transfer near to Meenakshipuram in Palakkad Division. Instead of doing the same, she sought for a transfer to Kollam which is far away from Meenakshipuram. It is clear that the CSB has not properly considered the case of transfer sought by the 7th respondent in this case. In the second application, the

7th respondent has sought a transfer only to Kollam or Kottayam but R7 was granted a transfer to Kochi.

17. We have also gone through the Minutes of the CSB which had considered the application as per Annexure R3. Application of the 7th respondent (R7) is considered at Sl.No. 312. The reason for granting the request is on spouse grounds, i.e., her husband is working in Kerala (Railways) and care of education of children. The transfer of 8th respondent (R8) was considered by CSB at Sl.No.310. R8 Smt. Maneesha B was transferred from Virudunagar to Kochi on grounds of education of her children and property matters. These two reasons stated by CSB clearly point to the fact that they have considered other reasons for giving transfer to Kochi. On the other hand, the applicant in this case, who is working in Thrissur from 2012 onwards and who is eligible for a transfer, had filed an application for transfer to Kochi on medical and spouse grounds, which has to be given priority over other request transfers. The applicant in this case is a heart patient and the discharge summary issued from Renai Medicity Multi Speciality Hospital clearly shows that he had to undergo angioplasty in 2016 (Annexure A1). Annexure A12 shows that he was continuing treatment from Renai Medicity till 2020. Annexure A3 shows that Smt. Sindhu M.S., wife of K.R.Krishnakumar is suffering from end stage renal disease and is on maintenance haemodialysis thrice a week in the Medical Trust Hospital since 2.11.2018. These two certificates clearly show that the applicant is in a very difficult situation medically and he requires a transfer to Kochi where his wife is also working. As per the guidelines issued by the Government and recorded in the Minutes, if there is a genuine request for transfer on grounds of illness of father, mother, spouse, child or self, it has to be given preference. Clause 7 of the Guidelines extracted in Annexure R3 Minutes shows that while going by the above order of priority with this category, the respondents

have to consider batch-wise seniority for preference and if this is not possible, within a batch, longer tenure of stay at the choice station has to be given preference. It appears that the applicant's case was not presented before the CSB held on 28.11.2019 where transfer to juniors R7 & 8 was given. As per the records, the transfer request of the applicant was forwarded by R5 & R6 to the competent authority on 29.4.2019 itself. There is no case for the respondents that the application for request transfer filed by the applicant was not received in their office in time. Even when this Tribunal had directed R2 to take a view on the transfer request of the applicant, the respondents had not denied the receipt of the said application in time. It appears that the transfer application of the applicant was presented before the CSB alone and CSB did not consider it appropriate to grant transfer then and deferred the case. The second respondent has not explained any reason why the representation of the applicant was not presented before the CSB for consideration and what was the reason for not presenting the application. There is also no mention why the medical grounds advanced by the applicant were not considered in preference to the case of R7 & R8.

18. The counsel for the applicant would contend that the representation filed by the applicant was purposefully not presented before the CSB in order to facilitate the transfer of R7 & R8 to Kochi. According to counsel for the applicant, R7 wanted a transfer to Kollam, Kottayam, Thiruvananthapuram or Kochi. As per her application, her place of residence is Kollam. Her husband is working in Palakkad Division and this matter was suppressed in the application and she sought for a transfer to Kollam, Kottayam or Kochi on spouse grounds.

19. If the transfer had been granted on spouse grounds, R7 should have been transferred to somewhere in Palakkad and not to Kochi. R7 & R8 are juniors to the applicant and in this circumstance also the applicant should have been given

priority. These aspects clearly point to the fact that the applicant was not properly considered and his application was not presented before the CSB in a proper manner. So the transfer of R7 & 8 have also become vitiated and requires a re-look. It is true that the guidelines has to be read along with administrative exigency. But the CSB has not given any other reason for transfer of R7 & R8 in this case. Annexure A11 order of R2 also does not reflect any administrative exigency whereby the applicant was not considered. This clearly points out that there was no element of administrative exigency for denying transfer to the applicant. The respondents are expected to act in a fair manner on the basis of the guiding principles issued by the Department from time to time. So the contention of the respondents that the transfer application of the applicant was not considered due to administrative exigency cannot be accepted.

20. Fundamental Rules (F.R.) 11 applies to all the employees and it cannot be applied to the applicant alone. Here the juniors of the applicant were granted transfers overlooking the claim of the applicant on medical grounds. It may be true that the applicant has been working at Kochi for 14 years prior to 2012. But that cannot be considered as a sufficient reason for denying his transfer request on medical grounds with supporting documents. The applicant has got a good case on medical grounds as well as spouse grounds for getting a transfer to Kochi. We find merit in the contentions put forward by the counsel for the applicant.

21. In the result, we hereby set aside the transfer orders of R7 & R8. We direct the respondents to place the transfer application filed by the applicant which had been given prior to the meeting of CSB dated 28.11.2019, before the CSB for fresh consideration along with the applications received from R7&8 for taking a fresh view as per guidelines issued by the department for request transfer and pass a fresh order of transfer based on the applications of applicant herein and R7&8

within a period of three months

22. R7&8 will be permitted to work in their present stations temporarily till the respondents pass orders on their transfer request.

23. The OA is disposed of as above.

(K.V.Eapen)
Administrative Member

(P.Madhavan)
Judicial Member

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Annexures filed by the applicant:

Annexure A1: A true copy of discharge summary dated 5.10.2016 issued from Renai Medicity Multi Speciality Hospital, Kochi-25.

Annexure A2: A true copy of latest certificate dated 2.6.2020 issued by Dr.Jay B. Pattam, Consultant Interventional Cardiologist, Renai Medicity Multi Speciality Hospital, Kochi-25.

Annexure A3: A true copy of Medical Certificate dated 7.12.2019 issued by Dr.Mammen, Consultant Nephrologist, Reg.No.20136, Medical Trust Hospital, Department of Nephrology, Pallimukh, Ernakulam in respect of wife of the applicant.

Annexure A4: A true copy of latest Certificate dated 1.6.2020 issued by Dr.Mammen, Consultant Nephrologist, Reg.No.20136, Medical Trust Hospital, Department of Nephrology, Pallimukh, Ernakulam in respect of wife of the applicant.

Annexure A5: A true copy of representation dated 29.4.2019.

Annexure A6: A true copy of common transfer order No.11015/1/2018-SSS dated 4.12.2019.

Annexure A7: A true copy of E-mail dated 3.12.2019 (4.43pm) sent to the 2nd respondent.

Annexure A8: A true copy of order dated 10.12.2019 in OA No.180/00877/2019.

Annexure A9: A true copy of interim order dated 16.12.2019 in OA No.180/00898/2019.

Annexure A10: A true copy of interim order dated 26.12.2019 in OA No.180/928/2019 filed by Alby Annie George (Employee Code No.5470).

Annexure A11: A true copy of order No.11024/14/2020-SSS dated 13.5.2020.

Annexure A12: A true copy of representation dated 14.2.2019 submitted by the 7th respondent.

Annexure A13: A true copy of representation dated 24.6.2019 of the 7th respondent.

Annexure A14: A true copy of office memorandum No.11015/1/2018-SSS dated 14.3.2019.

Annexure A15: A true copy of transfer application dated 22.11.2019 of the 7th respondent.

Annexure A16: A true copy of Employment Certificate No.J/P 535/VIII/SMS dated 10.10.2019 issued by the Divisional Office, Southern Railways, Personnel Branch, Palghat to the husband of respondent No.7, Shri Sanju, Station Master, Meenakshipuram.

Annexure A17: A true copy of Office Memorandum No.A-32016/7/2014-E.II dated 3.3.2015.

Annexure A18: A true copy of Minutes of the Meeting of the Civil Service Board (CSB) for Subordinate Statistical Service (SSS) held on 5.7.2019 at 10.00 hours at S.P.Bhavan, New Delhi.

Annexure A19: A true copy of Statement of Own Cost Transfer/Cancellation requests received from Senior Statistical Officers received along with Annexure A18.

Annexure A20: A true copy of letter No.11011/01(04)2019-SSS dated 20.1.2020, Minutes of the Meeting of the Civil Service Board (CSB) for Subordinate Statistical Service (SSS) held on 28th November, 2019 at 10.30 hrs. At Sankiyaki Bhavan, Delhi and Statement of Own Cost Transfer/Cancellation requests received from Senior Statistical Officers.

Annexure A21: A true copy of Office Memorandum No.28034/9/2009-Estt.(A) dated 30.09.2009.

Annexure A22: A true copy of relevant pages of order No.11015/1/2018-SSS dated 26.06.2020.

Annexure A23: A true copy of certificate dated 14.1.2021 issued by Dr.Mammen M John, Consultant Nephrologist, Reg. No.20136, Medical Trust Hospital, Department of Nephrology, Kochi-16

Annexure A24: A true copy of order No.2(5)T&P/TNS/2020-21 dated 24.2.2021 issued by the Assistant Director, Regional Office, Ministry of Statistics and Programme Implementations, National Statistical Office (Field Operation Division, 2nd Floor, R.K.Mahal, 86, Tamil Sangham Road, Madurai-625 001.

Annexures filed by the respondents:

Annexure R1: True copy of the communication.

Annexure R2: True copy of office order No.11012/02/2012-SSS dated 20.5.2014.

Annexure R3 (1) True copy of Minutes of Meeting (CSB) dated 28.9.2019.

Annexure R3 (2): True copy of the order issued by the Ministry of Statistics and Programme Implementations dated 11.8.2020.

Annexure R4: True copy of the instructions issued by the Ministry of Finance Department of Expenditure dated 24.5.1993.

Annexure R5: True copy of the Minutes of the Civil Service Board dated 27.2.2020.