

**Central Administrative Tribunal
Ernakulam Bench**

OA No.435/2013

Thursday, this the 22nd day of August, 2013.

CORAM

Hon'ble Dr.K.B.S.Rajan, Member (Judicial)

Habusathbi A.P.

D/o Sayed

Working as Compositor Grade.II

Lakshadweep Government Press

Chetlat Island (Residing at Alipura House)

U.T.of Lakshadweep.

Applicant

(By Advocate: Mr.Jobby Cyriac)

Versus

1. The Administrator
Union Territory of Lakshadweep
Kavaratti-682 555.
2. The Secretary
Department of Printing and Stationery
Union Territory of Lakshadweep
Kavaratti-682 555.
3. The Director
Department of Printing and Stationery
Union Territory of Lakshadweep
Kavaratti-682 555.

Respondents

(By Advocate: Mr.S.Radhakrishnan)

This application having been heard on 20th August, 2013, the Tribunal on 22.08.2013 delivered the following order:-

ORDER

The applicant, working as Compositor, has applied for transfer to Kadamath Island on her completion of normal tenure of four years at Chetlat Island. Kadamath island is the native place of the applicant; her husband is also employed therein and that for certain medical treatment of the applicant's sister also Kadmath island suits her. There is at present one vacancy of Compositor at Kadmath Island. However, the respondents have not so far acceded to the request. Hence, this OA seeking the following reliefs:-

- a) *"To direct the 3rd respondent to pass an appropriate order transferring the applicant to her native place, Kadamath from the present station, Chetlat Island within a time frame that may be fixed by this Hon'ble Tribunal.*
- b) *To direct the 3rd respondent to pass appropriate order on Annexure A4 application on merit and to communicate the same to the applicant forth with, and*
- c) *Such other order or direction as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."*

2. Respondents have contested the O.A. They have referred to a few judgments of the Apex Court to assert that transfer is an incidence of service and no one has any right to stick to a particular post or seek a posting to a particular post. In so far as the post of Compositor at Kadmath is concerned, there are many aspirants to the post and one Abdulkader, who is in a 'sinking stage' and who requires medical treatment has also applied for transfer to Kadmath Island. The provisions available in the guidelines, vide clause No. 19 provides that the Administration reserves its right to transfer any official at any time, in public interest or otherwise, without citing any reasons or to modify any of the above guidelines at any time.

3. In her rejoinder, the applicant submitted that the decisions relied upon by the respondents do not support their stand since the action on the part of the respondents is against the professed guidelines and certain element of malafide also subsists. The individual whom the respondents are considering for posting to Kadmath Island on medical grounds is not in such 'sinking stage' as stated as the medical documents nowhere reflect as such.

4. Counsel for the applicant argued that the following points go in favour of the applicant:-

(a) Applicant is a poor lady Tribal candidate who has been working at Chetlat, while her husband is working at Kadmath. The normal tenure at Chetlat Island is only three years (para 2 of Annexure A-3 guidelines), while the applicant has rendered four years of service in that island.

(b) Provisions of clause 6(b) which provides for transfer on medical grounds even before the completion of tenure applies to the case of the applicant as her sister is undergoing treatment in Kadmath Island.

- (c) Clause 13 which provides for posting of spouse in the same place where the other spouse is employed, as far as possible, also applies to the applicant.
- (d) The decision to consider Shri Abdulkader for posting to Kadmath also is not in accordance with the guidelines since, transfer on medical grounds is confined to Kochi, Agathi and Kavaratti and the said Abdulkader has been having the treatment at the Medical Trust Hospital, which is at Kochi. The said Abdulkader has not yet completed his tenure.
- (e) Provisions of clause 19 could be pressed into service judiciously and not capriciously. In the instant case, had the grounds for transfer of Abdulkader are more genuine and compelling in respect of the applicant and are within the ambit of guidelines, the act on the part of the respondents could be held justified. That is not so since the grounds in respect of the applicant are more stronger.

5. Counsel for the respondents argued on the basis of the reply filed and stated that the applicant has no vested right to seek transfer to a desired place and that the relationship of the applicant with that person who is undergoing medical treatment vide Annexure A-2 is also not given. There are in fact five aspirants for transfer to Kadmath Island and the respondents are to take a proper decision considering the priority and more compelling grounds, which it finds with Abdulkader.

6. Arguments were heard and documents perused. The contentions of the respondents that transfer is an incidence of service; that the authorities have unrestricted powers to transfer; there is no indefeasible right vested with any of the government servant to seek a transfer to a particular place etc., are all well settled principles. There cannot be any quarrel against the same. What is kept in mind at the time of invoking the discretionary powers is that there must be a judicious decision.

7. The Apex Court has, in a recent case of High Court of Judicature of Madras vs R. Perchi (2011) 12 SCC 137 had referred to an earlier decision in the case of N.K. Singh as under:-



22. In the context of transfer of a government servant we may refer to the dicta of this Court in *N.K. Singh v. Union of India* where this Court observed in AIR para 22 as follows: (SCC p. 108, para 23)

"23. ... Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make the decision. **Unless the decision is vitiated by mala fides or infraction of any professed norm of principle governing the transfer, which alone can be scrutinized judicially, there are no judicially manageable standards for scrutinizing all transfers and the courts lack the necessary expertise for personnel management of all government departments.** This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated." (emphasis supplied)

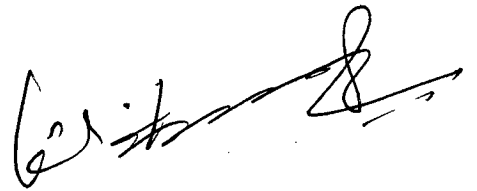
8. In the instant case, there has been no challenge against the transfer of the applicant but the challenge is against the alleged arbitrariness on the part of the respondents in ignoring the transfer request of the applicant. The respondents are certainly expected to consider the compelling grounds as contained in the five representations of individuals seeking transfer to Kadamath and while so considering, their decision should be in tune with the guidelines. Abdulkader, whom the respondents desire to post to Kadamath has mainly sought for transfer to Kadamath island as the same is his native place. However, the reason for transfer is that he needs medical treatment; but the medical treatment he is receiving is at Kochi and the guidelines provide for transfer to such a place where the medical treatment is obtained and Kochi is one of the specified places for transfer on medical ground. Thus, it does not appear appropriate that the intended posting of Abdulkader to Kadamath is on medical ground as the said place is not one specified in the guidelines nor is he undergoing treatment there. A more rational oriented look at the matter is expected of the respondents and also called for.

9. Compared to the case of Abdulkader, the case of the applicant seems to be more pressing. However, it is for the respondents to compare and contrast the grounds adduced in the representations which are pending. It is not exactly known whether there are pressing grounds in the representation of the other two about which there is nothing on the records.

10. Hence, the best course is that the Administrator is directed to consider all the pending representations from Compositors for transfer to Kadamath island and keeping in view the guidelines at Annexure A-3, a judicious decision shall be taken and if the applicant is found more deserving for transfer, due orders thereof be passed and if any other individual appears to be more deserving, the applicant be informed of the same, giving the reasons for such a decision to reject her request.

11. This order shall be complied with, within a period of two months.

12. The OA is disposed of. No costs.



(Dr.K.B.S.RAJAN)
Member (J)