

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 449 of 2010

Friday, this the 3rd day of September, 2010

CORAM

HON'BLE MR. JUSTICE K. THANKAPPAN, JUDICIAL MEMBER
HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

P.P. Premarajan,
Office Assistant,
Passport Office, Kozhikode,
Residing at Paraparambath,
P.O. Makkada, Kozhikode

... Applicant.

(By Advocate Mr. P. Ramakrishnan)

v e r s u s

1. The Joint Secretary (CPV) and
Chief Passport Officer,
Ministry of External Affairs, New Delhi.
2. The Passport Officer,
Ernanjipalam, Kozhikode ... Respondents.

(By Advocate Mr. Subnil Jacob Jose, SCGSC)

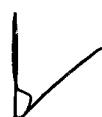
The Application having been heard on 19.08.2010, this Tribunal on
03.09.10 delivered the following:

ORDER

HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

This O.A. has been filed by the applicant for the following reliefs :

- (i) Issue an order quashing and setting aside Annexure A-3.
- (ii) Issue an order declaring that the applicant is entitled to continue at Kozhikode in the light of Annexure A-2 transfer guidelines.
- (iii) Issue an order directing the 1st respondent to pass final orders on Annexure A-4 representation, and
- (iv) such other orders and directions as are deemed fit in the facts and circumstances of the case.



2. The applicant is a Group-D official (Office Assistant) working in the office of the Passport Officer, Kozhikode. He is a physically handicapped person with a disability of over 40%. On account of his orthopedic impairment, his movements are considerably restrained and he carries forward his daily chores with the help of his family. In the month of April, 2010, when he learnt that the 1st respondent was taking steps to transfer him, he had submitted a detailed representation against it. However, as per order dated 24.05.2010, he has been transferred from Kozhikode to Malappuram. Hence this O.A. Interim stay on the transfer of the applicant was granted on 31.05.2010.

3. The applicant contends that as per the transfer policy, Group-D staff would not be generally transferred. The impugned order is issued in violation of the transfer policy. There are a number of officials who are similarly placed Group-D staff and had long stay at Kozhikode have been retained in Kozhikode singling out the applicant for transfer, which is discriminatory. On account of his physical disability, the applicant is unable to travel continuously between Kozhikode, where his aged mother and family are residing, and Malappuram on a daily basis. The respondents ought to have taken note of Annexure A-1 Medical Certificate issued by a competent medical board certifying the applicant's physical disability. Therefore, the applicant prays that the O.A. should be allowed.

4. The respondents contested the O.A. In their reply, it was submitted that the transfer of the applicant is made in public interest in accordance with transfer guidelines which do not apply in case of bifurcation of office. The transfer policy for Office Assistant lays down that they would not be generally transferred. However, it is the prerogative of the Government to

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transfer any Government official from one place to another in public interest. The applicant is only 40% disabled and, therefore, is not eligible for exemption for which the criterion is 50% or more disability, as per the transfer policy. The respondents relied on the common judgement dated 06.11.2008 of the Hon'ble High Court of Kerala in W.P.(C) No. 5989 and 10006 of 2008 (**Union of India and Others vs. Kumari T. Omana**) wherein it was held that "*No Court has any power to interfere with a transfer, unless it is shown to be illegal or vitiated by mala fides.*" The applicant has been transferred strictly based on the length of stay at Kozhikode. There is only one person senior to him as Office Assistant in the Passport Office, Kozhikode, i.e. Shri M. Balakrishnan Nair, who is superannuating on 31.12.2010. 34 officials, who were proceeded from Passport Office, Kozhikode to Malappuram, have complied with transfer orders and in the interest of justice, the requests of these officials are required to be considered subject to overall exigency of service. The respondents have considered the length of stay of the applicant in the Passport Office, Kozhikode, as the only consideration on his transfer, which is in public interest to maintain functional efficiency of the Passport office, Malappuram. In view of the above, the interim order may be vacated and the O.A. be dismissed.

5. Heard the learned counsel for the parties and the documents perused.

6. There are a number of judgements of the Apex Court and High Courts holding that the Courts/Tribunals are not appellate forums to decide on transfers of officials on administrative grounds unless the transfer orders are vitiated either by malafide or by extraneous consideration



without any factual background foundation. The transfer guidelines do not confer upon a Government employee a legally enforceable right. The transfer policy dated 09.02.2010 (Annexure A-2) states that the Office Assistants would not generally transferred. It does not mean that the Government cannot transfer an Office Assistant in public interest. The respondents have considered the length of stay of the applicant in the Passport Office, Kozhikode, only as the criterion for his transfer. But for Shri M. Balakrishnan Nair, who is to retire on 31.12.2010, the applicant is the senior most Office Assistant in the Passport Office, Kozhikode, due for transfer on the basis of length of stay. Kumari Baby Sharmila, Smt. A.P. Ambujakshy and Smt. C. Ambika, whose names have been cited by the applicant in his rejoinder as officials who have been continuing in the Passport Office, Kozhikode, from 1986 without any transfer, are in fact juniors to the applicant as per station seniority as he joined as casual labour on 29.05.1989 and was regularised on 12.04.2000. But this is not the full factual background.

7. It is seen that the respondents have considered the aspect of length of stay of the applicant at Passport Office, Kozhikode, only in ordering his transfer. The aspect that the applicant is a physically handicapped person with over 40% disability is totally ignored by the respondents on the ground that the applicant is only 40% disabled and, therefore, is not eligible for exemption from transfer for which the criterion is 50% or more disability, as per the transfer policy. The transfer policy dated 09.02.2010 states "The cases where officials are suffering from diseases such as cancer, brain tumour and those who have undergone heart surgery and those who are more than 50% physically handicapped be considered by the Board sympathetically to not to transfer them." This guideline is not in conformity with the notification issued by the Government of India under

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the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. According to the notification, 40% disability is the bench mark disability for treating a person as physically handicapped person. In Writ Petition (C) Nos. 5989 and 10006/2008, the Hon'ble High Court of Kerala held that "*If that (40% disability is the bench mark disability) be so, the respondents herein are also entitled to be treated as physically handicapped persons and further considered for the benefits that are bestowed on them as per the norms in in the matter of transfer.*"

8. The applicant herein is a handicapped person with more than 40% disability, which is not disputed by the respondents. His orthopedic disability considerably restrains his movements. It is very difficult for him to commute daily between Kozhikode and Malappuram. Being a Group-D employee he is not in a position to run two establishments at Malappuram and Kozhikode simultaneously. It is not fair to deprive him of the protection under the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. As per the averment of the respondents, it is clear that they have not considered the aspect of the disability of the applicant before transferring him. The applicant had made Annexure A-4 representation dated 26.04.2010 bringing to the notice of the respondents the fact that he is a physically handicapped person with above 40% disability and that it is very hard for him to travel more than 60 k.m. from his residence to Passport Office at Malappuram, which is not yet considered by the respondents. Therefore, in the facts and circumstances of the case, it would only be just and fair if the respondents treat the applicant as a physically handicapped person under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and

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consider his claim for retention at Kozhikode. Accordingly, we direct the respondents to consider the claim of the applicant for retention at Passport Office, Kozhikode, treating him as a physically handicapped person under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and pass suitable orders within a period of 60 (sixty) days from the date of receipt of a copy of this order. The interim order of stay will continue till a fresh order is passed by the competent authority.

9. The O.A. is disposed of as above. No order as to costs.

(Dated, the 3rd September, 2010)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER

CVR..