

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 453 of 2008

THURSDAY, this the 4TH day of December, 2008

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

P. Narayanan,
S/o. Late K. Narayanan Nair,
Superintendent,
Regional Passport Office, Cochin,
Residing at "Sivapadham",
Sree Rama Temple West Road,
Tripunithura : 682 301

...

Applicant.

(By Advocate Mr. P. Ramakrishnan)

versus

1. Union of India, represented by
Secretary to Government,
Ministry of External Affairs,
New Delhi : 110 001
2. The Joint Secretary (CPV) and
Chief Passpoert Officer,
Ministry of External Affairs,
New Delhi.
3. The Administrative Officer (PV.IV),
Ministry of External Affairs,
CPV Division, New Delhi.
4. The Regional Passport Officer,
Regional Passport Office,
Panampilly Nagar, Cochin.

...

Respondents.

(By Advocate Mr. Varghese P. Thomas)



ORDER
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

This is the second round of litigation. Earlier, when the applicant was sought to be transferred from Cochin to Bangalore, he had approached this Tribunal challenging the said order of transfer on the ground that he having been posted to Cochin on medical grounds, and the medical grounds still existing without change, he should not have been transferred out of Cochin. At that time, this Tribunal had passed the following order, vide Annexure A-6 order dated 9th April 2008 in OA No. 191/2008:-

" Heard the counsel for the applicant. The applicant who is at present serving as Superintendent in the Regional Passport Office, Cochin, came to be posted to Cochin on medical grounds in the wake of an accident that took place in 2001. According to the applicant his continued medical treatment compels him to be at Cochin only.

2. In June, 2004 vide Annexure A-1 the applicant was directed to get himself examined by a Medical Board in the Government Hospital, to have a medical report in regard to his then condition. Accordingly, Annexure A-2 Medical Certificate was produced by the applicant and he was allowed to continue. In August 2007, the applicant was transferred to Malappuram. However, the applicant had preferred Annexure A-4 representation dated 28.8.2007 and presumably accepting his submissions, the respondents did not insist upon his transfer to Malappuram.

3. It is by Annexure A-5 order that the applicant now has been transferred to Bangalore. The applicant has preferred a representation dated 7.4.2008(A-6) to the 2nd respondent, which has not so far been disposed of.

4. Counsel for the applicant submits that, the applicant's physical condition has not improved and he is under constant medical treatment at Cochin. According to the counsel, even very recently he has presented himself for medical examination and the authorities have confirmed as to his

inability to move. However, this medical examination is stated to have taken place after the applicant has preferred his representation dated 7.4.2008.

5. The applicant has prayed for quashing of impugned order and as an interim relief, he has prayed for a stay of the operation of the impugned order till the disposal of the O.A.

6. Counsel for respondents seeks some time to get instructions.

7. In view of the fact that the representation of the applicant has not so far been disposed of, the Tribunal feels that it would be in the interest of justice, if the application is disposed of at the admission stage itself, with a direction to the 2nd respondent to consider the representation dated 7.4.2008(A6) within a period of three weeks from today. The applicant is permitted to make available the latest medical certificate for consideration by the 2nd respondent and while coming to a decision in regard to retention/transfer the 2nd respondent shall take into account the medical certificate as well. In case, the respondents feel that the medical examination shall be by a Medical Board, they may accordingly direct the applicant to undergo such medical examination and a decision of the department should be on the basis of such medical report. Till such time a decision is arrived at as stated above, the applicant shall not be displaced from the present place of posting. O.A. is closed. No costs."

2. The applicant was subjected to a medical examination by a Medical Board which has certified as under vide Annexure A-7:-

"Medical Certificate"

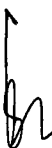
We the members of the District Medical Board, Ernakulam, have examined Mr. Narayanan .P aged 58 years and went through his treatment records. He is suffering from Post Traumatic Epilepsy. Sine he gets frequent seizure attacks in spite of optimum drugs, he needs continuous treatment and regular follow up. He has to avoid all strenuous physical activities and also avoid long journeys."



3. Meanwhile, the applicant who was under severe stress and strain submitted an application for voluntary retirement and as per letter dated 16th June 2008 he was informed that the competent authority had accepted his request that he would retire from service w.e.f. 11-08-2008. The applicant, however, chose to withdraw his application for voluntary retirement vide letter dated 7th July 2008, before the impending date of voluntary retirement and the same was stated to have been accepted. Thus, he has been allowed to continue beyond 11th August, 2008, but has been issued with a transfer order, this time instead of Bangalore, to Kozhikode, vide Annexure A-8. It is this order that the applicant has challenged in this O.A.

4. Respondents have contested the O.A. Their stand is that keeping in view the medical problem of the applicant, a lenient view was taken by the respondents and his transfer to Regional Passport Office, Bangalore was cancelled and he was diverted to the Passport Office, Koshikode, which is nearer to his present station and within the same State so that he may continue his treatment and follow up the advice of the Medical Board. His insistence that he may be allowed to remain in RPO, Cochin for ever is not feasible as the applicant is in a transferable job. And, the reasons for transferring him from Cochin are as under:-

- (a) There were in all 13 Superintendents in other Passport Offices whose native place is Cochin and who had sought for transfer to Cochin Office and till October, 2008, as many as 10 Superintendents were accommodated and 3 Superintendents are eagerly waiting for their turn and the genuine requests of such

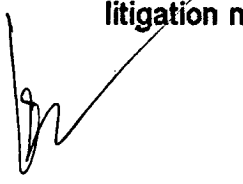


officers could be accepted only when the officials who have completed their tenure at Cochin could be shifted. The applicant having completed his tenure, has, therefore, been moved out of Cochin.

(b) While Cochin Office has as many as 14 Superintendents, there is a shortage at Kozhikode and service exigencies warrant someone to be posted there.

(c) There are many cases of medical problems in several other Passport Offices and retention of such officers at their place of posting for long time would hinder transfer and many deserving officials will be struck unduly which may affect smooth function in the CPO and that is why, the applicant has been transferred to PO Kozhikode, which is nearer to his hometown.

5. In addition to the above grounds, the respondents have referred to a few decisions of the Apex Court to emphasize that unless vitiated with Malafide or issued by authorities not competent to pass transfer order, judicial interference in matters of transfer should be avoided. Again, it has been emphasized that the Apex Court has stated that a government servant cannot disobey a transfer by not reporting at the place of posting and then go to the court to ventilate his grievance. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. Such tendency of not reporting at place of posting and indulging in litigation needs to be curbed.



6. Counsel for the applicant argued that the applicant is under such a physical condition that he cannot move out without escort and the hospital authorities are reluctant to even admit him due to complicated medical history. As such, his request for retention at Cochin is purely due to his delicate and poor health condition and not for anything else. Again, he having crossed 56 and running 57, provision exists to accommodate officers in the choice station, vide Annexure R-1. This aspect has not been properly considered by the Respondents.

7. Counsel for respondents reiterated the contents of the counter filed by the respondents.

8. Arguments were heard and documents perused. The applicant came to Cochin from Malappuram well before completing his tenure there due to the fact that he met with a serious accident. Initially, his posting at Cochin was for a short period upto August, 2002 but the same was extended and finally 'he was transferred there keeping in view the report of the Medical Board'. Reply to para 2.4 refers. The medical Board at that time inter alia, reported as under:-

"Considering all this, we are of the opinion that Mr. Narayanan needs *continuous treatment and regular follow up*. He has to *avoid strenuous Physical activities* and also *avoid long travels*. He has to remain under the care and observation of his family because of the nature of his illness."




9. A comparison of the above report with the recent report of the Medical Board would indicate whether there has been improvement in the health condition of the applicant. The recent report inter alia states as under:-

".... He needs continuous treatment and regular follow up. He has to avoid all strenuous physical activities and also avoid long journeys."

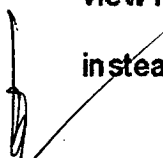
10. The above would go to show that there has not been any improvement in the health condition of the applicant. The respondents, of their own, vide their reply to para 2 to 4 of the OA, had allowed the applicant to continue at Cochin keeping in view the report of the Medical Board. The contingencies or conditions under which the applicant's posting at Cochin was continued earlier have not undergone any change as such. Thus, so far as personal consideration of the incumbent is concerned, the situation does warrant continuance of the applicant in Cochin.

11. Personal consideration, of course, has to take a back seat when exigencies of service are poised against it. Thus, it has to be seen whether service exigencies compel the move of the applicant from Cochin. As reflected in para 4 above, lot of emphasis has been laid to the fact that there are others who have applied for transfer to Cochin and if persons with health problems are retained at one place for long time, it would hinder the transfers and many deserving officials will be struck unduly which may affect the smooth functioning of the CPO. This argument, so far as Passport Office Cochin is concerned, may not be tenable since the actual strength of



Superintendents ~~and~~, according to the respondents, is excess of sanctioned strength and in case of transfer of any individual, ideally, the excess strength may have to be reduced and not maintained by posting some one from outside. If so, the posting the applicant out of Cochin may not serve the purpose of bringing any other person in his place as there is surplus strength at Cochin.

12. The applicant is at present 57 plus. Provision exists for seeking posting at a place of choice one year ahead of 57 so that the posting could take place to the desired station where the individual could plan for his resettlement after superannuation. Such is the laudable purpose behind this provision in the guidelines. Here is a case, where the applicant seeks retention at Cochin, mainly not with reference to his future plan of settling at Cochin after retirement but is under a compulsion to remain there for medical aid. A double purpose would be served in case he is retained in service. The fear of being frequently attacked by epilepsy, warranting some escort or aid to the applicant needs no special emphasis, as the medical report clearly states, **"He is suffering from post traumatic epilepsy since he gets frequent seizure attacks in spite of optimum drugs"** Under these circumstances, if the applicant is shifted to Bangalore or Kozhikode, the situation would remain the same. The requirement is that he may not be shifted from Cochin. Thus, the contention of the respondents that lenient view has been taken in the case of the applicant by posting him to Kozhikode instead of Bangalore cannot be appreciated.



13. It may not be out of place to keep in mind the benevolent attitude of the Government in executing the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, which, even mandates creation of supernumerary post as is evident from the following decision of the Apex Court in *Kunal Singh v. Union of India*, (2003) 4 SCC 524:-

"9. Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee, who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of the section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The section further provides that if an employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service."

14. Here the request of the applicant is only for retention at Cochin. His case is no less than a person with disabilities as defined in the aforesaid Act.

By retaining him at Cochin, no violation of rules takes place. Rather, provisions of accommodating persons within three years prior to superannuation, as contained in para (d) of the guidelines would be adequately met with.

15. In view of the above, the OA is allowed. Annexure A-8 order dated 1st August, 2008 is quashed and set aside. It is declared that the applicant shall not be shifted as long as his health condition remains the same.

16. Under the circumstances, there shall be no orders as to costs.

(Dated, the 4TH December, 2008)


(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.