

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A. NO. 473 OF 2009**

*Tuesday*, this the 18<sup>th</sup> day of August, 2009.

**CORAM:**

**HON'BLE Dr. K.B.S. RAJAN, JUDICIAL MEMBER  
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

A.N. Mohanan  
Superintendent  
Regional Passport Office  
Cochin -30

... Applicant

(By Advocate Mr. N. Nagaresh )

versus

1. Joint Secretary (PVA) and  
Chief Passport Officer  
Ministry of External Affairs, CPV Division  
New Delhi

2. Regional Passport Officer  
Cochin

... Respondents

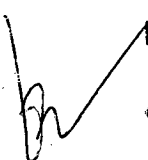
(By Advocate Mr. TPM Ibrahim Khan, SCGSC )

The application having been heard on 12.08.2009, the Tribunal  
on 18-08-09 delivered the following:

**ORDER**

**HON'BLE Dr. K.B.S. RAJAN, JUDICIAL MEMBER**

The applicant has challenged Annexure A-5 order dated 14.07.2009 whereby he was deputed for temporary duty at Regional Passport Office, Hyderabad for three weeks with effect from 20.07.2009. Immediately on the issue of the order, the applicant has approached the Tribunal on 15.07.2009 but the Tribunal had directed the respondents not to disturb the applicant from the present place of posting, an interim order.




2. Briefly stated, the applicant is suffering from 50% physical disability resulting Post Polio Residual paralysis and is also suffering from ailments like Hypercholestrdemia. Earlier in 2002 when he was transferred for a limited period of 45 days to Ahmedabad he approached this Tribunal and the Tribunal allowed the OA and set aside the order to the extent it related to the applicant's deployment to Ahmedabad. The applicant has moved the present OA challenging the impugned Annexure A-5 on the same grounds with an additional ground that he has only two years to superannuate and he may not be in a position to move around.

3. Respondents have contested the OA. According to them, the applicant is serving in the post of Superintendent and promotion to this post was granted to him on the basis of an undertaking given by the applicant which reads as under :-

**UNDERTAKING**

"I understand that I am being promoted as superintendent in the Central Passport Organisation in view of the posts created for the purpose of the implementation of the Passport Seva Project and therefore, I hereby undertake to move on transfer immediately to the place of the location of the Passport Seva Kendra or another passport office or a Passport application collection centre, where I may be posted anytime by the CPV Division for the implement ion of the Passport Seva Project. "




4. The applicant stands second in the said seniority in Regional Passport Office, Cochin. The respondents have issued the impugned order on the basis of station seniority. It has also been stated in the reply that earlier the applicant had accepted the transfer to other places as could be seen from Para 4.2 of the OA.

5. Applicant has filed rejoinder stating that his transfers in earlier days were when he was in 30's and these cannot be compared to the present transfer when he is in late 50's and with physical disability of over 50%.

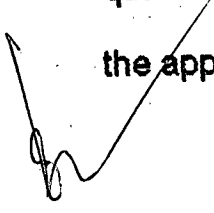
6. Counsel for applicant submitted that the applicant's physical condition does not permit him to move about. In fact, out of four individuals transferred only two of them moved whose tenure has been extended. One more individual has not so far moved. In so far as undertaking is concerned, the same is a routine undertaking, requisitioned from all those who are promoted and that the applicant suffers from 50% disability would always be kept in view before taking any decision to transfer him. The present transfer does not appear to have taken into account this aspect at all and only based on station seniority the transfer has been effected.

7. Counsel for respondents reiterated that the fact that the applicant's undertaking would reflect his conduct. Blissfully he gave the undertaking to get promotion but now challenges the transfer. Counsel for



applicant referred to "Persons with disability, (equal opportunities and protection of rights and full participation) Act, 1995" and in particular, refers to Section 47 thereof.

8. Arguments were heard and documents perused. Earlier for an identical transfer this Tribunal has held that the applicant should not be posted out. It is not the case of the respondents that there has been any improvement in the physical condition of the applicant which may justify a deviation from the earlier decision. Rather the situation might have been aggravated as the applicant is by now older by a few years. As such, it is clear that when the respondents have issued the impugned Annexure A-5 order consideration was given only to the undertaking and the fact that the applicant was in Sl.No.2 in Station seniority. It is also not the case of the respondents that but for the undertaking the applicant would not have been afforded the promotion at all. Thus the applicant has not gained anything by way of giving the undertaking. The undertaking given being the routine one and the applicant having been accommodated in the present place of posting, at the time of promotion, the said undertaking cannot be relied upon for a temporary transfer. It could have been a different matter had there been no post of Superintendent to accommodate the applicant in the present place of posting. That being not the case here, the good grounds on the basis of which applicant's transfer to Ahmedabad was earlier quashed and set aside are still prevalent which could be easily applied to the applicant's present transfer. It is also to be pointed out here that if the



applicant's posting at Hyderabad is only for three months from 20.07.2009.

The same by now being over, a requirement of the applicant's posting to Hyderabad may not perhaps exist.

9. In view of the above, Annexure A-5 impugned order, posting the applicant to Hyderabad is quashed and set aside. Respondents are directed not to disturb the applicant. While passing this order we have taken into account the law laid down by the Hon'ble Supreme Court in the case of ***Kunal Singh vs. Union of India & another*** 2003 4 SCC 524 where the Apex Court has emphasized protection to an employee who acquires a disability during service. The term protection need not be confined to monetary emoluments but to extend to the extent that the individual should not be made to suffer any hardship.

10. With the above observation, the OA is disposed of. No costs.

Dated, the 18<sup>th</sup> August, 2009.



**K GEORGE JOSEPH**  
**ADMINISTRATIVE MEMBER**



**Dr. K. B. S. RAJAN**  
**JUDICIAL MEMBER**

VS