

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 474/ 2009

Friday, this the 18th day of December, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

A. Swaminathan,
Section Officer (DDO), Special Bureau,
CBI Road, Kathrikadavu, Cochin.Applicant

(By Advocate Mr Shafik M Abdulkadir)

1. Union of India represented by the
Joint Secretary(Pers),
Cabinet Secretariat,
Government of India,
New Delhi.
2. The Addl. Secretary(Pers.),
Cabinet Secretariat,
Government of India,
New Delhi.
3. The Special Secretary,
Government of India,
Cabinet Secretariat,
Government of India,
New Delhi.Respondents

(By Advocate Mr Varghese P Thomas)

This application having been finally heard on 8.12.2009, the Tribunal on 18.12.2009 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is aggrieved by Annexure A-1 order dated 7.7.2009 by which he has been transferred from Special Bureau, Cochin to Special Bureau, Rajkot.

2. Brief Facts: Applicant commenced his service with respondents as



Lower Division Clerk with effect from 4.11.1970. He has put in more than 39 years of service so far. During his career he was posted in Ladakh, New Delhi, Nagercoil, Mumbai, Bangalore, Chennai etc. on different occasions and on different spells. From April, 2005 he was posted in Shillong again. In April 2007 he was posted to Chennai. There he was promoted as Section Officer and posted there itself. Again he was transferred and posted to H.Q at New Delhi. As the applicant was unable to bear the extreme climate in New Delhi, the Commissioner at Chennai recommended his case for transfer to Cochin. The Commissioner has also noted in his Fax message (Annexure A-2) dated 30.4.2008 to the Joint Secretary at New Delhi that the request of the applicant for a posting at Cochin was genuine and it was on medical grounds. His transfer back to Chennai from Shillong was on medical grounds with the specific approval to undergo the surgery at Cochin since there was no medical facilities available there. He has undergone the surgery at the "Indo American Hospital" at Vaikom for the Spinal Cord in the year 2004 and another in 2006 at Indira Gandhi Hospital at Cochin. He is still continuing his treatment there. He has produced Annexure A-5 and A-6 medical documents along with this application. He was, therefore, posted to Special Bureau, Cochin vide Annexure A-4 order dated 16.7.2008

3. The applicant has submitted that he belongs to Palghat in Kerala State and due to retire on 31.12.2010. According to him, he discharged his duties to the best of the satisfaction of his superiors. He ensured discipline in the office and cleared all the pending accounts and administration issues. For the creditable work done by him, he was appreciated by his superiors and he was recommended for Cash Award Rs.2500/- vide the Annexure A-7 order dated 24.11.2008 and for a cash award Rs.3000/- vide Annexure A-8 letter dated



2.9.2009. While ensuring discipline in the office, he had to enforce certain strict measures which has irritated some of the officials who made complaints against him to the 2nd respondent. However, he was not asked to give any explanation to those complaints so far.

4. He has also submitted that his transfer was against the transfer policy issued vide the Annexure A-9 memorandum No.11/1/2004 Pers.3 dated 1.6.2005 issued by the 1st respondent. According to the said memorandum, "*to the extent administratively feasible officers would be accommodated at their choice place of posting or nearer their home towns after they attain the age of 57 yrs subject to administrative requirements.*" Since he has only 17 months service left, he was hoping to retire from Cochin itself on 31.12.2010. Moreover, his 2nd daughter is studying in 9th standard at K.V., Cochin and her studies will be affected by the sudden transfer. Aggrieved by the transfer, he has made the Annexure A-10 representation to the Special Secretary, Government of India, New Delhi on 11.7.2009 and he hoped that he would get justice from the said authority.

5. The respondents in the reply have submitted that this O.A is not maintainable either in law or on facts. He approached this Tribunal without exhausting the alternative and efficacious remedies available to which is in violation of the Administrative Tribunals Act, 1985 and the provisions contained in CCS(CCA) Rules, 1965. On merits they have submitted that his transfer from Special Bureau, Kochi was following the receipts of complaints from the staff levelling allegations of harassment of lady staff and his misbehaviour towards other staff. In the past also, anonymous complaints were received against him for allegations of harassment and questioning the morality of lady staff.



According to them, for the smooth functioning of the office as well as for maintaining good administration in the office, the transfer of the applicant was necessary. They have also submitted that administrative authority can pass appropriate orders in the exigencies of service and it cannot be construed as violation of statutory provisions.

6. Learned counsel for the respondents Shri Varghese P Thomas has also relied upon the judgments of the Apex Court in **Mrs Shilpi Bose v. State of Bihar** [(1991) Supp 2 SCC 659] and in **Union of India v. S.L.Ablas** [(1993) 2 SLR 585] wherein it has been emphasised that the order of transfer is an incident of Government service and who should be transferred where, is a matter for the appropriate authority to decide.

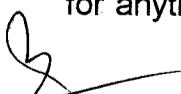
7. The applicant has filed a rejoinder stating that the respondents have issued a memorandum under CCS(CCA) Rules, 1965 as to explain why he produced copy of transfer policy which has been marked as "Secret" along with the O.A as an Annexure. According to him, it only shows the intolerance of the authority concerned and disciplinary proceedings are initiated in such light manner.

8. I have heard Shri Shafik M.A, counsel for the applicant and Shri Varghese P Thomas, counsel for respondents. It is seen that the applicant was transferred on the basis of some anonymous complaints made against him. The respondents have not even asked an explanation from him to find out whether the allegations were genuine or not. He served the department at different places in India. Now it is the fag end of his service. He is due to retire on 31.12.2010. He has also got medical problem, for which he is getting treatment



from a nearby hospital. Moreover, his daughter is in the 9th standard in K.V., Cochin. The sudden transfer of the applicant will adversely affect the study of his children. Further, the transfer policy of the Department also says that an employee should be posted to the extent administratively feasible nearest to his home town after he completes 57 years of age. Applicant belongs to Palghat and there is nothing which can be said it is administratively not feasible to retain the applicant at Cochin. The applicant had nearly 40 years of service to his credit. The integrity or efficiency of the officer is not any way in doubt. He was awarded cash price for the exemplary work done by him. Even recently, vide Annexure A-7 letter dated 24.11.2008 he was granted an amount of Rs.2500/- as cash price in appreciation of his exemplary performance. Again vide Annexure A-8 memorandum dated 2.4.2009 the Deputy Commissioner, S.B., Kochi recommended him for a cash award of Rs.3000/- in recognition of his excellent work. In these circumstances, it is highly unbelievable that the transfer of the applicant has become necessary for the smooth functioning of the office at Cochin as claimed by the Respondents in their reply affidavit. In my considered opinion, the motive behind his transfer is definitely not the administrative exigency or convenience. Rather, the impugned order is a punitive action and the reasons for such transfer is hidden elsewhere. Assuming that the applicant's behaviour was unbecoming of a Government servant, the right course was to take action against him under the relevant disciplinary rules. Transferring him to Rajkot is not a solution and no public interest is going to be served by such action. The following observations of a co-ordinate Bench of this Tribunal in O.A.484/1993 – **Y.Kurikesu v. Senior Superintendent of Telegraph Traffic, Trivandrum Division and others** is quite relevant in this case also:

“Transfer can only be in public interest and for no other reason (except when it is by way of disciplinary action). The expression “public interest” is not a magic word which can do service for anything in any situation. Nor is it a carpet under which anything



could be swept. Expression "public interest" has a definite purport and in a particular case such interest must be disclosed or discernible. It has not been done here. The expression "public interest" like the expression "exigencies of public service" is often made an apology, for something that cannot be justified. It is clear from the facts that the transfer ordered is not supportable (prima facie) on any principle, rule or other known norm."

9. In my view, this is a clear case of misuse of the administrative power and there is no bonafide on the part of the department in transferring the applicant at this stage. I, therefore, allow this O.A. Consequently the impugned Annexure A-1 order dated 7.7.2009 transferring the applicant from Special Bureau, Cochin to Special Bureau, Rajkot is quashed and set aside. There shall be no order as to costs.


GEORGE PARACKEN
JUDICIAL MEMBER

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