

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 477 of 2010

Thursday, this the 07th day of April, 2011

C O R A M

Hon'ble Mr. K. George Joseph, Administrative Member

K.R. Krishnakumar S/o K.K.Ramachandran
Working as Statistical Investigator Grade-II
(Redesignated as Asstt. Superintending Officer)
National Sample Survey Organisation (FOD)
Ministry of Statistics and Programme Implementation
3rd Floor, Block C-1 Wing
Kendriya Bhavan, Kakkanad, Cochin-37 **Applicant.**

(By Advocate M/s N. Unnikrishnan)

versus

- 1 Union of India, represented by the
Secretary to the Government
Ministry of Statistics and Programme
Implementation, Sardhar Patel Bhavan
New Delhi-110 001
- 2 The Additional Director General,
National Sample Survey Organisation (FOD)
East Block-6, Level 6-7
R.K. Puram, New Delhi-110 066
- 3 The Deputy Director General
National Sample Survey Organisation (FOD)
CGO Complex, Vellayani PO
Trivandrum-695 522
- 4 The Assistant Director
N.S.S.O (FOD), Sub Regional Office,
3rd Floor, C-Block, C-1 Wing
Kendriya Bhavan, Kakkanad, Cochin-37
- 5 The Under Secretary to the
Government of India (SSS),
Sardar Patel Bhavan, New Delhi



6 The Head of Office
 Indian Bureau of Mines
 Department of Mines,
 Ministry of Mines and Minerals
 Indira Bhavan, Civil Lines,
 Nagpur - 440 001 ... Respondents.

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

This application having been heard on 16.03.2011, the Tribunal on ..07-04-11.. delivered the following:

O R D E R

Hon'ble Mr. K. George Joseph, Administrative Member

The applicant who joined the National Sample Survey Organisation as Statistical Investigator on 16.07.1997 at Ernakulam on the strength of the order of this Tribunal dated 04.06.1997 in O.A. No. 307/1997, had to move Contempt Petition No. 26/2009 to get the order of this Tribunal in O.A. No. 454/2006 implemented, by which stepping up of his pay was granted. As apprehended by the applicant, he was given punitive transfer from Kochi to Shimoga. O.A. No. 674/2009 filed by the applicant challenging his transfer was disposed of alongwith O.A. No. 675/2009 as under :

"20 In view of the facts above, the administration might have felt compelled to take some action to ensure that there is a conducive work culture in the office, which enables the officers incharge to ensure achievements of target on time. Transfer is the easiest and perhaps the most managerial tool to enforce discipline. Still the fact remains that transfer in the mid academic year entails a lot of hardship for the employees as well as their family members, especially when they need chronic medical attention. The nature of work of data collection from households needs familiarity with the local language. The applicants have expressed their

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helplessness in working in States where the local languages are Kannada, Marathi or Konkani. The managerial excellence lies in finding solutions, to extract work from the employees, bearing in mind the welfare of the staff and the need to provide the necessary ambiance, to have a sound work culture, where the employees are self motivated.

21 In the facts and circumstances of the case the interest of justice will be met if the O.As are disposed of with direction. Accordingly, I direct the applicants to submit a detailed representation to the cadre controlling authority against the transfer order within two weeks from the date of receipt of this order. I further direct the cadre controlling authority to consider the representations notwithstanding the contentions in the reply statements and pass orders keeping in mind the observation made above, as early as possible, at any rate within two months from the date of receipt of the representation. The interim order will continue till then. The O.As are disposed of as above. There shall be no order as to costs."

2. Annexure A-5 order dated 28.05.2010 was issued by the Under Secretary to the Government of India in purported compliance of the above directions of this Tribunal which was followed by order of transfer dated 23.09.2009 (Annexure A/2) transferring the applicant from Kochi to Nagpur. The applicant has challenged the above order in this O.A. and sought for the following reliefs:

- (i) Call for the records leading to the issuance of Annexures A-2 and A-5;
- (ii) To declare that Annexures A-2 and A-5 are unsustainable in law;
- (iii) Issue appropriate order quashing Annexures A-2 and A-5;
- (iv) Issue appropriate order or direction to respondents to retain the applicant at Kochi and render justice to the applicant;



(v) To grant such other reliefs as this Hon'ble Tribunal may deem fit, just and necessary;

(vi) To grant the cost of this Original Application.

3. The applicant contends that the first respondent has so far not issued any order in compliance with order of this Tribunal in O.A. No. 674/2009. The impugned order at Annexure A-5 is not a speaking order. The contentions of the applicant in Annexure A/4 representation dated 12.03.2010 are not considered. The impugned order at Annexure A/2 order dated 23.09.2009 is punitive in nature. All the 4 Statistical Investigators Grade-II including the applicant were issued with identical show cause notice as well as identical orders of warning. But the applicant alone was picked up and transferred to Shimoga. Transfer as a punishment is not envisaged under Rule 11 of the CCS (CCA) Rules. Had the first respondent considered the A-4 representation, there cannot be a reason for transferring him to Nagpur. All Supervisors have certified that the quality of work done by the applicant was good as evident in Annexures A-9 and A-10. There is no case of any type of insubordination that has taken place in the office of the 4th respondent or among the applicant and the staff. If there is any insubordination or misconduct, proper proceedings against him should have been initiated in accordance with law. The impugned Annexure A-5 order violates the transfer guideline to post husband and wife in the same place as far as possible. If at all, the transfer ought to have been made, it should be justified and supported by reasons sustainable in the eyes of law. The transfer of the applicant from Kochi to Nagpur is a malafide exercise of power. The Hon'ble Supreme Court in *Bhikubhai Vithal Bhai Patel vs. State of*



Gujarat, AIR 2008 SC 1771, held that "the word 'consider' cannotes active application of mind and consideration of all relevant aspects of the matter."

The cadre controlling authority failed to consider Annexure A-4 representation of the applicant as directed by this Tribunal. He, therefore, prays for allowing this O.A.

4. The respondents opposed the O.A. In their reply, they submitted that the representation of the applicant was duly considered by the first respondent in accordance with the directions and observations of this Tribunal. The continuance of the applicant at the same station will adversely affect the total output of that Sub Regional office as insubordination, defiance of legitimate instructions of superiors and lack of devotion to work are bound to have a cascading effect. The respondents further submitted that this is a case of transfer simplicitor. The competent authority deserves its right to take suitable action against the other Statistical Investigators to whom show cause notices were issued and have been let off. The applicant was transferred from Kochi to Nagpur only because of his failure in discharging the duties as a public servant, defiance, insubordination and his style of work which ruins the work culture of the organisation.

5. In the rejoinder, the applicant submitted that no single example of insubordination on the part of the applicant is disclosed in the impugned orders or in the reply statement. In the absence of any indiscipline or misconduct that has been proved in accordance with law, the punitive transfer is invalid. As per the Government of India guidelines dated

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30.09.2009, if posts are available, husband and wife are to be posted at the same station mandatorily. The wife of the applicant, a Central Government employee, is transferable only within the limits of the State of Kerala. The applicant in O.A. No. 675/2009 has been promoted and posted at Trichur although he also was transferred alongwith the applicant vide Annexure A-2 order. No action was taken against one Mr. Sebastian who is continuously absent for years.

6. In the additional reply statement, the respondents submitted that the Regional Head had to issue a memorandum to the applicant in not submitting the revised action plan by the prescribed date. In his reply dated 24.08.2009 he stuck to his earlier submitted action plan which was not acceptable. He also submitted that he could not submit a revised action plan on the prescribed date as he was away on rural sample and the time given was short and stated that his tour programme for the month of September, 2009, is also his action plan. This indifferent attitude, insubordination and disobedience on the part of the applicant was considered detrimental to the smooth functioning of the Department. Continuance of the applicant in the office of the 4th respondent will adversely affect the discipline and work culture of the Sub Regional office.

7. In the additional rejoinder, the applicant submitted that the revised action plan was submitted and all the allotted samples were completed before the stipulated date of 30.09.2009 by taking extra efforts and by working on holidays as directed by the Deputy Director General. The real issue is not the action plan and work completion, but the Contempt



Petition filed by the applicant against the Deputy Director General in the matter of pay parity with his junior. No action has been taken against one Shri Sebastian who has not yet submitted the completion report of two samples of previous survey rounds. No materials are produced to show any insubordination or defiance on the part of the applicant. All 4 Statistical Investigators ought to have been transferred if the respondents were impartial in their action and action plan was the real issue. Since the impugned transfer suffers from extraneous consideration to achieve alien purpose and oblique motive, it amounts to malafide and colourable exercise of power.

8. In the additional reply statement, the respondents submitted that the stepping up of the applicant's pay with retrospective effect was a matter of legal dispute, which has no bearing on the on the transfer order by which another official who did not have any legal dispute with the legal department also was transferred. Disciplinary proceedings have already been initiated vide memorandum dated 17.03.2009 against Shri K.V. Sebastian.

9. In the additional rejoinder, the applicant submitted that this Tribunal directed the first respondent to consider sustainability of impugned transfer from Kochi to Shimoga, the 2nd respondent has issued the impugned Annexure A-5 order transferring the applicant to Nagpur on same set of facts. Action plan is only an outline of work and fulfillment of action plan is subject to the networking days available. Completion of work within the stipulated time on or before 30.09.2009 was back bone of the survey. The

applicant as well as three other Investigators could complete the work before 30.09.2009. Hence, there is no room for any action against them including the applicant. The respondents have not taken an action against Shri K.V. Sebastian who is absconding from service for years and the applicant has been harassed by transfers.

10. I have heard Mr. N. Unnikrishnan, the learned counsel for the applicant and Mr. Sunil Jacob Jose, the learned SCGSC appearing for the respondents and perused the records.

11. The direction of this Tribunal in O.A. No. 675/2009 was that the Cadre Controlling Authority should consider the representation of the applicant and pass orders keeping in mind the observations made by this Tribunal in the order. Annexure A-5 order dated 28.05.2010 is not passed by the Cadre Controlling Authority as directed by this Tribunal. The said order passed by the Under Secretary to the Government of India, Ministry of Statistics & Programme Implementation is not a speaking order. There is nothing in the said order to show that the Cadre Controlling Authority, i.e. the Secretary, Statistics & Programme Implementation has considered either the observation of this Tribunal in the aforesaid order or the contentions of the applicant made in his representation to the Secretary, Ministry of Statistics & Programme Implementation vide Annexure A-4 dated 12.03.2010. The observation of the Cadre Controlling Authority as reproduced in Annexure A-5 merely states that he has gone through the file and details of the case and the representation of the applicant and kept in view the observations of this Tribunal. It does not show active

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application of mind and consideration of all relevant aspects of the matter by the Cadre Controlling Authority. Therefore, Annexure A-5 order is bad in law.

12. As far as consequential transfer order transferring the applicant from Kochi to Nagpur is concerned, the respondents submitted that it was only because of the failure of the applicant in discharging the duties as a public servant, defiance, insubordination and his style of work which ruins the work culture of the organization that he was transferred. This goes against the submission of the respondents that this is a case of transfer simplicitor. In fact, it is a punitive transfer. The reason for the punitive transfer as insubordination, defiance etc. shown by the respondents, are not substantiated at all. No example of insubordination on the part of the applicant is discernable in the impugned orders or in the reply statement. The applicant alongwith 3 other Statistical Investigators Grade-II had been issued a memorandum for submission of revised action plan by the prescribed date of 30.09.2009. This was complied with by the all the 4 officers. Yet, they were served with identical orders of warning. As the applicant had carried out the assigned task of submitting the revised action plan by the prescribed date of 30.09.2009, the act of taking a particular stand or a mere statement of shortage of time cannot be seen as an indifferent attitude, insubordination or disobedience on the part of the applicant. Therefore, it follows that there is no basis to consider that the presence of the applicant in the office of the 4th respondent is detrimental to the smooth functioning of the department or will adversely affect the discipline and work culture in the office of the 4th respondent.

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13. While transferring the applicant to Shimoga and later to Nagpur the respondents have not taken into consideration the fact that he does not know Kannada or Marathi which will affect his performance nor have they considered the transfer guideline of the Government of India to post husband and wife in the same place as far as possible. This being a mandatory direction, the transfer order of the applicant is vitiated on the ground of violation of the same also. There are vacancies within Kerala where the applicant can be posted so as to enable the applicant and his spouse to stay in the same place. If the respondents had transferred the applicant to a place within Kerala, it could have been taken as a transfer simplicitor.

14. The action against one Shri Sebastian who is continuously absent for years, is only an after thought. Similarly, the inclusion of Shri G. Balagopal in Annexure A-2 transfer order dated 23.09.2009 is of no consequence as he was subsequently transferred to Trichur on promotion. In effect, only the applicant is transferred out. The apprehension of the applicant, therefore, that he was given punitive transfer from Kochi to Shimoga and later to Nagpur as he had moved a Contempt Petition against the respondents, does not appear to be without basis.

15. The matter of transfer is squarely within the purview of the administration. Unless the transfer order is vitiated by malafide or extraneous consideration, the Courts are not expected to interfere. In the present case, the transfer of the applicant from Kochi to Nagpur as per the

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transfer order (Annexure A-2) dated 23.09.2009 is vitiated for the reasons stated above. Therefore, the O.A. succeeds. However, it is made clear that the applicant does not have a vested right to be retained at Kochi only.

16. The Annexure A-2 order dated 23.09.2009 and the Annexure A-5 order dated 28.05.2010 are quashed and set aside. The respondents are free to retain the applicant at Kochi or to transfer him within Kerala keeping in mind the guideline of the Government of India to post husband and wife together as far as possible and other relevant factors. No order as to costs.

(Dated, the 07th April, 2011)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

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