

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 488 OF 2009

...~~Monday~~....., this the 16th day of November, 2009.

CORAM:

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

C.P. Badani, W/o. U. Sabjan,
Lady Village Extension Officer,
(Department of Women and Child
Development), Agatti Island,
Union Territory of Lakshadweep.

... Applicant

(By Advocate Mr. R. Ramdas)

versus

1. The Administrator,
Union Territory of Lakshadweep.

2. The Secretary,
Women and Child Development
Department, Kavaratti Island,
U.T. of Lakshadweep.

3. The Director (W&CD),
Department of Women and Child
Development, Kavaratti Island,
U.T. of Lakshadweep.

4. Smt. K. Asumabi,
Lady Village Extension Officer,
Agatti Island, U.T. of Lakshadweep.

... Respondents

(By Advocate Mr. S. Radhakrishnan)

The application having been heard on 12.11.2009, the Tribunal
on16-11-2009..... delivered the following:

ORDER

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

On 17-02-2009, vide Annexure A-1, orders of transfer and posting of
Lady Village Extension Officers were issued, in which, amongst six individuals,
the name of the applicant, who has been serving as Lady Village Extension
Officer at Agatti had been transferred to Kavaratti. This was challenged by the

applicant by O.A. No. 273/2009 and the pivotal ground was that the daughter of the applicant is a student whose education beyond school level could be prosecuted at Agatti where there is a college having B.Com Degree Course. In fact, the applicant had no objection in case she is posted to Androth, as there is a college with the said degree course there too. Further it has been contended that the applicant had already done 10 years service at Kavaratti. The said OA was disposed of at the very admission stage itself, directing the Administrator to consider the pending representation submitted by the applicant and to arrive at a judicious decision. Order dated 12th May 2009 at Annexure A-5 refers. In pursuance of the above order, the applicant was heard by the Administrator and her difficulties in moving out of Agatti heard. However, the Administrator was of the view that the applicant could well serve at Kavaratti, as there is a B.Com Degree College both at Androth and Kadmat and hostel facilities are also available at Androth. Thus, holding that there is no merit in the representation for cancellation of order to retain the applicant either at Agatti or transfer her to Androth on education of her daughter, the petition for cancellation of the Annexure A-1 transfer order was rejected and the Deputy Collector, Agatti had been directed to relieve the applicant with immediate effect. Order dated 17th June, 2009 at Annexure A-6 refers. In the wake of the above said order of the Administrator, the applicant stood relieved of her official duties on 17th June, 2009 with a direction to report to Kavaratti. Annexure A-7 refers. In the place of the applicant, another individual was already positioned as early as 18th May 2009, vide Annexure A-8.

2. The applicant has now challenged the transfer on various grounds, including a ground that at least three individuals who had longer station

seniority at Agatti have been retained, while the applicant has been transferred. Ground No. M. refers. The fact that the spouse of the applicant is working at Agatti has also been highlighted. It is also the case of the applicant that the Administrator has not properly considered the representation with the spirit with which it was directed to be considered by the Tribunal. Non payment of salary for the period from 20th May 2009 upto 17-06-2009 has also been reflected as a ground. It has also been alleged that the Administrator has violated the orders of the Tribunal.

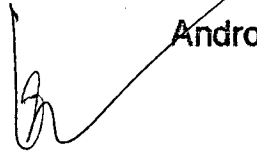
3. Respondents have filed their counter. Their contention is that the applicant, out of a total of 25 years of her service, had the chance of working in her native Island Agatti for 15 years, while the normal tenure is just three years. As per the transfer policy, the applicant has to move from Agatti. The spouse of the applicant also has been transferred to Kavaratti w.e.f. 18-05-2009. Thus, she stands posted where the spouse has been posted. The representation of the applicant had been carefully considered and the decision not to accede to her request for retention had been taken by the administrator. There is no B.Com Course in any institution at Agatti and while remaining in Agatti she has no problem with her daughter's education. If the applicant could ensure the continued education of her daughter while working at Agatti where there is no college for higher education, equally she could ensure the same while working at Kavaratti, where more facilities than that of Agatti are available. The fact is that the daughter of the applicant has already joined the B.Com course at Mahatma Gandhi Senior Secondary School, Androth and prosecuting her studies without any problem. There has been no violation the order of this Tribunal in considering the case of the applicant. Thus, on the above ground, especially, (a) that out of 26 years of service, the

applicant has served 15 years at Agatti compared to which the fourth respondent had served only 10 out of 26 years there; (b) that the daughter of the applicant was studying for TTC at mainland at the time of issue of transfer order and there being no college at Agatti, there was no necessity to retain the applicant on the ground of child's education at Agatti; and (c) hostel facilities are available at Androth, the request of the applicant for retention at Agatti had been rejected.

4. Counsel for the applicant had argued that the Tribunal directed the respondents to consider the case of the applicant vide Annexure A-5 order but without application of mind the administrator has rejected the request for retention. The fourth respondent had been brought to Agatti even when there was an order not to disturb the applicant at Agatti.

5. Counsel for the respondent had taken the tribunal through various contentions as reflected in the counter (which have also been narrated above).

6. Arguments have been heard and documents perused. The focal point in the earlier order of the Tribunal was that the posting of the applicant should be such that there may be no hindrance to the education of her daughter. In fact, the applicant's plea that should she be transferred out of Agatti for any reason, then Androth would suit her as her daughter could be put in higher education at Androth also goes to show that the main intention of the applicant is expressing her reluctance to join Kavaratti is that her child's education may be disturbed. The administrator has considered the entire issue and clearly indicated that there are colleges with B.Com faculties, both at Androth and at Kadmat and that hostel facilities are available at Androth and



thus, arrived at the conclusion that there is no merit in the representation of the applicant. The applicant has already admitted her daughter in a college at Androth. Today, the husband of the applicant, who was posted at Agatti earlier, is also posted to Kavaratti. The applicant has already spent 15 years at Agatti and others who belong to the same Native Island are equally interested in serving in the native island and respondent No. 4 is one such individual, whose total service is comparable to that of the applicant, but whose posting at Agatti has been only 10 years, while that of the applicant 15 years. Further, the fourth respondent had done a difficult posting at Minicoy recently. Thus, her request if any for transfer to Agatti cannot be ignored.

7. The administrator is the best authority to decide as to who is to be transferred where. In this regard, the observation of the Apex Court in the case of ***Union of India v. S.L. Abbas, (1993) 4 SCC 357***, is as under:-


"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration."

8. In the posting of fourth respondent to Agatti, there does not appear any undue favour shown to her, as compared to the applicant, her stay in her native Island Agatti is only for ten out of sixteen years. Only when undue favour is shown to any one in the process of which, the interest of another gets disturbed, could there be a judicial intervention. The administrator seems to have acted dispassionately in the matter of the applicant's transfer after giving

an opportunity of being heard. As such, the transfer order does not suffer from any illegality. With the daughter having been admitted in the College at Androth, and with the husband already posted to Kavaratti, and further applicant having already relieved from Agatti, where her substitute already stood posted, the transfer appears to be bonafide, without causing any inconvenience to the applicant. As such, **the OA has to be necessarily rejected and so ordered.** Respondents shall however consider disbursement of salary to the applicant for the period from 20th May 2009 to 17th June, 2009.

9. No order as to cost.

(Dated, the 16th November, 2009.)



Dr. K.B.S. RAJAN
JUDICIAL MEMBER

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