

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.509/2002.

Thursday this the 17th day of October 2002.

CORAM:

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

(By Advocate Shri Shafik M.A.)

vs.

1. Union of India, represented by Secretary to the Government of India, Ministry of External Affairs, New Delhi.
2. The Chief Passport Officer & Joint Secretary(CPV), Ministry of External Affairs, New Delhi.
3. The Regional Passport Officer, Regional Passport Office, Cochin. Respondents

(By Advocate Shri C.Rajendran, SCGSC)

The application having been heard on 17th October, 2002, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

This is the second round of litigation regarding temporary deployment of the applicant, an Assistant in the Regional Passport Office, Cochin to Ahmedabad for a period of 45 days.

2. The factual matrix is as follows:

By a memorandum dated 4.4.2002 (A2) eight Assistants of the Ernakulam Regional Passport Office were required to go to Ahmedabad for a period of 45 days to clear up the pending work there. The applicant was at serial No. 3 in the list. The applicant alleging that he being a person afflicted with post Polio residual paralysis suffering 50% physically handicapped as also suffering from other ailments like Hypercholesterolemia,

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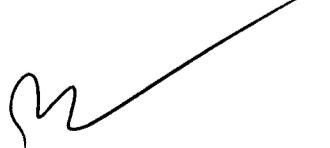
acidic peptic ulcer and having domestic problems as 80 years old mother is living with him, represented for retention. Finding no favourable response, the applicant filed O.A.393/02 seeking a cancellation of his deployment. The above application was disposed of as agreed to by the counsel on either side, permitting the applicant to make a representation to the 2nd respondent, the Chief Passport Officer and Joint Secretary, Ministry of External Affairs, New Delhi and with a direction to the 2nd respondent to take an appropriate decision and communicate the same to the applicant within three weeks keeping his deployment in abeyance. It was specifically mentioned in the order that while considering the representation, the physical condition as also the family circumstances of the applicant should be taken into account. In purported obedience to the above, the 2nd respondent has issued the impugned order A-1 dated 27.6.2002 stating that one Smt. Mamata Bhalla, UDC suffering from series of ailments and who was declined promotion, had been deputed to Ahmedabad, that the Allahabad Bench of the Tribunal refused to interfere with the move order, that the applicant's physical deformity does not entitle him for retention at Cochin for ever and that his request therefore, cannot be acceded to. It has also been stated that as the applicant brought in political pressure in the matter of his deployment, an adverse entry has been made in his ACR. Aggrieved by this, the applicant has filed this application seeking to set aside his deployment to Ahmedabad as made in A-2 order as also the A-1 order by which his representation for retention at Cochin has been turned down. It has been alleged in the application that the applicant has been chosen for deployment to Ahmedabad compulsorily despite his



physical deformity and adverse family circumstances even though persons who have had longer stay than the applicant and included in the list have been allowed to continue. Alleging that the representation of the applicant has not been considered in the right perspective in the light of the judgement of the Tribunal in O.A.393/02, the applicant prays that the impugned orders may be set aside.

3. The respondents in their reply statement seek to justify the impugned action on the ground that for the purpose of clearing up the arrears of work that had mounted up at Ahmedabad, deployment is required and the applicant's deployment has been made only taking into consideration the length of stay at Ernakulam and other relevant factors. It is also contended that the contention of the applicant that persons with longer stay has been retained at Cochin is not correct because even one Smt. Chandramma V.P. who is the only senior to him and had never gone on outside duty, has also been deployed.

4. We have gone through the pleadings and have also perused the other material placed on record and have heard Shri Shafik, learned counsel for the applicant and Shri C Rajendran, SCGSC appearing for the respondents. The deployment of the staff to places where their services are required should be left with the absolute domain of the competent authority in the department with least interference by the Courts and Tribunals. We are perfectly aware of the fact that the Courts are not expected to dictate to the department the manner of deploying staff. However, when administrative action is challenged on the ground of total



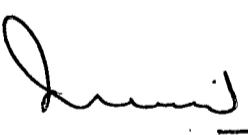
arbitrariness or lack of application of mind, the Courts/Tribunals can justifiably intervene. In this case the applicant a person who suffers from 50% physical disability resulting from Post Polio Residual paralysis and is also suffering from ailments like Hypercholesterolemia sought an exemption from deployment for a limited period of 45 days on the ground that it would be practically impossible for him to work there in his state of health especially in the disturbed condition in Ahmedabad. When there was no favourable response the applicant approached this Tribunal by filing O.A.393/02. The deployment being a routine administrative matter, the Tribunal thought that it might be appropriate to leave it to the competent authority to take a decision taking into consideration the physical disability and other pressing problems of the applicant. The O.A. was therefore, disposed of permitting the applicant to make a detailed representation to the 2nd respondent and with a direction to the 2nd respondent to consider the physical condition of the applicant and his family background and to take an appropriate decision. We find that in the impugned order A-1 the physical disability of the applicant or the family difficulties have not been adverted to at all. To say that Mamata Bhalla who was suffering from a number of ailments had been sent on transfer to Ahmedabad is not an answer to the problems of the applicant. Each case has to be viewed in the light of its facts. The 2nd respondent has failed to apply his mind to the facts of the case despite a direction given in the judgement to take into account the physical condition as also the family background of the applicant in deciding whether the applicant has to be compelled to go to Ahmedabad in his present

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state of health. It is also seen that the arrears of work which had mounted up in Ahmedabad have already been cleared by some persons deputed and the remaining work could be done by calling volunteers as seen from the Ministry's letter dated 28.6.02 (A-11). In A1 an order passed just one day prior to the date of issue of A-11 order, the deployment of the applicant, a person suffering from 50% disability has been found to be unavoidable. We are not convinced that this is a decision taken either on application of mind or in public interest. We are, therefore, inclined to set aside the impugned order A-1 and also A-2 to the extent it relates to the applicant's deployment to Ahmedabad. Regarding the adverse entry in the ACR, the applicant would be free to take up the matter in accordance with law.

5. In the light of what is stated above, the application is allowed. Impugned order A-1 is set aside and the deployment of the applicant under A-2 is also set aside. There is no order as to costs.

Dated the 17th October, 2002.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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APPENDIX

Applicant's Annexures:

1. A-1: True copy of the letter F.No.V.IV/441/15/2002 dated 27.6.2002 issued on behalf of the 2nd respondent.
2. A-2: True copy of the OM No.V.IV/560/1/2002 (Part) dated 4.4.2002 issued on behalf of the 2nd respondent.
3. A-3: True copy of the Medical Certificate issued by the Civil Surgeon, General Hospital, Ernakulam dated 17.8.1999.
4. A-4: True copy of the Medical Certificate dated 26.2.2002 issued by the Civil Surgeon, General Hospital, Ernakulam.
5. A-5: True copy of the representation dated 27.2.2002 submitted before the 2nd respondent.
6. A-6: True copy of the relevant extract of the order F.No.V.IV.560/1/2001 dated 10.4.2002 issued on behalf of the 2nd respondent.
7. A-7: True copy of the representation dated 9.4.2002 submitted before the 2nd respondent.
8. A-8: True copy of the station wise seniority list of group C officials of Regional Passport Office, Cochin.
9. A-9: True copy of the judgement dated 7.6.2002 in O.A.393/2002 of this Hon'ble Tribunal.
10. A-10: True copy of the representation dated 13.6.2002 submitted before the 2nd respondent.
11. A-11: True copy of the order F.No.V.IV/584/5/2002 dated 28.6.2002 issued on behalf of the 2nd respondent.

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