

O.A. 518/04.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO. 518/2004

THURSDAY THIS THE ^{3rd} DAY OF ~~MARCH~~, 2005

CORAM

HON'BLE MR. A.V. HARIDAS DAN, VICE CHAIRMAN

P.P.Unnikrishnan, aged 51 years,
S/o A.Parameswara Menon,
Assistant, Regional Passport Office,
Tiruchirapalli permanent address
Pranayam, Mevallor PO, Kottayam Dist.Applicant

(By Advocate Mr.T.C.Govindaswamy)

V.

1. Union of India represented by the Secretary to the Government of India, Ministry of External Affairs, New Delhi.
 2. The Joint Secretary (PV)
Ministry of External Affairs New Delhi.
 3. The Under Secretary (PV)
Ministry of External Affairs,
New Delhi.
 4. The Regional Passport Officer,
Regional Passport Office,
Kochi.
 5. The Passport Officer,
Passport Office,
Tiruchirapalli.
 6. Transfer Board, represented by its Chairman,
office of the Chief Passport Officer,
Ministry of External Affairs,
New Delhi.
- ✓

.2.

7. Smt.Kumari Bosco,
Assistant, Regional Passport Office,
Kochi.Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC for R.1to6
Advocate Mr.N.V.Kuriyakose for R.7)

The application having been heard on 14.12.2004, the
Tribunal on 3.3.2005 delivered the following:

ORDER


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

The applicant presently posted as Assistant in the
Regional Passport Office (RPO for short) Trichy pursuant to
Annexures. A.1 and A2 orders have filed this application
challenging these two orders and seeking a direction to the
respondents 1 to 6 to allow him to join back at RPO, Kochi.
The material facts can be briefly stated as follows.

2. While the applicant was working in RPO, Kochi the
2nd respondent issued Annexure A.3 order dated 24.8.2001
transferring him to Thiruvananthapuram. Without giving effect
to that order another order dated 19.2.2002 was issued
transferring the applicant to Ahmadabad. On consideration
of the applicant's representation that was converted into a
temporary posting for 45 days. However, the applicant made
Annexure.A.5 representation seeking retention at Kochi or a


.3.

posting to Thiruvananthapuram, but another order Annexure A.6 was issued posting the applicant to Kozhikode. The Annexure.A.6 order was also not given effect to. While so the applicant was served with Annexure A.1 order by which he was transferred to Trichy against the guidelines outside the zone. The applicant submitted representations which was rejected by Annexure A.10 order by the fourth respondent. Aggrieved by that the applicant filed an Original Application No.339/04 before this Bench of the Tribunal which was disposed of by order dated 5.5.04 permitting the applicant to make a representation to the Transfer Board represented by its Chairman, the second respondent in that case and directing the said respondent to consider and dispose of the same by an appropriate "speaking order" and communicating the same within thirty days keeping in abeyance the order of transfer of the applicant till the disposal of the representation. The applicant accordingly submitted Annexure.A12 representation indicating that his prior orders of transfer to Calicut and Trivandrum were not implemented, that his wife being a government servant the applicant's transfer to a



.4.

distant place would put him to great hardship especially when his wife is sick and that the transfer policy has not been followed and requesting that he be given a posting to Trivandrum or Calicut. In reply to the said representation, the applicant was served with Annexure.A.13 of the 4th respondent enclosing a copy of the E Mail Message (Annexure.A2) of the third respondent rejecting the applicant's representation and relieving him forthwith. Aggrieved by that the applicant has filed this application seeking to set aside Annexure.A.1 order to the extent it relates to the applicant and 7th respondent as also the Annexure. A.2 and for a direction to the respondents to allow the applicant to join back at Kochi RPO as if Annexures.A.1 and A2 have not been issued. It is alleged in the application that in total disregard to the directions contained in the order of the Tribunal in OA 339/04 that the representation shall be considered and disposed of by the second respondent in that case namely the Transfer Board represented by its Chairman, the Office of the CPO, Ministry of External Affairs, the third respondent ~~xxxxxxx~~ without placing the representation before the Transfer



.5.

Board rejected the application with a cryptic and non-speaking order, that transfer of the applicant from Kochi to Trichi which is outside the transfer zone and transfer of the 7th respondent from Trichy to Trivandrum which again outside the zone is arbitrary, irrational and unjustified, that the transfer of the applicant was unjustified as there are three vacancy still in Trivandrum and that posting of the applicant to a distant place while his wife is in Government Service and his children are studying are opposed to the guidelines contained in the Government of India, Department of Personnel and Training OM dated 12.6.97 (Anenxure.A.15) and dated 3.4.86(A.16), that the applicant had to report for duty at Trichy at a time when his wife was also under orders of transfer and that as the impugned orders are arbitrary, irrational and bereft of application of mind they have to be set aside to the extent it affects him.

3. The respondents 1 to 6 in their reply statement contend that the posting of the applicant to Kozhikode could not be implemented on account of unavoidable administrative reasons, that in exigencies of service it sometimes becomes necessary to transfer the employees outside the


✓

✓


.6.

zone also, that the applicant a Central Government employee should always be prepared to accept transfer and posting, that the availability of vacancy in a particular station is not the sole criteria for transfer, staff position in stations, work load etc. are also relevant considerations, that staff from Kochi had been earlier transferred to Trichy to meet the requirement then and therefore, they had to be accommodated at Kochi and that was the reason for the transfer, that the posting to Trichy being only for a period of three years the applicant would be considered for transfer back to Kochi after three years, that the representation of the applicant was considered and the impugned order has the approval of the competent authority, that speaking order need not contain reasons for the decision, that the transfer zone is being reviewed and that as the guidelines do not clothe the applicant with any right to be enforced the application has to be dismissed.

4. I have carefully gone through the pleadings and all the materials available on record and have heard the learned counsel on either side. Shri Govindaswamy, the learned



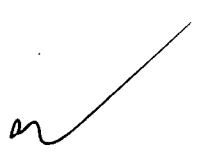
counsel of the applicant argued that the applicant being an Assistant his transfer from Cochin to Trichy was not permissible because Trivandrum-Kochi-Kozhikode is one zone and Chennai-Bangalore-Trichy is another transfer zone. He further argued that the transfer being only a routine transfer, and not ordered in exigencies of service, there was no justification in ignoring the guidelines and the applicant has been picked up for transfer out of zone arbitrarily. The learned counsel further argued that while the Tribunal has in its order in OA 339 of 2004 directed the Transfer Board represented by its Chairman to consider the representation of the applicant and to dispose of the same with a speaking order, the action of the third respondent in disposing of the representation himself with a cryptic and non-speaking order amounts to defiance of the directions contained in the Tribunal's orders. The learned counsel submitted that it is a case in which the Tribunal should intervene and render justice. Shri TPM Ibrahim Khan, the learned Senior Central Government Standing Counsel argued that transfer being an incidence of service judicial intervention can be justified only if the order is vitiated by malafides and that there is no



.8.

allegation of malafides in this case. He submitted that even though the applicant has been posted outside his normal zone that is no reason for judicial intervention because guidelines are directory in nature and not mandatory. Meeting the contention that Annexure.A.2 order is cryptic and non-speaking the counsel argued that administrative orders cannot be compared to quasi judicial or judicial orders and what is required is only application of mind which can be seen from the impugned order.

5. The law is well settled now that the courts would not generally interfere with administrative orders like transfer and posting unless the orders are seen to have been vitiated. It is also settled law that existence of guidelines do not clothe a government servant holding a transferable job to enforce posting to a station of his choice. However, it has also been held by the Apex Court that guidelines are meant to be followed and not to be totally ignored. In the normal circumstances and routine transfers guidelines to the extent possible should be followed and in the exigencies of service deviation would be justified. Annexure.A.1 would clearly



.9.

indicate that the order was of a general routine order of transfer and posting and not a special order issued in the exigencies of service. The statement at the end of the order that "It is certified that these transfers are in public interest" only indicate that they were not issued on requests of the incumbents but in public interest. Therefore, I am not satisfied that on account of any administrative exigency the transfer of the applicant outside the zone Trivandrum-Kochi-Kozhikode was made. Merely stating that the posting was on administrative exigency in the reply statement would not justify the non-observance of the directions in the guidelines that Assistants would not be transferred out of the zone unless it is established that there was any administrative exigency. It has not been made out that there was any exigency which required deviation from the guidelines. Further this Tribunal had in its order in OA 339 of 2004 directed the Transfer Board to consider the applicant's representation and to dispose it of with a speaking order. The impugned order Annexure.A2 passed purportedly in obedience to this order reads thus:



"Ag.PO from US (PV).

This is in reference to your letter No.CHN 551/4/2004 dated 12.5.04 forwarding the direction of CAT Ernakulam Bench in OA No.339/2004 filed by Shri P.P.Unnikrishnan, Asstt and his representation dated 03.5.2004 requesting for cancellation of his transfer.

Shri Unnikrishnan's representation has been considered. It is not possible to accede to his request. He stands relieved as per our instructions on this matter.

You may take necessary action on the basis of this message and relieve him immediately.


Regards

Ravi Shanker
US (PV)."

6. It is evident from what is quoted above that what is contained in this order is the decision of the third respondent. There is not even a statement that the representation was considered by the Transfer Board. While the Tribunal directed that the disposal of representation should be by a speaking order, Annexure.A.2 order is absolutely cryptic and non-speaking. Challenge to Annexure A2 order on the ground that it is cryptic and non-speaking is met by the respondents saying that speaking order need not contain reasons. I feel sorry and dismayed at the understanding of the respondents

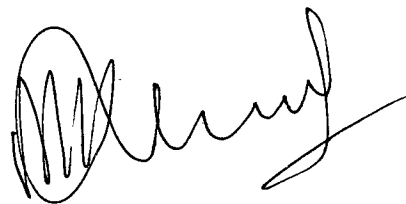
of the meaning of a "speaking order". A speaking order should speak for itself. Unless the reason for the decision is recorded how would the order be a speaking order? I find that not only the order of transfer of the applicant outside his zone has been issued arbitrarily and not taking relevant materials into consideration but also that the impugned order Annexure A.2 has been issued by the third respondent regardless of the binding direction contained in the order of the Tribunal in its order in OA 339 of 2004. the impugned orders Annexures.A.1 and A2 are therefore unsupportable.

7. In the light of what is stated above, it has to be considered as to what relief the applicant can be given. The applicant has already taken over at Trichy. Hence his transfer by Annexur.A.1 order cannot be effectively and meaningfully set aside. The impugned order Annexure.A2 undoubtedly has to be set aside. Now that there are vacancies available at Trivandrum is not disputed I am of the considered view that the interests of justice will be met if the respondents 1 to 6 are directed to give the applicant a posting to Trivandrum or to any one of the stations Trivandrum-Kochi-Kozhikode within his zone forthwith.



8. In the result, the Original Application is allowed in part. Impugned order Annexure.A.2 is set aside. The respondents 1 to 6 are directed to post the applicant as Assistant in the Regional Passport Office, Trivandrum or to one of the stations Trivandrum-Kochi or Kozhikode within a period of one month from the date of receipt of a copy of this order. No order as to costs.

Dated this the 3rd day of March 2005.



A.V. HARIDASAN
VICE CHAIRMAN

(S)