

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO.519/2010

Dated this the 13th day of December, 2010

CORAM

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

V.P. Krishnan
Wireless Supervisor,
Inter State Police Wireless
Quarter No. 2, ISPW Staff Quarters
Kavarathi, Lakshadweep. ..Applicant

By Advocate Ms Rinny Stephen

Vs

- 1 Director
Directorate of Coordination (Police Wireless)
Block No. 9, CGO Complex
Lodhi Road, New Delhi.
- 2 Assistant Director(Administration)
Directorate of Coordination (Police Wireless)
Block NO. 9, CGO Complex
Lodhi Road, New Delhi.
- 3 Union of India
rep. By the Principal Secretary
Ministry of Home Affairs
Central Secretariat, New Delhi. ..Respondents

By Advocate Mr. Sunil Jacob Jose, SCGSC

The Application having been heard on 3.12.2010 the Tribunal
delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant challenges his transfer to Daman during the middle of the academic year in violation of the transfer policy of the Government.

2 The applicant joined the Madras Station of the Police Wireless, Directorate of Coordination under the Ministry of Home Affairs, Government of India, New Delhi, as Wireless Operator in 1985. He worked in various places such as Gangtok, Thiruvananthapuram, Shillong and New Delhi. In the year 2006 he was promoted and transferred to Kavaratti where he is even now working. Aggrieved by the impugned transfer, he challenges Annexure A-5 order dated 5.5.2010 transferring him to Daman, on the grounds of his son studying for Plus two in Govt. Senior Secondary School at Kavaratti, the transfer is against the provisions of Annexure A-1 policy, he is entitled to be posted to the station of his choice, he has not been transferred during rotation transfer that nobody stands posted in his place and there is vacancy to accommodate him at Kavaratti.

3 The respondents resisted the O.A by filing reply statement. They stated that the applicant is liable to be transferred anywhere in India in public interest. They submitted that as per the transfer policy, transfer will normally be made as per the Station Seniority except for those who are required to be moved out earlier on completion of the tenure in hardship stations, NE region or in non-popular station subject to availability of a vacancy in their choice station and operational

Ty

and administrative considerations. They admitted that the applicant had requested for transfer to Trivandrum in 2007 or retention at Kavaratti if Trivandrum is not vacant, in 2008 and again in 2009. However, since the department was running short of staff due to compulsory cut and retirement it was decided to reduce operating staff to three at Kavaratti. Therefore, they could not accede to the request of the applicant in 2009 to retain him at Kavaratti. They submitted that the omission to transfer him in the general transfer of 2010 was a clerical mistake and hence it was rectified by transferring him to Daman vide Annexure A-5 dated 5.5.2010. They admitted that the applicant has submitted a request against his transfer to Daman which could not be acceded to. They relied on the judgments of the Apex Court in State of Madhya Pradesh and another Vs. S.S. Kourav and Others (AIR 1995 SC 1056) and other cases.

4 The applicant filed rejoinder reiterating the averments in the O.A

5 I have heard the learned counsel appearing on both sides.

6 It is a fact that the applicant has served in many places during his 24 years of service, including hardship and non-popular stations. After working for 4 years from 1996 to 2000 in Shillong, a hardship station, he was entitled for a transfer to his choice station viz. Trivandrum. Since, there was no vacancy at Trivandrum, he was transferred to Delhi in 2003 and from there he was transferred to Kavaratti in 2006. The tenure in non popular station for those who have crossed 20 years service is 2 years. Therefore, in 2008, he requested for transfer to Trivandrum. As there was no vacancy at Trivandrum, he

74

requested for retention at Kavaratti to facilitate admission of his son in Plus two course at Kavaratti and requested for retention at Kavaratti upto March, 2011 i.e. till his son completes Plus Two. I also find that the respondents considered the request and did not include him in the general transfer. Therefore, he is entitled to continue at Kavaratti at least for completion of the schooling of his son.

7 The Apex Court has laid down the dictum in transfer matters that:

"The Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundation. When, as in this case, the transfer order issued on administrative grounds the Court cannot go into the expediency of posting an officer at a particular place (State of Madhya Pradesh and another Vs. SS Kourav & Others)."

The Apex Court has also laid down that:

"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 However, in the case on hand, I find that the transfer of the applicant is to some extent in violation of the transfer policy of the Government. The applicant after completion of his tenure posting in hardship station/non-popular station, though entitled could not be posted to his choice station. It is contended by the respondents that the transfer is made on the basis of station seniority. I notice that the applicant is a Wireless Supervisor while Shri V. Ponnappan is a Wireless Operator whose transfer stands cancelled vide Annexure A-5. The

74

applicant's counsel contended that the applicant is being transferred to Daman against the post of Wireless Operator and not Wireless Supervisor. If so, they cannot be equated for the purpose of transfer. While the general transfer order is issued in March, the impugned transfer order is issued only on 5.5.2010. When the Application came up for admission on 16.6.2010, further proceedings of Annexure A-5 order was ordered to be kept in abeyance.

9 In this view of the matter and in the facts and circumstances of the case, the interest of justice will be met if the O.A. is disposed of with a direction to the respondents to keep the impugned transfer order at Annexure A-5 in abeyance till the end of the academic year 2010-11. It is ordered accordingly. No costs.

Dated 13th December, 2010


K. NOORJEHAN
ADMINISTRATIVE MEMBER

K...