

Central Administrative Tribunal

Ernakulam Bench

Dated Thursday the 30th day of November 1989

Present

Hon'ble Shri N. V. Krishnan, Administrative Member
and

Hon'ble Shri N. Dharmadan, Judicial Member

Original Application No.533/89

V.D. Varghese

...the applicant

V.

1. The Deputy Chief Engineer,
Ministry of Surface Transport,
Government of India,
Lakshadweep Harbour Works,
Calicut.
2. The Executive Engineer,
Lakshadweep Harbour Works,
Kavaratti.
3. The Assistant Engineer,
Lakshadweep Harbour Works,
Minicoy.
4. The Assistant Engineer,
Lakshadweep Harbour Works,
Amini.
5. P. Kunhi Seethi,
Driver Grade II,
Lakshadweep Harbour Works,
Andrott.
6. N.K. Soman, Driver Grade I,
Lakshadweep Harbour Works,
Minicoy. ...the respondents

M/s. U.K. Ramakrishnan, EK ...Applicant's
Madhavan, CP Ravindranath & Pv counsel
Lohithakshan

Mr. P.V. Madhavan Nambiar ... Respondents'
Senior Central Government counsel
Standing Counsel

Judgment

Shri N. Dharmadan, Judicial Member

The applicant who is at present working as Driver Grade II in the office of Assistant Engineer, Minicoy, challenges the order transferring him to Amini as illegal, malafide and passed on extraneous considerations only to favour respondents 5 and 6.

2. The applicant was working from 1984 as Driver Gr.II in the office of Assistant Engineer Lakshadweep Harbour Works, Amini. On 6.4.1989 as per Annexure-A order he was transferred from Amini to Minicoy and respondents 6 and 5 were transferred from Andrott and Minicoy to Amini and Andrott respectively. Accordingly in obedience of the order the applicant proceeded to Minicoy and joined duty. He also shifted his family from Amini; but to his surprise he received Annexure-B order within a very short period of four months directing him to get ready to proceed back to Amini. On the next day he also received Annexure-C office order directing the Assistant Engineer, Lakshadweep Harbour Works, Minicoy

to relieve the applicant from Minicoy enabling him to proceed back to Amini and report for duty to Assistant Engineer, Lakshadweep Harbour Works, Amini. This order contains the peculiar statement which reads as follows:

"This is in obedience to the telegram No.139 dated 14.8.1989 of DCE, KHW, Calicut."

Immediately the applicant sent Annexure-D telegram to the second respondent informing about his family position that his wife is pregnant and she wants medical treatment also and requesting for permission for resorting to legal help for redressing his grievance. He has also filed Annexure-E medical certificate showing that his wife requires treatment.

3. It is at this stage the applicant filed this application challenging Annexure-B and C office orders and obtained a stay from this Tribunal. The applicant is still continuing at Minicoy under the orders of the Tribunal and received pay in terms of the order. The respondents have filed a statement in which it is admitted that the respondents 5 and 6 who were also transferred along with the applicant by Annexure-A order have not yet joined to the transferred post. The case put forward by the applicant is that the impugned order

was passed only to oblige others is also admitted in the statement. It states that in order to oblige the fifth respondent the transfer order was kept in abeyance. The following portion of the statement filed by the respondents is relevant:

"But, Mr. Kunhiseethi, Driver Gr.II belongs to Lakshadweep Islands, approached the higher authorities, to keep his transfer to the new place, in abeyance temporarily in view of the extreme family problems being encountered by the individual. Being a scheduled tribe and belong to Lakshadweep islands, as has been indicated already in the reply statement, his request was considered sympathetically by the superiors."

Similarly the order transferring the 6th respondent was also not enforced by the respondents. The statement referring to 6th respondent reads as follows:

"Consequent on the relief of Sri.V.C. Varghese Driver Gr.I from Amini Sub Division, the Amini Sub division is left with no Driver to carry out the works in as much as the Driver of Minicoy Shri N.K. Soman did not move from his Headquarters based on the telegraphis instruction as per Annexure-R.1. Since the services of a Driver were urgently required by Amini islandsub Division for carrying out the ongoing projects at Amini island as per target fixed by the Government, shri V.D. Varghese Gr.II who had been transferred to Amini to Minicoy, was directed to proceed back to Amini by the Assistant Engineer(H), Minicoy by availing the immediate sailing based on the telegram received from the higher authorities....."

This shows that the respondents 5 and 6 due to their influence at higher level managed to disobey the order and they are safe, transfer order but the applicant who obeyed the order of transfer is disturbed by the impugned orders. The case of extraneous consideration in respect of the transfer of the applicant is virtually admitted in the statement filed by the respondent on 17.11.1989. Though in that statement it has been stated that the applicant has been transferred from Minicoy to Amini immediately within four months from the order of transfer from Amini to Minicoy and explained the position of the respondents 5 and 6, the respondents 1 to 3 attempted to sustain the impugned orders on the ground of exigencies of service. But the explanation given by them in the statement discloses the facts and the real state of affairs and we are satisfied that there is no bonafide exigencies of service involved in retransferring the applicant from Minicoy to Amini by the impugned orders.

4. The Supreme Court very recently held that judicial authority should not interfere in the transfer of public servants in the 'cavalier' manner in the decision

reported in Union of India and others V. H.N. Kirtania the 1989(4) SLR 9th position, was clarified by laying down the principle as follows:

"Transfer of a public servant made on administrative grounds or public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the grounds of violation of statutory rules or on grounds of malafides."

The Madras Bench of this Tribunal also held in V. Bhaskaran V. Deputy Collector of Central Excise and others, Ernakulam 1987(4) ATC 473 as follows:

"No doubt, the Collector is given the freedom to choose officers of his collectorate whom he considers fit for posting at the Airport and also for changing them as and when necessary. That does not mean that the freedom is to be exercised as a punitive measure or on irrelevant or extraneous considerations or on considerations which cannot stand scrutiny before a court of law!"

Following the dictum laid down in the above two cases this Tribunal in O.A. 404/89 held as follows:

"This is a case in which there is strong ground for interference as stated by the Supreme Court. The allegation of extraneous considerations based on alleged malafides for the transfer of the petitioner are clear from the records produced before the ^{tribunal} and on going through the files, I am satisfied that this is not a transfer made in the exigencies of service to promote public interest as stated above...."

5. Accordingly, we feel the exigencies of services as explained in the statement for calling the applicant back to Amini cannot be accepted for sustaining the impugned orders. We are inclined to accept the contentions of the applicant and allow this application.

6. Accordingly, in the facts and circumstances of this case, we quash the impugned orders at Annexures B and C and allow the application without any order as to costs. We make it clear that the applicant shall be entitled to the salary from the date of the impugned order from Minicoy, if he was available for work in that station during the period in question.

N. Dharmadan
(N. Dharmadan)

30.11.89
Judicial Member

N. V. Krishnan
(N. V. Krishnan)
30.11.89
Administrative Member

30th November 1989

ganga.