

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.543/03

Friday this the 27th day of February 2004

C O R A M :

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

P.Balakrishnan (No.3),
Clerk/Typist,
O/o.the A.G. (A&E), Kerala,
Br. Thrissur.

Applicant

(By Advocate Mr.K.K.Mohammad Ravuf)

Versus

1. The Accountant General (A&E),
Kerala, Thiruvananthapuram.
2. The Senior Dy.Accountant General (Admn.),
O/o. the A.G. (A&E), Kerala,
Thiruvananthapuram.
3. The Dy. Accountant General (A&E),
O/o. the A.G.(A&E), Kerala,
Br. Thrissur.

Respondents

(By Advocate Mr.C.Rajendran, SCGSC)

This application having been heard on 27th February 2004
the Tribunal on the same day delivered the following :

O R D E R

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

The applicant Clerk/Typist in the office of the Accountant General (A&E), Thrissur made a representation seeking a transfer and posting to Thiruvananthapuram on the ground that such a posting would facilitate his continued treatment at Sree Chitra Thirunal Institute of Medical Sciences and Technology where he is undergoing treatment for a very serious disease called "Deep Vein Thrombosis". Since his representation enclosing a medical certificate (Annexure A-2) was not considered he filed O.A.366/03 for appropriate orders to the 2nd respondent to allow the applicant's prayer for transfer from Thrissur to the main office at Thiruvananthapuram. The Tribunal disposed of the application

by order dated 29.4.2003 directing the respondents to consider the representation of the applicant on the basis of his medical status reflected in Annexure A-2 certificate judiciously and take a decision regarding transfer of the applicant to Thiruvananthapuram in order that he might receive medical treatment uninterruptedly and be enabled to discharge his official duties effectively and pass appropriate orders as expeditiously as possible at any rate within four weeks from the date of receipt of the representation from the applicant. In purported obedience to the above direction the impugned order (Annexure A-14) dated 5.6.2003 has been issued turning down his request for transfer on the ground that a criminal case has been registered against the applicant in Thrissur and his transfer to Thiruvananthapuram may jeopardise the criminal investigation initiated by the Police authorities against him at Thrissur and that it would not be in public interest to transfer the applicant from Thrissur to Thiruvananthapuram. Aggrieved by that the applicant has filed this application. It has been inter-alia alleged in the application that the order has been passed without any application of mind despite the specific direction in that behalf by the order of the Tribunal and that the inaction on the part of the respondents to grant him the much needed transfer would jeopardise his health. The applicant therefore seek to set aside the impugned order and a direction to the 2nd respondent to allow the prayer of the applicant to transfer him from Thrissur to main office Thiruvananthapuram on medical grounds.

2. On behalf of the respondents a reply statement has been filed by Senior Deputy Accountant General seeking to justify the impugned order on the ground that the criminal case having been



registered against the applicant at Thrissur the transfer of the applicant from Thrissur to Thiruvananthapuram would jeopardise the criminal proceedings and hence it would not be in public interest. It has also been contended that the applicant has since been removed from service after holding a disciplinary proceedings by order dated 30.6.2003. The O.A. has become infructuous and therefore no relief may be granted to the applicant.

3. I have gone through the pleadings and the documents on record and have heard the learned counsel. Normally an employee does not have a right to claim that he should be posted in a particular place or in a particular office. However when the circumstances required the posting of an employee in a particular place the employee may make a representation to the competent authority and in such cases the competent authority has the obligation to consider the request in the light of the facts and circumstances and to give an appropriate reply. The applicant in this case made a request for a transfer to main office at Thiruvananthapuram. The reason stated for making the request was that he was suffering from a very serious ailment called "Deep Vein Thrombosis" for which he has to take continued treatment in Sree Chitra Thirunal Institute of Medical Sciences and Technology and that he needed continued treatment. Under these circumstances when the applicant approached the Tribunal, the Tribunal by its orders dated 29.4.2003 in O.A.366/03 directed the respondents to consider the claim of the applicant in the light of the medical certificate and to take a decision on his transfer to Thiruvananthapuram so that he might receive medical treatment uninterruptedly and be enabled to discharge his official duty

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effectively. Unfortunately, in the impugned order no reference at all has been made to the medical certificate which was required to be considered in taking a decision in terms of the directions contained in the order of the Tribunal. The rejection of the request of the applicant was not on the ground that his claim was found to be untenable or that he did not suffer any ailment which required treatment in Sree Chitra Thirunal Institute of Medical Sciences and Technology nor was it on the ground that administrative exigency required his continuance at Thrissur nor is there a case for the respondents that there is no post at Thiruvananthapuram to accommodate him. The sole reason in not acceding to the request of the applicant for a posting to Thiruvananthapuram mentioned in the impugned order is that a criminal case against the applicant has been registered at Thrissur and his transfer from Thrissur would jeopardise the investigation by the investigating authorities. I am of the considered view that the impugned order is vitiated by non application of mind to the relevant facts and also for taking into account only extraneous matters for deciding the issue despite the specific direction of the Tribunal that a decision shall be taken taking into account the medical certificate. It is an unpleasant fact to note that a senior officer in the rank of Deputy Accountant General has while disposing of the representation totally discarded the relevant facts and did not take care to abide by the directions given by the Tribunal in its order. To say that the transfer of the applicant from Thrissur to Thiruvananthapuram would not be in public interest because a criminal case registered against the applicant is under investigation and that the transfer of the applicant would jeopardise the investigation is making the process of the

disposal of the representation a mockery. How the transfer of the applicant from Thrissur to Thiruvananthapuram would jeopardise the investigation by the Police is difficult to understand. Generally the contention used to be the otherway around. If a departmental enquiry or criminal investigation is pending the incumbent used to be transferred on the ground that the continuance of the official against whom investigation is going on would not be congenial for investigation for he may attempt to tamper with the evidence or influence the witnesses. Thus I am of the considered view that the impugned order is absolutely unsustainable as vitiated by non application of mind to the relevant facts and is based on irrelevant considerations.

4. Now what is to be considered is in the light of the Annexure R-1 order dated 30.6.2003 removing the applicant from service what relief can be granted to the applicant even if the impugned order is set aside. There is no question of applicant continuing in service after Annexure R-1 order unless the order is reversed by appeal or in judicial proceeding and the applicant is reinstated. In the facts and circumstances of the case therefore the relief that can be granted to the applicant is only a direction to respondents that in case the applicant is reinstated in service the respondents shall consider the posting of the applicant to Thiruvananthapuram to enable him to have continued and uninterrupted treatment at Sree Chitra Thirunal Institute of Medical Sciences and Technology.

5. In the result the application is allowed in part, the impugned order Annexure A-14 is set aside and the respondents are directed that in case the applicant is reinstated in service in

appeal against Annexure R-1 or in judicial proceedings arising therefrom the respondents shall consider posting of the applicant to the main office at Thiruvananthapuram. There is no order as to costs.

(Dated the 27th day of February 2004)



A.V. HARIDASAN
VICE CHAIRMAN

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