

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 560 of 2010

Tuesday, this the 19th day of October, 2010.

CORAM:

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

K.K. Ambujakshy
Superintendent,
Regional Passport Office,
Kochi. ... **Applicant**

(By Advocate Mr. N. Nagaresh)

Versus

1. Under Secretary (PVA),
Ministry of External Affairs (CPV Division),
Government of India,
New Delhi.
2. Regional Passport Officer,
Panampilly Nagar (P.O.),
Cochin. ... **Respondents**

(By Advocate Mr. Pradeep Krishna, ACGSC)

The application having been heard on 04.10.2010, the Tribunal
on 19-10-10 delivered the following:

ORDER

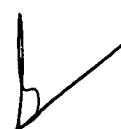
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Aggrieved by the order dated 24.06.10. transferring her from the
Regional Passport Office, Ernakulam, to the Regional Passport Office,
Bangalore, the applicant has filed this O.A. with a prayer to set it aside.



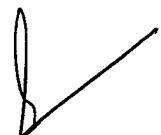
2. The applicant joined service in the year 1977 in the Regional Passport Office, Ernakulam. She was posted at Kozhikode, Trichy and lastly at Ernakulam where she is working as Superintendent. She is to retire from service on superannuation on 30.04.2012. She is a severely handicapped person with 50% permanent disability as per certificate dated 12.11.2001. She cannot travel without escort. Her husband died 18 months ago. Her father-in-law is 90 year old and totally bed ridden. He suffered a cardiac attack recently. She had submitted a representation to the first respondent requesting to retain her at Cochin considering her hardships. As the applicant is suffering at present from more than 50% physical handicap, her case for retaining her at Cochin could be considered sympathetically in accordance with revised transfer policy. If at all it becomes necessary to transfer a physically handicapped official, efforts should be made to transfer him/her to the nearest station as per the policy. However, the applicant has been transferred to a distant place offending Article 14 of the Constitution of India. The applicant is over 58 years of age and transferring her at the fag end of her career cannot be justified. Hence this O.A.

3. The respondents contested the O.A. In their reply statement, it is submitted that the Government has launched a Passport Seva Project on 28.05.2010 in Karnataka, as a public-private partnership initiative. The transfer of 4 Superintendents from the Regional Passport Office, Cochin, including the applicant, was in connection with the implementation of the Passport Seva Project and purely arising out of administrative exigencies. The Apex Court in the case of State of

A handwritten signature consisting of a stylized 'B' and a diagonal line.

Madhya Pradesh and Another vs. S. Kourav and Others, AIR 1995 SC 1056, has held that the Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds and that they should not interfere unless they are vitiated either by malafides or by extraneous consideration without any factual background foundation. The respondents further submitted that they have strictly followed the transfer guidelines. As per the station seniority, the applicant has been transferred. She had given an undertaking on 12.01.2009 at the time of her promotion as Superintendent that she is ready to accept transfer to any Passport office. In Writ Petition No. 5989/2008 and 10006/2008, the Hon'ble High Court of Kerala clarified that the powers of the competent authority to transfer physically handicapped persons in exigencies of services will not be affected by a direction to consider their claim for retention in the present station in Kerala nor does it mean that all physically handicapped persons should be retained at the places opted by them.

4. In the rejoinder, the applicant submitted that all the 4 Passport Seva Kendras in Karnataka have already become fully functional with Superintendents holding charge of them. The judgement of the Apex Court referred to in the reply statement is not relevant in the case on hand. The 1st respondent has disposed of Annexure A-4 representation of the applicant during pendency of the O.A., rejecting her request for retention at Cochin. The order of rejection is clearly illegal and ultra vires as it has been passed after filing this O.A. before the Tribunal. Section 19(4) of the Administrative Tribunals Act, 1985, mandates that

A handwritten signature in black ink, consisting of a stylized 'S' and a diagonal line.

where an application has been admitted by a Tribunal, every proceeding as to redressal of grievances in relation to the subject matter pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter thereafter be entertained. Further, the 1st respondent has not considered any of the contentions raised in the representation. The applicant has a legal duty and obligation to maintain and look after her father-in-law under Section 4 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The undertakings from all Superintendents have been obtained by pressure. At the time of giving the said undertaking the applicant could not have contemplated that she would turn out to be a widow and her father-in-law would suffer cardiac attack. As of now the applicant's permanent disability is more than 50% with acute deformity of left foot and suffers severe Osteo Arthritis on hip. The Passport Seva Kendras do not require any more Superintendents.

5. In the additional reply statement, the respondents reiterated that they have strictly followed station seniority criterion in view of the administrative exigencies without any malafide intention. The applicant had worked at Kozhikode and Trichy, therefore, the question of physical handicap and other factors mentioned in the application are not relevant in respect of transfer. The impugned transfer is for ensuring functional efficiency of the Government and is subject to exigencies of service. It was further submitted that 416 new posts were created at different levels in the Central Passport Organization for operating the Passport

A handwritten signature or mark, appearing to be a stylized 'D' or a checkmark, is located at the bottom center of the page.

Seva Projects. Promotions were made in different grades with an undertaking by all the promotees to move immediately to any place on transfer. The promotees of Regional Passport Offices are transferable as per zones prescribed in the transfer policy. Hence the O.A. should be dismissed.

6. The arguments were heard and documents perused.

7. This Tribunal is not expected to interfere in any orders of transfer unless they are vitiated either by malafide or by extraneous consideration without any factual background foundation. The respondents claim that they have followed strictly the transfer guidelines and station seniority in transferring the applicant who had given an undertaking to accept transfer as and when it is made. She was transferred in the exigencies of manning the prestigious E-Governance Passport Seva Project in Karnataka. However, the order transferring the applicant suffers from non-consideration of certain relevant facts. The applicant is a severely handicapped person with 50% permanent disability as on 12.11.2001. As of now, according to the applicant, she is suffering from more than 50% physical handicap. As per para V(ii) of the general terms and conditions of transfer guidelines, 2010, the officials who are more than 50% physically handicapped shall be considered sympathetically not to transfer them. In case it becomes necessary to transfer such officials also, efforts will be made to transfer them to the nearest station. As the applicant fulfils the condition of more than 50% disability, she is to be given sympathetic consideration as per the transfer policy.

A handwritten signature or mark, appearing to be a stylized 'D' or a checkmark, is located at the bottom right of the page.

8. As per the Department of Personnel and Training O.M. dated 04.06.1998, the minimum degree of disability in order for a person to be eligible for any concession/benefit would continue to be 40%. Therefore, she is eligible for exemption from transfer as per protection available to her under the provisions of The Persons with Disabilities (Equal Opportunities, Protection of rights and Full Participation) Act, 1995. Further, vide O.M. dated 13.03.2002 modifying the O.M. dated 10.05.1990 of the DoP&T, it has been reiterated that the requests from physically handicapped employees for posting at their choice station or near their native place may be given preference. In Writ Petition (C) Nos. 5989/08 and 10006/08, decided on 06.11.2008, Hon'ble High Court of Kerala held as under :

"3. As per the notification issued by the Central Government under the provisions of the Persons with Disabilities (Equal Opportunities, Protection of rights and Full Participation) Act, 1995, 40% disability is the benchmark disability for treating a person as physically handicapped person. If that be so, the respondents herein are also entitled to be treated as physically handicapped persons and further considered for the benefits that are bestowed on them as per the norms in the matter of transfer. So, we find nothing wrong with the direction of the CAT to treat them also as physically handicapped persons and also to consider their claim for retention in the present station or at least in the State of Kerala. But, this does not mean that all physically handicapped persons should be retained at the place opted by them. All transfer norms are subject to the power of the competent authority to transfer any employee in exigencies of service. Therefore, it is clarified that, though the claim of the respondents in these Writ Petitions are also liable to be considered for retention in the present station or at least in the State of Kerala, the same will not affect the powers of the competent authority to transfer them in exigencies of service. No court has any power to interfere with a transfer, unless it is shown to be illegal or vitiated by mala fides. So, the direction of the CAT should be understood

A handwritten signature or mark, appearing to be a stylized 'D' or a checkmark, is located at the bottom right of the page.

as directing the competent authority to consider the claim of the applicants, treating them as physically handicapped persons, but without affecting the power of the authority to decide on the question of transfer, in exigencies of service."

The applicant herein has sought for retention at the present place due to her physical disability. The aspect of her physical disability was not considered by the respondents before transferring her.

9. The applicant is a widow and she shoulders the responsibility to look after her 90 year old bed ridden father-in-law who suffered a cardiac attack recently. As pointed out by the applicant, she has a legal duty and obligation to maintain and look after her father-in-law under Section 4 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The respondents cannot be unaware of this legal obligation.

10. When the transfer order was issued on 26.06.2010, the applicant was more than 58 years old. As per para V(iii) of general terms and conditions of transfer policy, 2010, one year prior to superannuation, efforts shall be made to post officials working away from their native places to their place of choice in view of the welfare oriented policies of the Government of India. Within one year of her posting in Bangalore, she is eligible to be given a posting to the place of her choice on account of her superannuation. In such a situation, for less than a period of one year whether she should be transferred at all is a moot point. Again, para V(viii) of general terms and conditions of transfer policy, 2010, stipulates that transfers shall not for the purpose of

A handwritten signature in black ink, appearing to be a stylized 'S' or a similar character, is located at the bottom center of the page.

transfer. It would mean that the purpose of transfer is not merely for the sake of transfer but to meet the requirement of the organization. The respondents need manpower to operate the Passport Seva Kendras at Bangalore, but whether a handicapped person like the applicant, who cannot travel without an escort and is about to retire in a short period and who is a widow and has the responsibility of looking after her aged father-in-law, is in a position to discharge her duties in connection with implementation of the prestigious Passport Seva Project at a far away place, is to be considered by the respondents.

11. It is true that the applicant had given an undertaking to move on getting transfer order, immediately to the place of posting after promotion as Superintendent. She was not transferred upon promotion. After giving an undertaking on 12.01.2009, the applicant's situation underwent a change on account of death of her husband and as her aged father-in-law who is bed ridden suffered a cardiac attack. Her situation merits humane consideration. The undertaking by itself does not have any special significance because Central Government employees are liable to be transferred anywhere in India in exigencies of service.

12. The applicant has submitted that the Passport Seva Kendras, Bangalore, do not require any more Superintendents. This also is a material point which needs consideration by the respondents besides the other facts.

A handwritten signature in black ink, appearing to be a stylized 'S' or a similar character, is located at the bottom center of the page.

13. The transfer order in respect of the applicant violates the provisions of The Persons with Disabilities (Equal Opportunities, Protection of rights and Full Participation) Act, 1995, The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, the transfer guidelines and the O.Ms mentioned above. Therefore, in the interest of justice, it is necessary that the respondents take a relook at the transfer of the applicant. In view of the above, it is ordered as under.

14. The applicant is directed to file a fresh representation for reconsideration of her transfer with all relevant facts within a period of 15 days from the date of receipt of a copy of this order. The respondent No.1 is directed to consider the said representation within a period of 60 (sixty) days thereafter keeping in mind the observations made by this Tribunal and pass a speaking order. The interim stay order granted by this Tribunal on 30.06.2010 on the transfer of the applicant shall continue till the decision on her representation taken by the respondent No.1, is communicated to her.

15. The O.A. is allowed to the above extent. No order as to costs.

(Dated, the 19th October, 2010)


K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER