

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

Original Application No. 568 of 2010

THURSDAY, this the 28th day of October, 2010

C O R A M :

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

K. Seethala,
W/o. T. Gopinathan,
Superintendent,
Passport Office, Malappuram,
Residing at 'Sarang', Marikunnu PO,
Kozhikode : 673 012 ... Applicant.

(By Advocate Mr. Shafik M.A.)

v e r s u s

1. Union of India represented by
The Chief Passport Officer &
Joint Secretary (CPV),
Ministry of External Affairs,
New Delhi.
2. The Under Secretary (PVA),
Ministry of External Affairs, New Delhi.
3. The Passport Officer,
Passport Office, Malappuram. ... Respondents.

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

The Original Application having been heard on 07.10.10, this Tribunal
on 28-10-10... delivered the following :

O R D E R
HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant is aggrieved by the refusal of the respondents to
relieve her from Malappuram Passport Office to join Kozhikode Passport

Office inspite of the transfer order dated 12.06.2009. By filing this O.A., she prays for a direction to the respondents to issue immediate order relieving her from Malappuram Passport Office to join Kozhikode Passport Office.

2. The applicant is presently working as Superintendent at Passport Office, Malappuram. She was deputed there on temporary duty in the year 2006 from Kozhikode office and was transferred there subsequently. She has completed more than 4 years at Malappuram. As per the transfer policy dated 09.02.2010, two years is the tenure at a station. As per order dated 12.06.2009, she has been transferred back to Kozhikode alongwith 5 others, out of which 3 have been relieved and have joined the office at Kozhikode. Her representation dated 29.01.2010 and 26.04.2010 have not resulted in her getting relieved from Malappuram office. The Passport Officer, Malappuram, by fax message dated 25.05.2010, has recommended her transfer back to Kozhikode alongwith 3 others.

3. The applicant submits that she is entitled for a transfer back to Kozhikode in 2009 itself as per the then existing transfer policy. Even according to the revised transfer policy of 2010, she is eligible to be transferred back to Kozhikode. The applicant herself and her husband are suffering from various diseases. They are residing at Kozhikode. The juniors to the applicant in age and service were relieved from Malappuram and transferred back to Kozhikode. As per the records maintained by the respondents themselves, a vacancy of Superintendent is available at Kozhikode Passport Office also. There are officials who are working at

Kozhikode Passport Office and also at the Regional Passport Office, Cochin, who have not been transferred since 1988. The applicant understands that the Passport Officer, Kozhikode, has refused to relieve the existing Superintendents from Kozhikode due to heavy work load, as four Superintendents had already been transferred out from that office and only three have been transferred in. In O.A. No. 808/2005, this Tribunal has allowed posting to choice station after the tenure period is over. Therefore, the O.A. should be allowed.

4. The respondents contested the O.A. It is submitted on their behalf that the applicant was not relieved from Malappuram as she was junior to other Superintendents as is evident from the station seniority. The applicant and others who have completed more than three years could not be relieved due to non availability of equal number of PIAs in Passport Office, Kozhikode. The contention of the applicant that her juniors have been transferred to Kozhikode is without any basis. Completion of 2 years at certain station does not automatically entitle the official to seek transfer, which is to be decided solely on administrative exigencies. The administrative exigencies are given preference over the personal requirements. The respondents have acted in accordance with the transfer policy guidelines. The respondents relied on the decision of the Apex Court in ***State of Madhya Pradesh and Another vs. S.S. Kourav and Others***, AIR 1995 SC 1056, wherein it was observed that "The Courts/Tribunals are not appellate forums to decide on transfers of officers on administrative grounds and unless the orders are vitiated by malafide or by extraneous consideration without any factual background foundation,

the Courts/Tribunals should not interfere. The transfer guidelines do not confer upon the Government employees a legally enforceable right for a choice posting as per decision of the Hon'ble Supreme Court in ***Union of India and Others vs. S.L. Abbas***, AIR 1993 SC 2444. In the light of the above, the O.A. should be dismissed.

5. Arguments were heard and documents perused.

6. The transfer order in respect of the applicant is dated 12.06.2009. She has not been relieved because of shortage of officers at Kozhikode Passport Office to replace her. But as per Annexure A-10, the sanctioned strength of Superintendents at Kozhikode Passport Office is 5, out of which 4 Superintendents were relieved recently and 3 Superintendents have joined recently. As on June, 2010, the working strength in the cadre of Superintendents at Kozhikode Passport Office is 4, leaving one clear vacancy. When the Passport Officer, Malappuram, recommended the case of 4 officers, including the applicant, for favourable consideration regarding transfer back to choice station and when there is a vacancy available at Kozhikode Passport Office, there is no reason not to relieve her to join the Passport Office at Kozhikode. As per the averment of the respondents, there is heavy work load at Kozhikode Passport office. Since there is one clear vacancy available for the applicant to be posted, there is no need to wait for more vacancies to arise in Kozhikode for the officers remaining to be sent there together. As per the statement of the respondents, the applicant is the senior most Superintendent awaiting for a transfer back to Kozhikode. According to the transfer policy, the applicant

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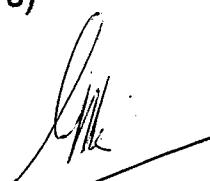
is eligible for a transfer back to Kozhikode. Further, as per transfer policy, one year prior to superannuation, efforts shall be made to post the official at the place of his/her choice in view of the welfare oriented policies of the Government of India. As stated in the representation dated 26.04.2010, the applicant has only 2 more years to serve. Her husband is a retired Central Government employee, who is sick and staying at Kozhikode. On humanitarian ground, it is possible for the respondents to transfer her back to Kozhikode. The contention that there are many officers at Passport Office, Kozhikode and Cochin who have not been transferred after 1988, is not contested by the respondents. Although it is stated in the reply statement that the transfer order dated 12.06.2009 was superseded by the transfers made in the next Transfer Board held in March, 2010, vide letter No. V.IV/584/1/10 dated 22.04.2010, no evidence is available on record to show that the impugned transfer is modified or cancelled. In the absence of any modification or cancellation of the said order which is dated 12.06.2009, the applicant who is senior most is not relieved from Malappuram Passport Office to join Passport Office, Kozhikode, inspite of a clear vacancy there, is rather strange. In the facts and circumstances of the case, it would be only fair and just if the applicant is relieved from the Passport Office, Malappuram, to join the Passport Office, Kozhikode, at the earliest. Accordingly it is ordered as under.

7. The respondents are directed to consider the case of the applicant sympathetically in the light of the discussion above to relieve her from Malappuram Passport Office to join Kozhikode Passport Office, within 30 days from the date of receipt of a copy of this order.



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

(Dated, the 28th October, 2010)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER

CVR.