

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O A-570/91

O.A. No. Dy. No. 2821/91 1990
T.A. No. O.A. 570/91

DATE OF DECISION 11.4.1991

P.N.M.Elayadom _____ Applicant (s)

Ms. K.Usha _____ Advocate for the Applicant (s)

Versus

Union of India rep. by Secy., Respondent (s)
Ministry of Defence, New Delhi & others

Mr.K.A.Cherian, ACGSC _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. I.K.Rasgotra - Administrative Member
and

The Hon'ble Mr. A.V.Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Mr.A.V.Haridasan, Judicial Member)

The applicant who is working as Senior Auditor in the Defence Accounts at Always has filed this application under Section 19 of the Administrative Tribunals Act, challenging the order dated 25.3.1991, issued by the Area Accounts Office, C.D.A(Navy), Cochin, at Annexure-V whereby he was informed that the G.G.D.A, New Delhi had decided to alert the staff serving at Cochin and contiguous places with station seniority upto 12/84 for their transfer out of Cochin/Ernakulam/Always at the end of the current accademic session including Shri P.N.M. Elayadom, Senior Auditor, A/C No.8270437 serving in SNLA

M/

Always and requesting him to name to three choice stations and his willing~~to~~ to travel at own/state expense. It is averred in the application that the applicant's wife is employed at Edappally at Ernakulam in State service, that he had sustained injury by a fall in the lavatory, that while he was transferred out of Always in 1989 he had filed OA 250/89 which was allowed, that as despite the order in the Original Application he was not posted back at Always, he had to move this Tribunal to compel the respondents to obey the order and give him a posting, that in obedienc~~e~~ to the above order, the applicant was posted at Always with effect from 3.12.1990, that the present attempt is to transfer him again out of Always violating the guidelines in regard to transfer, and that, therefore, it is just and necessary that the impugned order is quashed and the respondents are directed to allow the applicant to continue at Always itself.

2. We have heard the counsel for the applicant and have also gone through the pleadings and documents produced by him.

3. It has been repeatedly held by the Hon'ble Supreme Court in a catena of decisions that transfer being an incidence of service, judicial intervention is justified only if the impugned order of transfer is vitiated by

mala fides or amounts to a colourable exercise of power.

In Gujarat Electricity Board and Another Vs. Atmaram

Sungomal Poshani, JT 1989 (3) S.C. 20, the Hon'ble Supreme

Court has observed as follows:

"Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Government Servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order. He would expose himself to disciplinary action under the relevant Rules, ~~Section~~"

In the instant case, if the applicant is transferred out of Cochin and if he's got any genuine ground for retention it is open for him to make a representation on receipt of the order of transfer. The impugned letter, Annexure-V is not even an order of transfer for the applicant to rush

to the Tribunal seeking to quash the same. There is not even an indication in the Annexure-V that the applicant would be transferred in violation of the guidelines regarding transfer. The course open for the applicant is to make a representation to the concerned authority explaining his position and the grounds on which he claims a retention in Alwaye. We are of the view that this application at this juncture while the applicant is only alerted that there is chance of his case being considered for transfer out of Alwaye and requesting ^{us} ~~ed~~ ^{him} to name three choice stations which he ~~was~~ ^{is} likely ^{to} be posted in the event of transfer is premature, and that does not merit consideration.

4. In the result, we reject the application under Section 19(3) of the Administrative Tribunals Act.


11-4-91

(A.V.HARIDASAN)
JUDICIAL MEMBER


(I.K.RASGOTRA)
ADMINISTRATIVE MEMBER

11.4.1991