

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.582/04

Thursday this the 16th day of December 2004

C O R A M :

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

P.P.Cheriyakoya,
S/o.late K.I.Muthukoya,
Trained Graduate Teacher (English),
Government High School, Amini.
(Under orders of transfer),
Union Territory of Lakshadweep.
Residing at Amini, Lakshadweep.

Applicant

(By Advocate Mr.O.V.Radhakrishnan)

Versus

1. Administrator,
Union Territory of Lakshadweep,
Kavaratti.
2. Director of Education,
Union Territory of Lakshadweep,
Kavaratti.
3. Union of India represented by
its Secretary, Ministry of Home Affairs,
North Block, New Delhi.
4. P.K.Basheer,
Trained Graduate Teacher,
Government High School,
Amini, Lakshadweep.

Respondents

(By Advocate Mr.Shafik M.A. [R1-2] & Mr.P.V.Baby [R4])

O R D E R

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant who was working as Trained Graduate Teacher (TGT for short) at Government High School (GHS for short), Kalpeni and having served for more than two and half years in the Government High School, Kalpeni as TGT he was transferred to Government High School, Amini as per Annexure A-1 order dated 3.6.2004. Thereafter he was again transferred from Government High School, Amini to Government High School, Chetlet and directing the 4th respondent to retain at Government High School, Amini cancelling his transfer to GHS,Chetlet (Annexure A-2 dated




12.7.2004). The applicant was relieved from the post of TGT (English) GHS, Amini on the basis of Annexure A-3 order on the same date. The applicant submitted a representation (Annexure A-5) dated 9.7.2004 to the 1st respondent which did not yield any response. It is also brought to the notice that to the regular vacancy of TGT (English) at GHS, Amini Shri. Najimudeen Syed C.P. has been posted as Guest Teacher on contract basis as per File No. 01/26/2/2003/GHSA dated 24.7.2004. Aggrieved by the said indiscriminate transfer the applicant has filed this O.A. seeking the following reliefs :

1. to call for the records leading to Annexure A-3 order dated 12.7.2004 of the 1st respondent and to set aside the same.
2. to declare that the applicant is entitled to continue in the post of Trained Graduate Teacher (English) in the Government High School, Amini till the completion of his period of tenure of three years from the date of joining the post in terms of Annexure A-2 transfer policy.
3. to issue appropriate direction or order, directing the respondents 1 to 2 to allow the applicant to continue in the post of Trained Graduate Teacher (English) in the Government High School, Amini without regard to Annexure A-3 till the completion of his tenure of three years or in the alternative to accommodate the applicant against the regular post of Trained Graduate Teacher (English) in the Government High School, Amini now filled up by guest teacher on contract basis whichever is feasible.

2. Respondents 1-2 have filed a detailed reply statement contending that the applicant who was working at GHS, Kalpeni for more than 9 years in his native island was transferred to GHS, Amini as per Annexure A-1 and joined the said post on 16.6.2004 in place of the 4th respondent. However the 4th respondent submitted a representation seeking for retention at Amini itself which was considered in detail by the Administration and having regard to the fact that as per the Policy of the Education Department teachers are normally permitted to continue for more



than 3 years at their native island the transfer order with respect to the 4th respondent was cancelled and he was retained at GHS, Amini as he had completed only 3 years and could continue for further period so that the academic atmosphere is not disturbed at all. The U.T. of Lakshadweep has framed transfer policy for Government servants working on posts dealing with the public can be transferred on completion of 3 years of service from Kalpeni, Andrott, Kavaratti, Agatti, Amini and Kadmath and after 2 years from Minicoy, Kiltan and Chetlat and after one year from Bitra Island. However in the case of teachers, the Education Department permits them to continue for more than 3 years in their native islands so that academic atmosphere of School and its results are not in any way disturbed. Presently there are 13 Graduate Teachers (English) including the applicant and the 4th respondent and it has been decided to post atleast one regular Trained Graduate Teacher to each GHS so that there is no difficulty in teaching English, especially for Class IX and X who are preparing for Board Examinations. Permitting the 4th respondent to continue for more than 3 years in his native island resulted in consequent transfer of the applicant to the GHS, Chetlat which was ordered in public interest as there was no regular English teacher at GHS, Chetlat and the students were not to be put to difficulty. Transportation facilities are available and ship schedule is made by the Port Department. Regular ships are available and it reaches from island to island except in Minicoy once in every fortnight. Government servants on transfer are allowed to avail 10 days joining time plus journey period/time and are also eligible to claim T.A. However they are not entitled to use helicopter for such conveyance which if at all used should be at their expense. It is also pointed out that



the transfer orders could not be effected in April/May due to the Parliament Elections held on 10.5.2004. No political pressure or arbitrary action could be attributed in the impugned orders. It is done in the public interest and the teachers are given posting as far as possible in their native islands for the larger interest of the institution. Respondents have not violated any of the rights of the applicant guaranteed under Art.14 & 16 of the Constitution of India. The applicant has no legal or enforceable right and O.A. is devoid of merits.

3. The 4th respondent has filed a separate reply statement contending that no employee can insist to the authorities that he/she should be posted at a particular place or institution. Though allegations are made in the application against the Hon'ble Minister for Power under whose instance this transfer took place has not been impleaded as a respondent in the application. It is further contended that the 4th respondent was forced to halt at Amini from 16.6.2004 to 12.7.2004 was certified by the Port Assistant. Noticing the grievance of the 4th respondent against the transfer from Amini to Chetlat a representation was submitted on 14.6.2004 (Annexure R-4[a]) to the 2nd respondent stating that he has 3 sisters, all married and aged mother. One sister is divorced with 3 children staying with him and is also undergoing treatment in the Lisie Hospital, Ernakulam for Lumbar Spine disease. Considering the request the 2nd respondent issued Annexure A-3 order retaining him (4th respondent) at GHS, Amini and the applicant was transferred to GHS, Chetlat cancelling the order of transfer of the 4th respondent to GHS, Chetlat. Annexure A-2 filed by the applicant is only a circular and a guideline and there is no hard and fast



rule to follow the same in effecting transfers. Further the respondent has no objection in providing the post of C.P.Najimudeen Syed now working as Guest Teacher at GHS, Amini provided the Administration has no hesitation to give the same to the applicant.


4. When the application came up for hearing Shri.O.V.Radhakrishnan appeared for the applicant and Shri.Shafik M.A. appeared for respondents 1-2 and Shri.P.V.Baby appeared for 4th respondent. Learned counsel appearing for the parties has brought to my notice evidence and material placed on record. The counsel for the applicant submitted that the applicant was transferred to GHS, Amini as per Annexure A-1 order dated 3.6.2004 and joined the post on 16.6.2004 in compliance thereof. The applicant was relieved on the basis of Annexure A-3 office order dated 12.7.2004. The 4th respondent was transferred to GHS, Chetlat as per Annexure A-1 after he completed the period of his tenure at GHS, Amini and therefore he cannot claim any legal right to continue at GHS, Amini. The 4th respondent was relieved from the post of TGT (English), GHS Amini in implementation of Annexure A-1 but he did not report for duty before the Headmaster GHS,Chetlet and he got the order of his transfer cancelled exerting political pressure and influence and the cancellation of his order of transfer within one month shows that the cancellation was not ordered in public interest or due to the exigencies of service but is on extraneous and irrelevant considerations vitiating the action. The applicant has been punished and has been treated arbitrarily and unfairly in transferring him out within one month from the date of joining the post of TGT (English), GHS, Amini. Though transfer is an



incident of service cannot be exercised arbitrarily or unreasonably or by way of punishment and the power can be exercised only in the public interest or due to exigencies of service. The unscheduled and sudden transfer of the applicant from GHS, Amini to GHS, Chetlet shows that the transfer ordered as per Annexure A-3 is suspicious and is contrary to the period of tenure prescribed in Annexure A-2 transfer norms. The transfer of the applicant ordered as per Annexure A-3 to GHS, Chetlet without regard to the regular vacancy of TGT (English) in the GHS, Amini which has been filled up by guest teacher on contract basis which is contrary to the Government Orders on the subject and is plainly arbitrary. Therefore the impugned order is not in terms with that of compliance of natural justice or in public interest.

5. Learned counsel for the respondents, on the other hand, persuasively argued that even as per Annexure A-2 guidelines the 4th respondent is entitled to be retained at Amini, his native island, and therefore, there is no violation of policy. The applicant was in haste in coming to Amini and shows his eagerness to join the post by using air transport which is not justified nor he entitled to.

6. I have given due consideration to the arguments advanced by the learned counsel and have perused the evidence and material placed on record. The short question for consideration is whether the impugned order transferring the applicant from Amini to Chetlet in modification of order dated 3.6.2004 (Annexure A-1) is correct. The Apex Court has time and again reminded Courts/Tribunals that they cannot interfere in transfer matters



unless there is malafide or violations of rules against the guidelines (National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan (SC) reported in All India Law Journal Vol.79 January 2002 Part I 87). A mere allegation or averment also will not constitute malafides. On going through the pleadings there is no averment, pleading on the question of malafides in this case except that modification in the impugned order was made at the instance of a minister and therefore it is vitiated. Nothing is forthcoming to substantiate the malafides. Therefore the allegation of malafides cannot be pressed into service as far as this case is concerned. Then the question comes whether there is any violation of guidelines/rules. It is an admitted fact that vide Annexure A-1 (the original order) dated 3.6.2004 the applicant was transferred from Kalpeni to Amini and the 4th respondent was transferred from Amini to Chetlet. By modification out of the six persons in the original order only the applicant vis-a-vis the 4th respondent are inter-changed. Both the applicant and the 4th respondent is having difficulties and inconvenience of their own which cannot be a reason for re-transfer but it is surprising that when Annexure A-1 order was effected the authority should have weighed and assessed the difficulties of the 4th respondent and that of the applicant and this Annexure A-1 order has been issued and in furtherance of that the applicant joined at Amini and out of his anxiety in a speedy manner by engaging air transport. But on 12.7.2004 hardly after one month the impugned order transferring the applicant from Amini to Chetlat and retaining the 4th respondent at Amini cancelling the earlier order was passed. According to the applicant this time was granted to the 4th respondent to manure things and schemes for cancellation of his transfer order through



extraneous measures. However the fact remains that Annexure A-1 order has been passed in tune with the Annexure A-2 guidelines. The normal period of posting in an island is for three years in Kalpeni, Andrott, Kavaratti, Agatti, Amini and Kadmath and two years in Minicoy, Kiltan and Chetlat and one year in Bitra Island. The 4th respondent has completed three years of service at Amini and the applicant has also completed two years in Chetlat, so they are eligible to be transferred from their respective places as per the guidelines which is done in Annexure A-1.

7. Learned counsel for the applicant has brought to my notice the following cases :-

(1). National Hydroelectric Power Corporation Ltd. Vs. Shri.Bhagwan & Shiv Prakash reported in 2001 8 SCC 574 held that transfer of employee, nature of and scope of judicial review of such transfer. Transfer of employee held is not only an incident but a condition of service unless shown to be an outcome of malafide exercise of power or violative of any statutory provision, held, not subject to judicial interference as a matter of routine.

(2). Laxmi Narain Mehar Vs. Union of India & Ors. reported in JT 1997 (3) SC 444 held that transfer cannot be said to be arbitrary especially when service of experienced officers were required. Though convenience of officers for posting near home town is to be seen, yet the transfer on administrative exigencies cannot be ruled out.



(3). Oswal Steel Employees Union Vs. Presiding Officer & Ors. reported in 1996 (3) SLR 531 held that transfer though an incident in service it cannot be arbitrary and unfair.

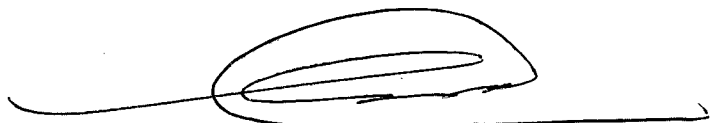
8. There is no quarrel with the proposition of law that is being canvassed by the counsel that transfer in normal circumstances cannot be interfered by the Tribunals/Courts except in the circumstances of malafides and issued against the guidelines/rules. It is also decided by the Hon'ble High Court in Rajan Vs. Director General of Police reported in 1999 (2) KLT 673 held that transfer can always be done in public interest but the discretion granted to the administration in transferring the employees does not mean that the authority can arbitrarily exercise powers as it limit the powers entrusted to serve the public purpose.

9. Therefore I will evaluate this case on the facts and legal position given, whether it has followed the guidelines or is arbitrary. Admittedly the original transfer order has been cancelled within one month and the applicant has been placed to Chetlat, a different island. It is submitted that when Annexure A-1 order has been passed the guidelines, balance of conveniences of the employees, relative disadvantages, rules governing the subject had all taken into consideration and the applicant was transferred to Amini and the 4th respondent transferred from Amini to Chetlat. The respondents has no case that the 4th respondent has not completed the required period but contend that on a subsequent representation by the 4th respondent informing his difficulties the order transferring him from Amini to Chetlat



was cancelled and the applicant was transferred on his place. It is not evident that the applicant has been serving elsewhere having greater difficulties than the 4th respondent has not been considered by the administration at all. However balance of convenience is a criterion for the modification in the original transfer order. Therefore I am of the opinion that the modification order is not in conformity with the legal principles and is unfair and arbitrary, therefore, will not stand in its leg. In the circumstances I am of the view that the transfer of the applicant from Amini to Chetlat has been ordered not in good taste of law. Therefore I have no hesistation in setting aside Annexure A-3 modification order as far as the applicant is concerned.

10. In the circumstances while setting aside Annexure A-3 order as far as transfer of applicant is concerned the official respondents are at liberty to consider the applicant to be retained in Amini in the place of C.P.Najimudeen Syed and give him a proper posting somewhere else which could solve the entire situation, if they so desired. Otherwise the applicant will be retained at Amini in cancellation of Annexure A-3 order. It is reported that the applicant is on leave and if so, his leave will be regularised as per rules and orders be issued within three weeks from the date of receipt of a copy of this order. The O.A. is allowed as above. In the circumstances no order as to costs.



K.V.SACHIDANANDAN
JUDICIAL MEMBER