

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Common order in O.A.Nos. 582/07, 583/07 & 641/07

Friday, this the 9th day of November, 2007.

CORAM:

HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER

1. O.A. No. 582/07:

Evelin Daniel,
W/o Joseph George, Assistant,
Regional Passport Office, Kochi,
Residing at Passport Office Staff Quarters No.2/1,
Perumanoor P.O, Thevara,
COCHIN – 682 015.

: Applicant

(By Advocate Shri TC Govindaswamy)

Vs.

1. Union of India, represented by
the Secretary to the Government of India,
Ministry of External Affairs, NEW DELHI.
2. The Joint Secretary (PV),
Ministry of External Affairs, NEW DELHI.
3. The Administrative Officer (PV.IV)
Ministry of External Affairs,
(CPV Division) NEW DELHI.
4. The Regional Passport Officer,
Regional Passport Office, KOCHI.

: Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC.)

2. O.A. No. 583/07 :

Kumari T. Omana,
D/o late C.P.Raghavan, Cochin,
Residing at 'Chennanattu Chira', CMC VIII,
Cherthala.

: Applicant

(By Advocate Shri Shafik M.A.)

Vs.

1. Union of India, represented by
Foreign Secretary
Ministry of External Affairs,
Government of India, New Delhi.

2. The Chief Passport Officer &
Joint secretary (CPV)
Ministry of External Affairs, New Delhi.
3. The Administrative Officer (PV.IV)
Ministry of External Affairs, New Delhi. : Respondents
- (By Advocate Shri George Joseph, ACGSC)

3. O.A. No. 641/07:

K. Narayanikutty Kavu,
Assistant,
Regional Passport Office, Cochin. : Applicant

(By Advocate Shri N. Nagaresh)

Vs.

1. Additional Secretary (CPV),
CPV Division, Ministry of External Affairs,
Patiala House, Tilak Marg, New Delhi – 110 001.
2. Joint Secretary (CPV) & Chief Passport Officer,
CPV Division, Ministry of External Affairs,
Patiala House, Tilak Marg, New Delhi – 110 001.
3. Review Transfer Board,
Represented by its Secretary,
Ministry of External Affairs,
Patiala House, Tilak Marg,
New Delhi – 110 001.
4. The Administrative Officer (P.V.IV)
Government of India,
Ministry of External Affairs, (CPV Division),
Patiala House, Tilak Marg,
New Delhi – 110 001.
5. Regional Passport Officer, Cochin. : Respondents

(By Advocate Shri Sunil Jose, ACGSC)

The Applications having been heard on 6.11.2007,
the Tribunal on 09.11.07 delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The above three OAs have been filed challenging the transfer of the applicants therein from Cochin. As the legal issues involved are identical, all the

OAs are dealt with together and a common order passed.

2. (a) Facts as per OA 582/07.:

(i) The applicant is working as an Assistant in the Regional Passport Office, Kochi, is aggrieved by an office order dated 20.08.2007 transferring her to Passport Office, Bangalore vide Annexure A1.

(ii) The applicant was initially appointed as a Lower Division Clerk on 21.1.1991. She was later promoted as an Upper Division Clerk on 19.07.96 and as an Assistant from 5.8.2002. She is a member of the Scheduled Tribe Community. Her husband is presently working as a Rationing Inspector in the Civil Supplies Corporation, Government of Kerala, Emakulam. She has a daughter aged 11 years, presently studying in VI standard and son aged 2 1/2 years. The applicant's widowed mother is also staying with the applicant. The Revised Transfer Policy, 2007, vide Annexure A/2, provides that transfers will be effected strictly based on the length of stay of an official at a station except on certain specified grounds.

(iii) In terms of para (g) of the transfer policy, 'as far as possible, transfer will be effected in such a way that synchronize with the academic term of the school going children of the official concerned'. Annexure A/1 order dated 20.8.2007 was issued in blatant violation of the Policy, Therefore, the applicant submitted a representation dated 5.9.2007, vide Annexure A/3. A statement showing the stay-wise seniority of the of the Assistants of the Regional Passport Office, Kochi, as maintained by the 4th respondent is at Annexure A/4 wherein the applicant is at Sl. No. 8. While those at Sl. Nos. 1, 2, 3 and 4 through transferred in May, 2007 are still retained those at Sl. Nos. 6 and 7 have not even been transferred.

(iv) Annexure A/1 transfer is also opposed to the Government of India DOPT order dated 12.6.1997, vide Annexure A/5. The applicant should have been posted as far as possible, and subject to

administrative constraints near her native place within the region as per O.M. dated 20.06.1989 (Annexure A/6) issued by the Ministry of Personnel, Public Grievances and Pension.

(b) Respondents have contested the OA and their reply is that the applicant has been transferred along with other officials by the Transfer Board of the Central Passport Organization, Ministry of External Affairs, New Delhi, from the Regional Passport Office, Cochin to the Passport Office, Bangalore i.e., within the transfer zone fixed for Group 'C' employees of the CPO. Many transfers have been done by the Transfer Board in public interest.

(c) The applicant has filed her rejoinder in which it has been contended that Smt. Asha Latha Devi who joined the Trichy Passport Office on 9.11.88 was transferred to Trichur and she joined Cochin on 4.2.89. She has never been transferred out of Cochin and she is a person a much longer stay than that of the applicant, as evident from Annexure A4.

(d) Respondents have filed their Additional reply, stating that total 90 Assistants from CPO have been transferred by the Transfer Board out of which 5 were from Regional Passport Office, Cochin. Smt. Ashalehta Devi's name has been left out by oversight in the Transfer Board meeting but she will be transferred within the zone by Administrative decision shortly.

(e) Applicant has in turn filed additional Rejoinder wherein she has stated that several persons transferred from Calicut and elsewhere to Bangalore have not been relieved so far though they have not approached this Tribunal. Initially neither the case of Ashaletha Devi nor that of this applicant was considered by the Transfer Board. The Review Board had no occasion to consider persons for transfer because that was not the object for which the Review Board met.

(f) Respondents in turn filed additional reply to the addl. rejoinder

wherein it has been contended that transfer is an exigency of service and is an administrative matter in which the Courts should not generally interfere, unless such transfers were vitiated with malafide; or were issued by persons not competent to pass such orders. The Apex Court in the case of *S.C. Saxena vs. Union of India* (C.A. No. 280/2003) has also held that "a Government servant cannot disobey a transfer by not reporting at the place of posting and then go to Court to ventilate his grievance."

3. (a) Facts as per OA No. 583/07 :

(i) The applicant, a physically disabled spinster, is working as Assistant in the Regional Passport Office at Ernakulam. She joined in 1978 and was regularised as LDC on 13.06.1985. In 1998, the respondents have transferred the applicant to Kozhikode. The applicant approached this Tribunal in O.A. No. 1581/98 and the Tribunal directed the 2nd respondent to consider and dispose of her representation vide Annexure A/3. The transfer order of the applicant was cancelled and the applicant was permitted to continue at Ernakulam.

(ii) As per A/1 order, the applicant was transferred to Bangalore. Since she is not in a position to move out of the present station, she has submitted a representation vide Annexure A/4 pointing out her disability and the fact that the officials with more station seniority are retained at Ernakulam. The Regional Passport Officer has directed the applicant to be present before a Medical Board on 16.07.07. The applicant has attended the examination and the Medical Board has assessed the permanent disability of the applicant as 40% vide Annexure A/7. In spite of the same, the respondents issued A/2 order rejecting her request to cancel the transfer order. There are senior and junior handicapped officials to the applicant available in the office. The respondents seem to have just picked the applicant out of the same avoiding all the seniors who have continued for years than the applicant at Ernakulam.

(iii) O.M. dated 13.3.2002 modifying O.M. dated 10.05.90 vide Annexure A/9 reiterates that requests from Physically Handicapped Employees for choice posting to or near their native places may be given preference. The applicant who has sought for retention due to the ill health and old age of her dependant mother (70 years) was further troubled by the sudden death of her younger brother and in such circumstances, the present order is made with a mala fide intention to specifically dislodge the applicant alone. In the circumstances, she submitted one more representation on 7.9.2007 to the 2nd respondent, for reconsideration of her transfer as a special case, vide Annexure A-10. The respondents have not passed any orders on the same.

(b) Respondents have contested the OA and their reply is as under:-

(i) The applicant has been transferred along with other officials by the Transfer Board of the Central Passport Organization, Ministry of External Affairs, new Delhi, as per the Revised Transfer Policy, 2007 (Annexure A-8). The applicant has been staying in RPO, Cochin, from 1978. It is prerogative of the Government of India to transfer any Government official from one place to another in public interest.

(ii) On the recommendation of the medical Board, the employees who are 50% or more disabled are exempted from transfer. The applicant is only 40% disabled and staying in the station from 1978.

(c) The applicant has filed her rejoinder in which it has been contended that A-7 certificate obtained by the respondents directly without the knowledge of the applicant recording the percentage of disability of the applicant has been initially forwarded without recording the percentage of disability and the present one recording 40% disability has been obtained on a subsequent date after getting an entry in the said column as a correction. The applicant is more than 50% handicapped lady having permanent partial

disability of right lower limb due to post Polio residual paralysis, vide disability certificate issued by the medical Board of General Hospital on 24.05.2002 at Annexure A-11. The averments of the respondents that as a policy measure they are retaining only those who are having 50% handicap is absolutely illegal and arbitrary.

4. (a) Facts as in OA No. 641/07:

(i) The applicant is working in the Regional Passport Office, Cochin. She has already undergone two transfers. She is aged 57 years and due to retire within three years. Clause (e) of the Revised Transfer Policy, 2007 (Annexure A/1) issued by the respondents stipulates that in such cases the official should be posted to a Passport Office of his/her choice. On coming to know of Annexure A/1 Policy, the applicant has opted to be retained at Regional Passport Office, Cochin, vide Annexure A/2.

(ii) The applicant is physically handicapped with locomotor disability of lower right limb to the extent of 53% as on 7.11.2001, vide Annexure A/3. She requires help to carry out household chores, hence she is residing at Thrissur along with her relatives.

(iii) The Ministry of Personnel has issued an O.M. dated 13.03.2002 (Annexure A/4) that all physically handicapped persons should be posted to or near their native places. The Ministry of External Affairs has granted permission to the applicant to act as Honorary manager of an Aided Primary Schools being attended by 250 pupils, belonging to her family as per order dated 23.02.1994. The applicant is acting as such even now.

(iv) There are many persons who have rendered longer service in Cochin. The applicant was transferred from Cochin to Bangalore vide Annexure A/5 presumably to facilitate transfer of another person from Bangalore to Malappuram. Aggrieved by Annexure A/5, the applicant preferred a representation dated 15.05.2007, vide

Annexure A/6 which was not favourably considered, but rejected vide Annexure A-7 order dated 20.08.2007. Applicant has submitted two representations vide Annexures A/8 and A/9.

(v) O.A. No. 636/2007 was filed by the applicant which was disposed of by this Tribunal directing the respondents to take a decision on Annexure A/9 within two weeks.

(b) Respondents have contested the OA and their reply is as under:-

(i) The applicant has been transferred along with other officials by the Transfer Board of the Central Passport organization, Ministry of External Affairs, New Delhi, that is within the transfer zone fixed for Group 'C' employees of the Central Passport Organization. In the case of the applicant, she was initially appointed in 1980 in Passport Office, Kozhikode, and she worked there till 15.07.1982. She was transferred to RPO, Cochin, and has been working there till date from July, 1982 onwards.

(ii) As regards the contentions of the applicant that she is physically handicapped to the extent of 53%, as per the certificate issued by the District Medical Board to which she was subjected to, the applicant is only 40% disabled. On the recommendations of the Medical Board, the employees who are 50% or more disabled are exempted from the transfer. So, it is desirable to transfer her within the transfer zone.

(iii) As regards the Ministry's permission to the applicant to act as Honorary Manager of an aided Primary School, which belongs to her family, it does not come in the way of her transfer to another nearby Station, and it is not binding.

(iv) The Apex Court in the case of S.C. Saxena vs. Union of India and Another reported in 2006 SCC (L&S) 1890, has held that "a Government servant cannot disobey a transfer by not reporting at the place of posting and then go to Court to ventilate his

grievance. It is his/her duty to first report for work where he/she is transferred and make a representation as to what may be his/her personal problems. Such tendency of not reporting at place of posting and indulging in litigation needs to be curbed..... Therefore, there is no reason to interfere with the order made by Tribunal and High Court".

(c) The applicant has filed her rejoinder in which it has been contended as follows:

(i) There are vacancies of Assistants in Passport office, Malappuram. The applicant could have been transferred to Malappuram Passport Office. Representation dated 31.8.2007 was submitted to the 2nd respondent vide Annexure A-13. The respondents did not consider that request at all and condemned the applicant to go out of State.

(ii) There are a number of other officials working in Cochin Passport Office continuously since 1978, i.e. for more than 29 years. The applicant has at least undergone a transfer to Kozhikode Passport Office in 1980 and remained there till 1982. The applicant's service is not the longest service in Cochin Station. M/s. A.G. Geetha, Suseela Devi, T. Omana etc. have longer service in Station.

(iii) Clause (e) of Annexure A-1 policy is intended to be applied during the general transfers coming due before the three year period. The transfer orders issued in May, 2007, were the general transfer orders coming prior to applicant's three year period prior to superannuation. Hence Clause (e) of Annexure A-1 Policy ought to have been applied in the case of the applicant, which obviously was not done.

(iv) The nearest Passport Office for the applicant is at Malappuram and the applicant had represented for a posting there as per Annexure A-13. The respondents have not properly

considered applicant's representations in the light of Annexure A-1 Revised Transfer Policy, but rejected it vide order dated 29.10.2007 at Annexure A-15.

5. Arguments of the Counsel: Counsel for the applicants in their arguments struck a symphonic syndrome contending that the recent transfer policy is the latest professed norms and many of the norms have not been followed while effecting transfer. In short, their arguments revolved round the policy and how they have been violated. These in nutshell are as under:-

- (a) Transfers upto UDC were hitherto avoided and the applicants having become Assistant recently only, station seniority should be based on their holding the present post.
- (b) Station seniority has not been correctly worked out. As for example, in respect of those whose dates of regularization have recently been advanced, the same were with a rider that such advancement would not give any benefit of seniority. As such, if seniority is not to be counted for promotion etc, the same should not also count for station seniority for transfer. (This argument has been advanced by counsel in OA No. 583/07, in whose case the advancement of date of regularization was w.e.f. 1978 but seniority as of 1985 originally fixed had been maintained.)
- (c) Vide (e) of the policy, as far as possible, three years prior to superannuation, an official will be posted to a Passport Office of his choice which should be indicated a year ahead of the date on which he/she will be attaining the age of 57 years. This has, as per the counsel for Applicant in OA No. 641/07, not been followed in respect of that Applicant.
- (d) In so far physically handicapped persons are concerned, fixation of 50% as the benchmark for retention is arbitrary. According to the counsel, in so far as reservation for physically handicapped

persons, vide D.O.P.T. OM dated 4th June, 1998, the minimum degree of disability in order for a person to be eligible for any concessions/benefits would continue to be 40%. Applicants in OA 583/07 and 641/07 are covered by this.

- (e) The other domestic circumstances as reflected in the representations of the applicants have not been considered.
- (f) Seniors have been retained, while transfer has been effected upon the juniors. Counsel for the applicant in OA No. 582/07 argued that initially the respondents contended that the transfer has been effected strictly in accordance with the latest transfer policy, but when the fact that one Ms. Ashalatha has not been transferred had been pointed out in the rejoinder, the reaction of the respondents was that the same was omitted by oversight and she would be transferred shortly. The counsel argued that if Ashaletha, who has longer station seniority happens to be transferred, then there would be no requirement for further transfer and the applicant in OA No. 582/2007 should be retained.
- (g) Other than referring to the General Transfer Policy, there has been no specific mention about any "administrative exigency" warranting the transfer.
- (h) In the case of Applicant in OA 582/07, her transfer was originally not at all considered and it was by a review that the same was considered. However, as per the counsel for the applicant, such a review to trap junior candidates is impermissible. The transfer order is in the middle of the academic session.

6. Counsel for the respondents have also in a single tone, argued that the scope for judicial interference is limited and as per the decision of the Apex Court, in fact, persons transferred should first obey the order and then only could

proceed to agitate against it. Certain decisions have also been cited by them.

7. Arguments were heard and documents perused. In two other cases, earlier, this Tribunal disposed of the O.A. directing the respondents to consider accommodating the applicants in Malappuram, where, as per the data furnished by the applicants in those cases, vacancies therein exist. In those cases, even the station seniority afforded to them had been held to be incorrect. Here again, in so far as Applicant in OA 583/07 is concerned, it has been argued by the counsel for the applicant at the bar that the applicant in the said OA is similarly situated as the applicants in the other OAs decided as stated above earlier. The date of regularization having been advanced has been specifically mentioned as not for seniority purposes and as such, the pre-dating of regularization would not affect the seniority which is around 1985. From that point of view, the applicant cannot be considered as senior for the purpose of transfer.

8. Applicants in OA 583/07 and 641/07 are physically handicapped. Their original extent of disability was more than 50%. However, on medical examination conducted by the Board in the recent past, their percentage of disability was certified as 40%. Counsel for the applicant in OA 583/07 submitted that as per the applicant, she was given to understand that the Hospital authorities had initially kept blank the column relating to extent of handicap and it was after a month or so, that it was written as 40% and as such, he doubts the correctness of the entry made. This dispute need not dilate us here, for, if as per Nodal Ministry's policy, 40% is the benchmark for recruitment, the same should hold good for exemption from transfer as well.

9. Clause (e) of the Policy has been given a complete go bye.

10. Thus, there is full substance in the contention of the counsel for the applicants. There appears no other administrative Exigency in effecting the transfer. The Tribunal is not oblivious of the limited scope of judicial review but what is to be seen is whether uniformity is followed, without any discrimination and whether the attendant aspects such as posting both the husband and wife together for the welfare of their children, avoiding transfer at the middle of the academic session etc., have been kept in view. From this angle, all the three cases deserve reconsideration. The applicants are not averse to be shifted at all, and all that they plead is that in case transfer is inevitable on account of absolute necessity, they may be posted within the same State. It is stated that there are vacancies at Malappuram. Their claim thus, being reasonable, the OAs are disposed of with a direction to the respondents to have a re-look of all the cases taking into account (a) the fact that persons with 40% disability be treated as one within the exempted category for transfer; (b) relative seniority shall be corresponding to the seniority in the grade of LDC (as in OA 583/07) and (c) after considering the retention cases, all those who are to be transferred be shifted strictly according to their station seniority and preferably after the academic session (at least in those cases where school going children are there) ^{or} those who are in the age of 56, should be first asked to give their option as per clause (e). Till such a decision is taken, the impugned orders in the above cases shall be kept in abeyance and in case any of the applicants are to be transferred, fresh orders be passed.

11. Under these circumstances, there shall be no orders as to costs.

(Dated, the 9th November, 2007)

(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.