

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.585/98

Friday this, the 5th day of February, 1999.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

K.Gopalakrishnan,
Zonal Director,
Cochin Zonal Base of Fishery Survey of India,
Kochangady,
Cochin-5.

..Applicant

(By Advocate Shri S.Parameswaran)

vs.

1. Director General,
Fishery Survey of India,
Sir P.H.Road, Mumbai-400 001.
2. Secretary to Govt. of India,
Ministry of Agriculture, Department of
Animal Husbandry and Dairying, Krishi Bhavan,
New Delhi.
3. K.P.Philip, Zonal Director now under orders of
Transfer to Cochin base of Fishery Survey of India,
Cochin-5.
4. Dr.V.S.Somvanshi,
Director General,
Fishery Survey of India, Bottawala chambers,
Sir P.M.Road, Mumbai- 400 001.

..Respondents

(By Advocate Mr. Govindh K.Bharathan, SCGSC(R4)
Mr.Thomas Mathew Nellimoottil(R1-2)
Mr.Rajeev Jose (R3)

O R D E R

Shri K.Gopalakrishnan, Zonal Director in the Fishery Survey of India was by order dated 7.4.1998 (Annexure A-I) issued by the first respondent, transferred to Vishakhapatnam while the third respondent was transferred from Vishakhapatnam to Cochin. The applicant is aggrieved by the order of transfer. Therefore, he has filed this application to set aside the Annexure A-1 order and for a direction to the respondents 1 and 2 to allow the applicant to continue as Zonal Director, Cochin Base of Fishery Survey

of India declaring that he is entitled to continue at Cochin till regular transfer policy is formulated and implemented in accordance with law.

2. The applicant has impleaded Dr. V.S.Somvanshi the incumbent in the office of the first respondent in his personal capacity as the 4th respondent as he has averred in the application that the impugned order of transfer purportedly issued in public interest was really motivated by malice in the mind of Dr.Somvanshi against the applicant. It is alleged that the applicant has filed O.P.1738/98 before the High Court of Kerala challenging the selection and appointment of Dr.Somvanshi as the Director General of the Fishery Survey of India and that therefore the 4th respondent, out of malice, has transferred the applicant to Vishakhapatnam with a view to prevent his conducting the litigation against him. It is alleged in the application that the applicant had been during the 17 years of his service subjected to 8 transfers while many Zonal Directors and Scientists, whose names are given in paragraph 2 of the application, have been left undisturbed for very long period, that the norms generally applicable to the Central Govt. servants are not made applicable to the employees working in the Fishery Survey of India, that no separate norms have been formulated for the transfer and posting of the officials of the Fishery Survey of India, that the absence of such norms confers unfettered freedom on the competent authority to transfer officials, that the impugned order has been issued with a view to give the third respondent a convenient posting at Cochin, that even on earlier occasions the third respondent had been favoured with comfortable posting enabling

him and his wife who is working in the South Indian Bank to serve at the same stations, that no public interest is served by the impugned order of transfer, that the impugned order has been issued to achieve oblique motive of harassing the applicant, that the first respondent had denied permission to the applicant to register for PhD in Cochin University by Annexures A-2 and A-3 orders, that the applicant's complaint against Shri V.K.Gopinathan was not taken care of by the first respondent, that the applicant was denied the air fare for his journey to participate in the personal talk with the Union Public Service Commission and that all these would disclose the enmity of the 4th respondent towards the applicant and that as the order is vitiated by malafides, the same may be set aside.

3. All the respondents have filed separate and individual reply statements.

4. In the reply statement filed by respondents 1 and 2, it has been contended that the transfer of the applicant has been made in public interest on a review of the working and with a view to improve the performance as the presence of the 3rd respondent was found essential at Cochin for improving the performance of vessels and survey activities and that the O.P filed by the applicant before the High Court has no nexus with the order of transfer. It is contended that the O.P.1738/98 was filed by the applicant before the High Court not challenging the appointment of the 4th respondent as Director General of Fishery Survey of India but challenging the order of the Tribunal rejecting O.A.1146/95 filed by the applicant challenging the selection of the 4th respondent with a direction to the applicant to pay a cost of.

Rs.5000/- and that the malafides, if any, is only in the mind of the applicant.

5. The 4th respondent has in his reply statement inter alia refuted the allegation of malafides and has stated that the transfer of the applicant was effected only in public interest to improve the functioning of the Cochin Zone. It is contended that when the applicant applied for permission to register for PhD in Cochin University he was asked to postpone the decision in Annexures A2 and A3 orders for the reason that organisational change was under contemplation as also facility for research was being made available in the Fishery Survey of India itself. The 4th respondent has reiterated that in issuing the impugned order he was guided only by public interest.

6. The third respondent in his reply statement has contended that he was not favoured in the matter of posting, that throughout his career he did not have a chance to work in his native State and as there is only a short period left for him to reach the period of superannuation, his posting at Cochin cannot at all be considered unreasonable.

7. The applicant has filed a rejoinder in which he has reiterated the contentions put forth in the application and raised a contention that as the transfer of the applicant was punitive in nature, it is vitiated for denial of principles of natural justice as he was not given an opportunity to show-case. He has also contended that the 4th respondent in fairness should not have issued the order of transfer of the applicant as litigation between him and the applicant was pending before the High Court.

8. I have heard the arguments of Shri Parameswaran, Senior Counsel appearing for the applicant at considerable length and I have also heard the Sr. Central Govt. Standing Counsel for respondent 4 and Mr. Thomas Mathew Nellimoottil, the learned counsel appearing for the respondents 1 and 2.

9. Sri Parameswaran, the learned Senior Counsel of the applicant stressed mainly three points in his argument against the impugned order. The first and foremost point stressed by him is that the impugned order is vitiated by malafides as it was made not in the exigencies of service but to wreck the private vengeance of the 4th respondent as the applicant had filed O.P.No.1738/98 before the High Court of Kerala challenging his selection and appointment as Director General of Fishery Survey of India. The learned Senior Central Govt. Standing Counsel appearing for the respondent 4 admitted that the applicant had filed O.P.No.1738/98 before the High Court of Kerala but has stated that this O.P. was not filed challenging the selection and appointment of the 4th respondent as Director General of Fishery Survey of India, but challenging the order of this Tribunal in O.A.1146/95, an application filed by the applicant challenging the selection of the 4th respondent which was rejected by the Tribunal by order dated 20th October 1997 with an order to the applicant to pay cost of Rs.5000/- to the respondents 1 to 4 in that O.A. excepting the 5th respondent therein, who is the 4th respondent in this case as he had not appeared to contest the case. If the 4th respondent had any enmity towards the applicant on account of his filing O.A.1146/95

challenging the selection of the 4th respondent as Director General, Fishery Survey of India, he could very well have transferred the applicant during the pendency of the said O.A., argued the learned counsel. Sri Parameswaran invited our attention to Annexure-A2 letter dated 6.3.97 and A3 letter dated 16.2.98 wherein the applicant was informed that the first respondent had not acceded to the request of the applicant for permission to register at the Cochin University for PhD and argued that the attitude of the 4th respondent in denying a chance for career advancement of the applicant, would disclose the hostile animus of the 4th respondent towards the applicant and that nothing more is required to bring home the allegation of malafides. He further argued that the action of the administration in denying him airfare to Delhi for attending the personal talk with the Union Public Service Commission and paying only the 1st class train fare as also not taking any action on the complaint of the applicant against one Sri V.K.Gopinathan also expose the discriminatory attitude meted out to the applicant. The Sr.Central Government Standing Counsel referred to the contention of the first respondent that the applicant was advised to put off his registration for PhD with the Cochin University by the letters Annexures A-2 and A-3 because changes in the Fishery Survey of India was anticipated and facility for conducting research was being made available with the department itself. He argued that the fact that the applicant was asked to put off his idea of registering with the Cochin University, therefore, cannot be considered as malafide. He also referred to the contention of the first respondent that the applicant was paid eligible conveyance

charges for attending the personal talk with the Union Public Service Commission as in the case of other officers like him and above him and that the complaint of the applicant against Sri V.K.Gopinathan was immediately forwarded to the Ministry for further action and argued that the case of the applicant that the first respondent has refused due conveyance charges to the applicant and that he did not take action on the applicant's complaint against Sri Gopinathan also is devoid of substance. Learned Sr.Central Govt.Standing Counsel with considerable tenacity argued that in the voluminous pleadings of the applicant contained in the application as also in the rejoinder, there is nothing which would establish that the 4th respondent has exhibited any hostile animus towards the applicant. The first respondent being the Head of the Organisation has on a review of the working of the different zones under him in public interest decided to transfer the third respondent and to post him at Cochin only with a view to improve the functioning there and not because of any malafides against the applicant or with a view to confer on the third respondent any benefit as even according to the applicant there is no special reason for the first respondent to favour the third respondent, argued the learned Sr.Central Govt.Standing Counsel. He argued that it is not enough if wild allegations of malafides are raised, but to succeed the applicant should be able to establish the same and that in this case, the applicant has miserably failed. Sri Parameswaran, the learned Senior Counsel of the applicant argued that as the applicant has admittedly filed a case against the 4th respondent before the High Court of Kerala, it is not unreasonable to presume that the 4th respondent has transferred the applicant out of malafides arising out of the enmity being adversary in a litigation and with a view to cause impediments in the applicant's prosecuting the

matter before the Hon'ble High Court of Kerala as in the ordinary course of human conduct, the 4th respondent may not be happy with the applicant because he had challenged the 4th respondent's appointment as Director General. Malafide being a state of mind can be gathered from the surrounding circumstances and if the circumstances of the case are taken into consideration as a whole, the applicant has succeeded in establishing the hostile animus of the 4th respondent against the applicant and that this hostile animus was the root-cause for issue of the impugned order, argued the learned counsel. While admitting that the consistent view of the Apex Court in regard to orders of transfer of officials holding a transferable post is that unless the order is vitiated by malafides, judicial intervention is not justified. Sri Parameswaran argued that there is plethora of rulings of the Apex Court holding that where malafides are established, the Courts and Tribunals should not hesitate to strike down the impugned orders. As the above position is well-established and is covered by a catena of judicial pronouncements, it is not necessary to catalogue the various rulings cited by the learned Senior Counsel in this regard. The question is whether the applicant has been able to establish that the impugned order transferring the applicant from Cochin to Vishakhapatnam was not one issued in public interest as it was purported to be, but with an oblique motive to harass the applicant and to preempt him from conducting effectively O.P.1738/98 before the High Court of Kerala as contended by him. If the transfer of the applicant from Cochin to Vishakhapatnam was motivated by the illfeeling of the 4th respondent against the applicant for his challenging the 4th respondent's selection and appointment, the 4th respondent could have transferred the applicant

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immediately on filing of O.A.1146/95. Even though the 4th respondent in this case was impleaded in his personal capacity as respondent No.5 in O.A.1146/95, it is seen from the certified copy of the order of the Tribunal in that case (Annexure-R4A) that the 4th respondent did not bother to appear and contest the case, but left it to the Tribunal to decide the case on merits without raising any contention on his behalf. Even though the order of the Tribunal dismissing the Original Application was passed on 20th October 1997 the order transferring the applicant and the 3rd respondent was issued only on 7th April 1998. Though in the ordinary course of human conduct, one may not welcome any litigation against oneself, it is not an unexceptionable rule of conduct that a person would be inimical towards another who has filed a case impleading him. Therefore, just because the applicant has filed O.P. 1738/98 in the High Court of Kerala challenging the order of the Tribunal in O.A.1146/95 rejecting his application with an order to pay Rs.5000/- as costs, I am not persuaded to infer that the 4th respondent is motivated by malice against the applicant and that was the reason why the impugned order transferring the applicant was issued. I do not find any reason to disbelieve the case of the first respondent that it was for the purpose of improving the functioning of the Cochin zone, that the third respondent was transferred to Cochin from Vishakhapatnam on a dispassionate and matter of fact review of the functioning of the respective zones. Just because the applicant has filed a case impleading the 4th respondent, i.e. the first respondent in his personal capacity, the first respondent cannot discard his official duties as the Director General of Fishery Survey of India to see that the establishment including the various

zones functioned in the most effective manner. There is nothing to indicate that the 4th respondent has any special interest in the third respondent to presume that the impugned order was issued to confer any benefit on the third respondent. I therefore hold that the applicant has not been able to establish that the impugned order is vitiated by malafides and not issued in public interest.

10. The next point argued by the learned Senior Counsel of the applicant is that as a litigation before the High Court between the applicant and the respondents including the 4th respondent is pending, the 4th respondent should not have issued the impugned orders of transfer as it would appear that the order was vitiated by bias. Propriety demanded the first respondent not to issue the order himself but to delegate the power to some other authority in the establishment who could dispassionately decide whether such a transfer was needed or not, argued the learned Senior Counsel. In support of this contention that even an apprehension of bias in the mind of the affected person is sufficient to vitiate the order, Sri Parameswaran referred to a number of rulings of the Apex Court. To mention some of them, he referred to Institute of Chartered Accountants of India vs. L.K. Ratna and others, AIR 1987 SC 71; the Andhra Pradesh State Road Transport Corporation vs. Sri Satyanarayana Transports (Private) Ltd., Guntur, AIR 1965 SC 1303 and Dr. G. Sarana vs. University of Lucknow and others, AIR 1976 SC 2428. I have carefully gone through all these decisions cited by the learned Sr. Counsel. The facts of the cases have no comparison to the facts of the case on hand and the principle enunciated therein that the domestic Tribunal or administrative authority taking decision on rival claims should be free from even apprehension of bias, has no

application to the instant case because in this case the impugned order is of an order of routine administrative nature, i.e. the transfer of an officer from one station to other, where the question of consideration of rival claims does not arise. Learned Sr.Counsel again referred me to the following decisions:

- i) Cottle vs. Cottle, (1939) All E.R. 535
- ii) The King vs. Sussex Justices, (1924) K B. 256
- iii) Regina vs. Altrincham Justices, (1975) 1 Q.B. 549
- iv) R vs. Grimsby Borough Quarter Sessions, (1955) 3 All E.R. 300

These cases also relate to either hearing of criminal cases or adjudication of rival claims. Therefore the principle enunciated in these cases also have no bearing to the issue on hand.

11. The next point argued by the learned Sr.Counsel is based on the contention of the respondents in the reply statement that the decision to transfer the applicant was taken in public interest on a review of the functioning of the Cochin zone and with a view to improve the functioning as it was decided that the posting of the third respondent as Zonal Director, Cochin, would be in public interest. The learned Sr.Counsel argued that before arriving at a decision that the functioning of the Cochin zone needed improvement and to transfer the applicant out of Cochin zone, the principles of natural justice demanded a notice to be given to the applicant informing him of his short-comings and affording an opportunity of hearing to him. The impugned order of transfer purportedly for the better functioning of the Cochin zone, is punitive in nature and therefore, the order issued without giving the applicant a notice and an opportunity of hearing is vitiated for violation of the principles of natural justice, argued the learned Sr.Counsel.

I am not at all impressed by this argument. As the Director General of the Fishery Survey of India, it is the duty of the first respondent to chalk out programmes for better functioning and to distribute the officers working under him in different zones taking into account the requirement in each zone and potential of the officer concerned. In doing so, it would not be practicable to inform every official that he is going to be transferred for such and such reasons and to call for his explanation or to give him an opportunity of hearing. If the competent authority is to give a notice to the officers who are to be transferred and to hear all of them, I am of the considered view that it would be next to impossibility to run an establishment. The transfer for effective functioning of an establishment cannot be considered by any stretch of imagination, as punitive. Therefore the argument that natural justice had been denied to the applicant as a notice was not given to him before deciding to transfer him has no merit at all.

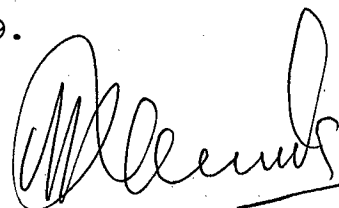
12. The last limb of the argument of the learned Sr.Counsel of the applicant was that as there is no specific norms regarding transfer applicable to the Fishery Survey of India, the unfettered right of the first respondent to transfer the officers under him to any place at his sweet-will and pleasure would lead to nepotism and arbitrariness and as that has happened in this case, the applicant is entitled to the reliefs for a declaration that he is entitled to continue at Cochin till regular transfer policy is formulated and implemented in accordance with law as prayed for in sub-para (d) of para 8 of the application. I find no merit in this argument. The policy and guidelines in regard to transfer are only intended for the guidance of the

competent authority in effecting transfers. They do not clothe the official holding a transferable job with any right to be enforced in a Court of law. Transfer is an incident of service and if that is done in public interest and in the exigencies of service, even non-observance of the norms and guidelines would not affect its validity and judicial intervention would be justified only in cases where the order is vitiated by malafides or colourable exercise of power. As observed by Their Lordships in Gujarat Electricity Board and another vs. Atmaram Sungomal Poshani, (1989)2 SCC 602:

"4. 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."

13. In the light of the above discussion finding no merit in this application, I dismiss the same leaving the parties to bear their own costs.

Dated the 5th day of February, 1999.



A.V. HARIDASAN
VICE CHAIRMAN

LIST OF ANNEXURES

1. Annexure A1 : A true copy of the Order No.8-7/90-E.I dated 7.4.1998 issued by the first respondent.
2. Annexure AII : A true copy of the letter No.F5-26/95 E-J dated 6.3.97 sent by the first respondent to the third respondent.
3. Annexure AIII: A true copy of letter No.K-No.5-26/91 E-1 dated 16.2.1998 sent by the first respondent to the third respondent.
4. Annexure R4A : Photo copy of the order of the Central Administrative Tribunal, Ernakulam Bench in OA.1146/95 dated 28.10.1997.

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