

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA 587/2005

.THURSDY THIS THE 16TH DAY OF FEBRUARY, 2006

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

C.Sreenivasan, aged 57 years
S/o late Achuthan Nair,
Assistant Project Officer,
Kerala State Social Welfare Board,
Trivandrum.10.
Residing at Sree Nilayam, PO Viyyoor,
Trichur.Applicant

(By Advocate Mr. P.V.Mohanan)

V.

- 1 The Chairperson,
Central Social Welfare Board
B.12, Qutab Institutional Area,
New Delhi
(Ministry of Human Resources Department)
Government of India.)
- 2 The Joint Director
Central Social Welfare Board,
B.12, Qutub Institutional Area,
New Delhi.
- 3 Union of India, represented by
Secretary, Government of India,
Department of Women and Child Development,
Ministry of Human Resources Department,
New Delhi.Respondents

(By Advocate Mr.Sunil Jose, ACGSC)

The application having been heard on 13.2.2006, the Tribunal on 16 .
2.2006 delivered the following:



ORDER

The applicant is aggrieved by the Annexure.A1 Office Order dated 25.5.05 by which he was transferred from the State Board of Kerala and posted to that of Mizoram alongwith 55 other field officers transferred and posted to the various State Boards on administrative grounds and in public interest. The applicant's name appears at Sl.No.19. As far as his transfer is concerned, the applicant submits that it is a punitive action and not in administrative or public interest, as claimed by the respondents in the aforesaid order dated 25.5.05. He has also submitted that his wife is employed in a public sector undertaking in Kerala stationed at Ernakulam and his transfer to Mizoram is against the guidelines issued by the Government of India vide OM No.28034/7/86-Estt.(A) dated 3.4.1986 which reads as under:

"Where one spouse is employed under the Central Government and the other spouse is employed under the State Government: "The spouse employed under the Central Government may apply to the competent authority and the competent authority may post the said officer to the station, or if there is no post in that station, to the state where the other spouse is posted."

His challenge to the transfer order is also on the third ground that he is due to retire on 30.4.2008 and according to the guidelines, he should have been retained at his last place of posting in his home state, as far as possible.

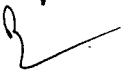
2 The applicant has approached this Tribunal earlier vide OA 445/05 against the same impugned order dated 25.5.05 which was

disposed of vide Annexure.A2 order dated 14.6.05 with a direction to the respondents to consider his representation dated 7.6.05 and to take a decision in the matter within a period of two months and till a decision is taken status quo as regards the applicant's continuance has to be maintained. It is pursuant to the said order dated 14.6.05 that the Annexure.A3 memo dated 26/28.7.2005 has been passed by the Respondent No.2 rejecting his request for retention in Kerala State Board but to consider his request at an appropriate time in future and directing him to join his place of posting by 5.8.05. When the applicant approached this Tribunal with this OA for the second time impugning both the aforesaid transfer order dated 25.5.05 and rejection memo dated 26/28.7.2005 an interim order was passed on 4.8.05 to keep the order dated 25.5.05 in abeyance.

3 The respondents have submitted that the impugned transfer order dated 25.5.05 is not an isolated transfer order but it involves large number of field officers working in various State Boards in different States of the country. They have also submitted that the applicant is working in a post which has an all India transfer liability and he cannot choose his station of posting to suite his convenience alone. According to them the transfer of the applicant is purely on administrative grounds and in public interest. They have further submitted that the applicant was appointed as a direct recruit Welfare Officer in the year 1980 and was appointed against a vacant post in the Kerala Board. He was transferred to Lakshadweep from 1986 to

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1989. From 1989 to 1994 the applicant remained posted in Kerala itself. From August, 1994 to June, 1996 he was transferred to Tamil Nadu. Again he was transferred back to Kerala State Board in June, 1996 and from that time onwards he is in the Kerala State Board. The contention of the respondents is that the OM dated 3.4.86 issued by the Government of India is only a guideline for the purpose of regulating the all India transfers and it cannot be implemented in letter and spirit ~~xxxxxx~~ in impracticable situations. The guideline regarding transferring an incumbent who is on the verge of retirement is also not applicable in the case of the applicant as his retirement is three years away from now. The respondents have sought to justify the transfer on their averments in the reply statement that there were several allegations against the applicant like submission of false TA bills, complaint from the Chairperson of the Kerala State Board regarding his corrupt practices, manipulations and harassing voluntary institutions with malafide intentions etc. There were also several requests to the first respondent to transfer the applicant from the Kerala State Board in public interest. According to the respondents the complaints received against the applicant were got inquired into by the 1st respondent and on the same being found to be true, "the extreme step of transferring the applicant from Kerala to a far flung area had to be resorted to in public interest". The applicant was also found to be guilty of travelling abroad without the permission of the Central Board.



4 The applicant has filed a rejoinder to the reply filed by the respondents. He has produced a copy of the DO letter dated 31.5.05 written by the Chief Minister of Kerala to the Hon'ble Union Minister of Human Resources Development requesting him to retain the malayalee field officers in the State itself in the best interest of State and public. He had also produced a copy of the resolution said to have been passed by the State Board which met on 31.5.05 in which the en-mass transfer of field officers by the Central Social Welfare Board was discussed in detail and came to the conclusion that such transfers adversely affects the implementation of the programmes of the Board and is against the interest of the State. Since the field officers have to deal with village level women workers, who knows only local language ie., Malayalam it will be extremely difficult for them to interact with the field officers from other states. The State Board has, therefore, unanimously resolved to retain the present field officers who know Malayalam in the State and to post out non-malayalee officers to their native States since the women workers are facing communication difficulties.

5 I have heard the counsels of the applicant and respondents. I have also perused the documents available on record. One thing is clear from the pleadings that this is not a routine administrative transfer. It is true that the reasons advanced by the applicant that his wife is working in State of Kerala itself and he is to retire on 30.4.2008 are not good enough reasons to restrain the respondents

from transferring him from the State Board of Kerala to another State Board. But, I do find substance in the other ground taken by the Applicant that his transfer is a punitive action and it is not in administrative or public interest. The reply submitted by the respondents is quite contradictory to what is stated in the impugned transfer order. On the one hand the respondents have stated in the impugned order in a general manner that the transfers of the 56 officials mentioned in the said order were purely on administrative ground and on public interest and on the other hand they stated in the reply affidavit that "complaints against the applicant was got inquired into by the 1st respondent and on the same being found to be true, the extreme step of transferring the applicant from Kerala to a far flung area had to be resorted to in public interest". It was further stated in the reply affidavit that his transfer was on account of his misconduct such as submission of false TA bills, complaint from Chairperson of the Kerala State Board regarding corrupt practices, manipulation and harassment of voluntary institutions with mala fide intentions etc. From the submissions made in the affidavit it has been established beyond any doubt that the impugned transfer of the applicant was for certain other extraneous reasons and not in any public interest. By transfer of employees from one place to another, such alleged misconduct cannot be prevented. There is no guarantee that such employees would not repeat the same misconduct in their new place of posting. The remedy to deal with such situations lies



elsewhere and not in transfer. As held by the Hon'ble High Court of Kerala in **P.Pushkaran V. The Chairman, Coir Board, Cochin and others, 1997(1) SLR 309** "what is ostensible in a transfer order may not be the real object. Behind the mask of innocence may hide sweet revenge, a desire to get rid of an inconvenient employee or to keep at bay an activist or a stormy petrel. When the Court is alerted, the Court has necessarily to tear the veil of deceptive innocuousness and see what exactly motivated the transfer. This Court can and should, in cases where it is satisfied that the real object of transfer is not what is apparent, examine what exactly was behind the transfer". In the present case also the order of transfer is a very innocuous one saying that all the transfers in the impugned order dated 25.5.2005 have been made "on administrative grounds and in public interest". Instead of this Tribunal tearing the veil to find out the real reason for the transfer of the Applicant in the wake of his allegation that no administrative or public interest was involved in his transfer, the Respondents themselves have come out with their explanation that "complaints against the applicant was got inquired into by the 1st respondent and on the same being found to be true, the extreme step of transferring the applicant from Kerala to a far flung area had to be resorted to in public interest". In view of the Respondents' own admission above, the transfer order in respect of the Applicant cannot be sustained, being a punitive one. Accordingly, the OA is allowed and the impugned Annexure.A1 order in respect of the

the applicant is quashed and set aside. The consequent memo dated 26/28.7.2005 rejecting his request for retention in Kerala has also been quashed and set aside. No order as to costs.

Dated this the 16th day of February, 2006


GEORGE PARACKEN
JUDICIAL MEMBER

S.