

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 620 of 2009

Friday, this the 22nd day of January, 2010

CORAM:


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

A.K. Shaji,
Project Officer,
Kerala State Social Welfare Board,
Trivandrum,
Residing at : Attoor, TC 22/190,
Swati Nagar, Lane 1, Peroorkada,
Trivandrum – 5

... Applicant.

(By Advocate Mr. P. Vijaya Kumar)

v e r s u s

1. Central Social Welfare Board,
Represented by Executive Director,
Samaj Kalyan Bhavan,
B 12, Institutional Area,
New Delhi -110 609
 2. Chairperson,
Central Social Welfare Board,
Samaj Kalyan Bhavan,
B 12, Institutional Area,
New Delhi -110 609
 3. Joint Director (F O ESTT),
Central Social Welfare Board,
Samaj Kalyan Bhavan,
B 12, Institutional Area,
New Delhi -110 609
 4. Deputy Director (F O ESTT),
Central Social Welfare Board,
Samaj Kalyan Bhavan,
B 12, Institutional Area,
New Delhi -110 609
 5. Kerala State Social Welfare Board,
Represented by Secretary,
Sasthamangalam, Trivandrum – 10
 6. Chair Person,
Kerala State Social Welfare Board,
Sasthamangalam, Trivandrum
- 

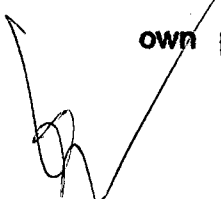
7. Dr. Philipose,
Project Officer,
Kerala State Social Welfare Board,
Represented by Secretary,
Sasthamangalam, Trivandrum ... Respondents.

[By Advocates Mr. P. Nandakumar (R1-6)
Mr. S.M. Prasanth (R-7)]

The Original Application having been heard on 14.01.2010, this Tribunal on 22-01-10 delivered the following :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant functioning as Assistant Project Officer (APO for short) was, by Annexure A-1 order dated 09-08-2005 was posted as Project Officer of Tamil Nadu State Board. By Annexure A-2 order dated 29th May 2006 he was transferred to Karnataka. By order dated 06-06-2008 he was transferred to Kerala State Social Welfare Board, Trivandrum on administrative grounds, viz for making arrangements of Parliamentary Standing Committee Meeting scheduled to be held on 17-07-2008, vide Annexure A-3. On joining the Kerala State Board, he was allotted the work as per Annexure A-4. It is pertinent to mention here itself that respondent No. 7 who was posted as Project Officer was also allotted work by the very same Annexure A-4 order dated 02-08-2008. By Annexure A-5 order dated 20th May 2009 the private respondent No. 7 was, among others, transferred to A & Islands, while the general transfer order did not contain the name of the applicant. And on the strength of the said transfer order, the said private respondent was also relieved of his duties, vide Annexure A-6 order dated 15-06-2009. However, by the impugned order dated 26-06-2009 the applicant was transferred to A & Islands. As such, the applicant penned a representation dated 30-06-2009 manifesting the domestic difficulties and requested that he be retained at Kerala State Social Welfare Board itself. His own physical ailment, that of his wife, of his aged parents and his son's



education are all the difficulties itemized in the said representation. As there was no positive response from the respondent, the applicant filed OA No. 454/2009 which was disposed of by order dated 11th August, 2009 (Annexure A-9) with liberty to the applicant to file a fresh representation and with a direction to the respondents to consider the representation of the applicant and decide the same. Till then the respondents were directed maintain status quo in regard to the transfer of the applicant. The applicant accordingly submitted a representation dated 17-08-2009 vide Annexure A-10 and the same was further supplemented by Annexure A-11 representation dated 22nd August 2009. It was by Annexure A-12 order that the respondents have rejected the request and the said Annexure A-12 order dated 02-09-2009 is impugned along with Annexure A-7 transfer order. Many grounds, including malafide, favouritism, non-consideration of the representation in its proper perspective, non application of mind, incompetence of the authority who has passed the order, have all been raised in the O.A.

2. Respondents have contested the O.A. According to them, all the points raised in the representation have been met with and there is no justification in the challenge of the applicant against the transfer order. Respondent No. 5 had by Annexure R-5(a) order dated 08-09-2009 relieved the applicant and the same was stated to have been despatched through courier vide Annexure R-5(b) and ©. As the private respondent had also been impleaded, he too had filed his reply justifying his retention. Respondents No. 1 to 4 have filed their version stating as under:-

"4. As is evident from Annexure A-3, the applicant has been transferred to Kerala State Social Welfare Board, Thiruvananthapuram on administrative grounds i.e., making arrangements of Parliamentary Standing Committee Meeting which was to be held on 11-07-2008 at Thiruvananthapuram. But even though the Meeting of the Parliamentary Standing Committee could be held on



11-07-2008, it so happened that the applicant could continue at Thiruvananthapuram thereafter.

5. Though the 7th respondent was sought to be transferred to Andaman and Nicobar as per Annexure A5 order, on the basis of the recommendation of the State Board Chairperson, the order of transfer of the 7th respondent was cancelled. This was mainly due to the reason that the 7th respondent was assigned with the job of liaising with the State Government on various projects. The allegation of the applicant that he was transferred to Andaman & Nicobar Island in order to protect the 7th respondent is not correct. The transfer of the applicant was only a routine transfer. Since he was deputed to Kerala State Social Welfare Board only on deputation, it cannot be said that he has a right to continue in the present post for three years. There is no necessity to get the prior concurrence of the applicant to post him to another place by way of deputation or otherwise."

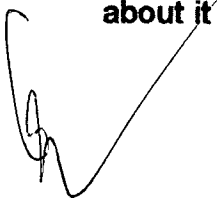
3. Rejoinder has been filed by the applicant against the reply filed on behalf of Respondent Nos. 5 and 6 as well as against the reply filed on behalf of Respondents Nos. 1 to 4. As regards delivery of the relieving order, the applicant has stated that he had issued a police complaint against the courier as no such communication has ever been delivered to the applicant. He has also issued one legal notice to the courier company. In reply to the legal notice, the courier company stated that the consignment addressed to the applicant could not be delivered to the applicant but was handed over to a neighbour. As regards favouritism shown to the private respondent the applicant has furnished a copy of the attendance register, wherein the space against the name of the private respondent remained blank. It has also been stated that in his representation the applicant had requested that as is usually done, appointment of Secretary on deputation may be considered at A & N Islands but the respondents have not cared for the same.

4. In his additional reply, the fifth respondent had added a copy of the order of the Central Board emphasizing that the State Board had absolutely no

authority for retention of any of the A.P.Os or P.Os who are under the direct control of the Central Welfare Board. Annexure R-5(d) dated 9th June 2005 refers.

5. In response to the reply filed on behalf of Respondents No. 1 to 4, the applicant reiterated his contentions as contained in the O.A. In addition, to substantiate his contention that the respondents have been vindictive towards the applicant, certain show cause notice issued to the applicant had been added to the rejoinder, vide Annexure A-20. His explanation has also been annexed, vide Annexure A-21. In addition, in so far as retention of private respondents is concerned, the reason given (that his services are required for liaison purposes), cannot be genuine and the applicant had also annexed a communication dated 30th December, 2009 about the functional responsibilities assigned to the said Respondent.

6. Counsel for the applicant stated that the entire act on the part of the respondents has been accentuated by bias, malafide and of vindictive attitude towards the applicant. It is the case of the applicant that he was no doubt transferred to Kerala for a specific purpose, but if the authorities wanted to shift the applicant due to the purpose for which the applicant had been transferred to Kerala not existing further, they could have included the name of the applicant in the very first general transfer order. There was a conspicuous omission of the name of the applicant and it was Private Respondent No. 7 that had been transferred. The said respondent had also stood relieved. To defend the retention of the said private respondent, in the counter it was averred that with a view to having the services of the said Respondent in liaison work, he was retained, whereas, the charter of duties of the said respondent was totally silent about it at the time of issue of the order cancelling his transfer. The fact that as

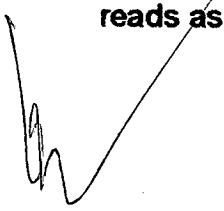


late as 30th December, 2009 there was a change in the charter of duties would evidently prove that the same is an after thought. Even as regards to the alleged service of relieving order of the applicant, the counsel stated that the entire episode does leave some doubt as to the collusion of respondents with the private courier. Above all the counsel vehemently contended that the domestic reasons which compel the applicant to remain in Kerala and which is the spine of the very representation, had not at all been adverted to, much less considered, and the least appreciated. There is absolutely no whisper in the rejection order to show that the said reasons were at all considered.

7. Counsel for the respondents defended the transfer order stating that the employer is the authority to decide as to who is to be transferred and when and there is little scope of judicial review. Judicial interference could be permitted where there is proved malafide or violation of professed norms or the authority lacked jurisdiction. In other cases, judicial intervention is not normally permissible. In the instant case, though the applicant has alleged malafide, he had not named any particular individual. The transfer order emanated from the Central Board at Delhi and vide Annexure R5(d) the State Board has absolutely no stay. Thus, the OA should be dismissed.

8. Counsel for private respondent justified his retention.

9. Arguments were heard and documents perused. The initial order of the Tribunal mandated the first respondent to consider the representation of the applicant and decide the issue. The applicant's counsel is absolutely right when he argued that there is absolutely no inkling to show that the domestic difficulties explained in para 5 of the representation had been adverted to. The said para 5 reads as under:-



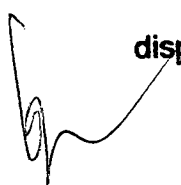
"As stated earlier all along in my career I have putting up my best in the service as field officer and I enjoyed an unblemished and complemented track record. I earnestly hope to serve the department with vigorous fervor and dedication. But on account of the exceptionally distressing situation relating to my health and the difficulties faced by my wife and by my aged parents and necessity of my presence at home and also to take care of the studies of my daughter, I find that the transfer in the middle of the academic year that too a remote island to Andamans would cause serious prejudice and hardships and also would affect my functional efficacy as an officer. Even though I admit that transfer is an incident of service, I am confident your authority would appreciate, while affecting transfer for administrative needs, the interest of the employee would also be taken care of to the possible extent, so that the employee can devote his efforts in his service in congenial atmosphere."

10. The above difficulties enumerated by the applicant are not reflected in the impugned Annexure A-12 order to confirm that the authority had considered the same. The Joint Director who had issued the impugned order talked elaborately of the contents of the rejoinder which did not form part of the representation, but gave a complete go bye to the difficulties enumerated in the representation. Justification that the move of the applicant had been necessitated due to the specific purpose for which the applicant was transferred to Kerala State Board did no longer exist is a clear after thought in view of the following:-

(a) If it were true, logically, the move of the applicant would have been either immediately on coming to know that the Parliamentary Standing Committee Meeting was not to take place or at the latest, along with the other general transfer order.

(b) Again, in that event, the applicant who had been earlier posted at Karnataka State Board, would have been repatriated to that State.

11. That the respondent had posted the applicant after cancellation of the transfer order of Respondent No. 7 would also go to show that the Central Board dispassionately originally issued transfer order of the said Respondent, but for



reasons best known to them, the same had been cancelled and justification given was that his services were to be utilized for liaison work. In fact, the said respondent No. 7 had certain area and specific functional responsibilities, which never included the so called liaison work. The inclusion of liaison work in the schedule of functional responsibilities of liaison with state government vide Annexure A-22 evidently goes to show that the same was added for the first time and as such, means were searched to justify the end.

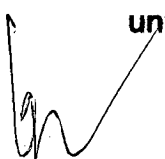
12. A look at the extent of transfer effected upon the applicant would be appropriate at this juncture. The same is as under:-

- (a) Posting at Trivandrum : 30-09-2003.
- (b) Transfer to Tamil Nadu : 25-05-2005.
- (c) Transfer to Karnataka : 29-05-2006
- (d) Transfer to Kerala : 06-06-2008
- (e) Present transfer order : 26-06-2009

13. Thus, in a short span of 6 years there have been as many as 5 transfers. It has been held by the Apex Court in the case of **B. Varadha Rao v. State of Karnataka, (1986) 4 SCC 131**, as under:-

"6. One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralisation. It therefore follows that the policy of transfer should be reasonable and fair and should apply to everybody equally."

14. If exigencies warrant, especially in respect of higher posts, transfers cannot be questioned but what the Apex Court has said even in that case is uniformity and equal application. The same appears to be totally missing in the



instant case.

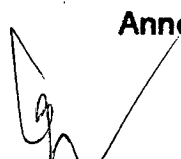
15. Again, it is a matter of record that the transfer of the applicant was at the middle of the academic session. The applicant's ward is studying in X standard, and the same is crucial for the student. The Apex Court has in the case of *Director of School Education v. O. Karuppa Thevan, 1994 Supp (2) SCC 666*, held as under:-

"...the learned counsel for the respondent, contended that in view of the fact that respondent's children are studying in school, the transfer should not have been effected during mid-academic term. Although there is no such rule, we are of the view that in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service are not urgent. The learned counsel appearing for the appellant was unable to point out that there was such urgency in the present case that the employee could not have been accommodated till the end of the current academic year. We, therefore, while setting aside the impugned order of the Tribunal, direct that the appellant should not effect the transfer till the end of the current academic year. The appeal is allowed accordingly with no order as to costs."

16. Thus for the above reason also the impugned order has to be held to be not appropriate.

17. During the course of the arguments, the counsel for the respondents stated that the applicant himself spelt out three places of posting, two in Kerala and one at Tamil Nadu (Coimbatore). This would go to show that the applicant as such is not averse to transfer and is willing to undergo transfer but in such a way that his domestic difficulties are not aggravated by the transfer. Transfer to A & N Islands without considering the children education or for that matter the ailment of the self, spouse and other family members is thus not justified.

18. In view of the above, the impugned orders cannot be sustained. Annexure A-7 and A-11 are therefore, quashed and set aside. However, liberty



is given to the first respondent to consider the representation of the applicant with particular reference to para 5 judiciously and in case he is satisfied, the applicant may be retained at Kerala either in the present station or within the State of Kerala and if the service exigencies warrant shifting of the applicant, as far as possible attempt be made to transfer the applicant to any nearby place so that the applicant could be in a position to look after his ailing and agent parents. Such a transfer also should be only after the end of the current academic session and before the commencement of the next academic session.

19. The O.A. is allowed on the above terms. No costs.

(Dated, the January, 2010)



Dr. K B S RAJAN
JUDICIAL MEMBER

cvr.