

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 69/95

Monday, this the 27th day of March, 1995

CORAM

HON'BLE MR. JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR. S. P. BISWAS, ADMINISTRATIVE MEMBER

M.V. Jaganivas
Assistant Engineer (Electrical)
Electricity Sub Division,
Department of Electricity,
Union Territory of Lakshadweep,
Cochin-3

Applicant

By Advocate Mr. K. Balakrishnan

vs.

1. The Administrator,
Union Territory of Lakshadweep
Kavarathy
2. The Assistant Executive Engineer
(Electrical), Union Territory of Lakshadweep
Department of Electricity
Kavaratti.
3. C.M. Ahmed, Assistant Executive Engineer
(Electrical), Union Territory of
Lakshadweep, Department of Electricity
Kavaratti
4. K.P. Prakashan
Assistant Engineer (Electrical)
Electricity Sub Division,
Union Territory of Lakshadweep
Andreth Island

Respondents

By Advocate Mr. M.V. S. Nampoothiry for R 1 & 2

By Advocate Mr. Shafik M.A. for R-4

O R D E R

S. P. BISWAS, ADMINISTRATIVE MEMBER

Applicant, an Assistant Engineer under Lakshadweep Administration, seeks to quash Annexure A-1 transfer order and Annexure A-7 wireless message ordering him to carry out the order of transfer from Cochin to Minicoy. According to him, the said order is without jurisdiction as the same has been issued by third respondent who is an Asst. Executive Engineer and is not competent to issue such orders.

2. Learned counsel for applicant argued that under the existing transfer guidelines mentioned in circular dated 27.1.86 issued by the Administrator, the usual tenure for an employee like applicant at a station is three years, and almost all of those similarly placed have been allowed to complete the period of three years. This policy has been followed in the case of mainland ~~xxxxxxxxxx~~ ^{Govt.} ~~xxxxxxxx~~ and in the case of main islands of Kavaratti, Minicoy, Androth and Kadmath, submitted counsel. It was argued that applicant has been disturbed despite the fact that his daughter is yet to finish S.S.L.C. course and that he has to complete the construction of his house at Cochin. Applicant would submit that second respondent (who is impleaded by name as third respondent) against whom he had filed applications before this Tribunal was not well disposed towards him and that he was settling personal score through the impugned transfer order. Applicant also complains that he was dislodged only to accommodate fourth respondent.

3. The counsel for applicant argued that respondents are under the wrong impression that applicant has been continuing at Cochin for a period of 13 years. The transfer order has been issued relying on this wrong assumption of '13 years' stay and based on this applicant's representation dated 9.6.94 was rejected by first respondent. Hence, the transfer order is unsustainable, counsel submitted.

4. Counsel further submitted that the Administrative Law principle evolved by the U.S. Supreme Court in Vitarelli v. Seaton (1959) 359 U.S. 535) which was followed by the Hon'ble Supreme Court in Sukhdev Singh v. Bhagatram (AIR 1975 S.C. 1331), Ramanna v. International Airport Authority of India (AIR 1979 S.C. 1628) and B.S. Minhas v. Indian Statistical Institute (AIR 1984 S.C. 363) will apply in this case. While enunciating the rule in Vitarelli v. Seaton, the learned Judge held;

"... an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe these standards on pain of invalidation of an act in violation of them..."

So, the first respondent is bound to follow the circulars even if they are not-statutory in nature, submits counsel.

5. Learned counsel for respondents submitted that applicant's allegation that he had worked for 8 years is totally incorrect. He has actually worked for 13 years at mainland as shown below:

" Kochi : 22.12.1978 to 1.3.1985
-do- 2.8.1985 to 17.5.1989
-do- 16.11.1992 onwards."

Respondents have averred that there is no malafide intention in the order. It was issued keeping in view convenience of the administration and public interest. The second respondent has not transferred applicant. Administrator ordered applicant's transfer and second respondent issued the order. Except the applicant, all others have joined at their respective places.

6. The plea that applicant is constructing a house is not correct. The said construction has been completed a year before and applicant continues to reside in that house, submits the counsel for respondents. The representation of applicant dated 9.6.94, arising out of the directions of this Tribunal in O.A.1229/94 has also been disposed of by first respondent on 4.1.95.

7. Counsel for respondents also argued that the transfer guidelines issued by first respondent do not mention anything about the tenure of Group-A and B officers at a particular station and that these guidelines are intended for Group-C and D categories of staff.

8. The subject of transfer of government employees and the issue of guidelines by Government Departments were

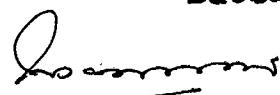
considered separately by the Supreme Court in the case of Union of India and others v. S.L. Abbas (AIR 1993 SC 2444). In their judgment, their Lordships held:

"While ordering the transfer of Government employee, there is no doubt, the authority must keep in mind the guidelines issued by Government on the subject but the said guidelines do not confer upon the Government employee a legally enforceable right. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it."

9. It is argued that applicant has worked only for 8 years at Cochin and not for 13 years as stated by the Administration. It is also argued that this mistake vitiates the decision to reject his representation. We cannot accept the submission. Whether applicant has worked for eight years or thirteen years, he is liable to be transferred in law as held by the Supreme Court in Gujarat Electricity Board and another v. Atmaram Sanjomal Peshani (AIR 1989 SC 1433), Union of India and others v. S.L. Abbas, (AIR 1993 SC 2444) and N.K. Singh v. Union of India and others (AIR 1995 SC 423). An employee has no right to remain at any station for any length of time. No malafide has been established. In the absence of a legal right, the contention has no relevance and cannot be accepted.

10. For the reasons aforementioned, the application is dismissed but without any order as to costs.

Dated the 27th March, 1995.



S.P. BISWAS
ADMINISTRATIVE MEMBER

kmm



CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN

List of Annexures

- 1. Annexure-A1:- True copy of the order No.F.37/8/94-Estt/Ele./1237 dated 1.6.94 issued by the 2nd respondent.
- 2. Annexure-A7:- True copy of the Telegram received by the applicant on 7.1.95.