

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No.75/2006

Friday this the 22<sup>nd</sup> day of September 2006.

**CORAM:**

**HON'BLE MR. K.B.S. RAJAN, JUDICIAL MEMBER**

Syamala Thyagarajan,  
W/o late D.Thyagarajan,  
Skilled Worker,  
Handicrafts Marketing and Extension Service Centre,  
D.I.C. Building, Water Works Compound,  
Vellayambalam, Thiruvananthapuram,  
residing at Souparnika, Near sarkaa V.H.S.,  
Cheerayinkeezhu, Trivandrum.

Applicant

By Advocate Mr.M.R.Hariraj)

Vs.

1. Union of India, represented by  
Secretary to Government of India,  
Ministry of Textiles, New Delhi.
2. The Development Commissioner,  
Office of the Development Commissioners  
(Handicrafts), West Block No.7,  
R.K.Puram, New Delhi-110 066.
3. The Assistant Director (Admn.III),  
Office of the Development Commissioners  
(Handicrafts), West Block No.7,  
R.K.Puram, New Delhi-110 066.
4. The Deputy Director (Admn.III),  
Office of the Development Commissioners  
(Handicrafts), West Block No.7,  
R.K.Puram, New Delhi-110 066.
5. C.George Varghese,  
Assistant Director (H),  
Handicrafts Marketing and Extension Service Centre,  
D.I.C. Building, Water Works Compound,  
Vellayambalam,  
Thiruvananthapuram – 695 033.

Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC)

✓ The Application having been heard on 14.9.2006  
the Tribunal on 22.9.2006 delivered the following:

ORDER

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

The applicant has challenged the Annexure A-1 to A-3 orders relating to her transfer from Trivandrum to Bangalore.

2. Brief facts of the case as contained in the OA are as under:-

a) The applicant was appointed as Skilled worker in the Regional Design and Technical Development Centre, Bombay on compassionate grounds, on the death of her husband, with effect from 21.6.1985. She has all along been allotted to do administrative works. Annexure A5, required the applicant to do the following jobs:

- i) To type routine letters, circulars and statements.
- ii) To maintain Despatch/Diary Registers/Stamp Accounts.
- iii) To maintain pay bill registers.
- iv) To assist other staff members in Adm/Accounts.
- v) To maintain stationery and miscellaneous registers etc.

She had acquired typing skill in the meantime. The applicant by order No.RDC/BB/2/2(1)/93-94/395 dated 25.11.1993 was required to assist the Deputy director in establishment and administrative matters related to staff as well as office. She was entrusted works relating to Diary and Despatch, maintenance of personnel records of RD and TDC Staff Members (ACR's), Typing work, listing of library books/Maintenance of New papers/periodicals and Assisting Shri A.V.Dhawan in development work.

b) The applicant was transferred on her own request on compassionate ground to Handicrafts Marketing and Extension Service Centre, Thiruvananthapuram along with post by order dated 6.4.2000. At Thiruvananthapuram too, she was required to do clerical jobs and no skilled work

was ever performed by her in her entire career though she is designated as skilled worker. From her initial days in the office itself, applicant was facing harassments. Applicant's complaint were turned deaf ears by the 5<sup>th</sup> respondent.

c) Mr. A.B.Singh who was transferred from HMSEC, Varanasi to HMSEC, Thiruvananthapuram, submitted his T.A.Bill. The applicant, who was then incharge to scrutinize the bills, objected to Mr. A.B.Singh's bill as no originals of the bills were produced despite request for the same. Mr.A.B.Singh started threatening and harassing the applicant, removed the applicant's name from the Attendance Register of Regular Staff. The 5<sup>th</sup> respondent was all through out supporting A.B.Singh and one Venugopal. Files and papers from applicant's table were being taken by A.B.Singh and Venugopal after office hours. On 16.2.2005, A.B.Singh without any provocation physically attacked the applicant in the presence of other staffs. The applicant sustained physical injuries. She immediately reported the incident to 5<sup>th</sup> respondent on telephone. When no effort was seen moved by 5<sup>th</sup> respondent to complain the matter to the police, she herself approached the Sub Inspector of Police, Museum Police Station. On the very same day, she forwarded a complaint to the 2<sup>nd</sup> respondent. She had also represented her grievance before the 5<sup>th</sup> respondent on the very same day. As per her complaint to the Police, she was required to be present in the Police Station on 17.2.2005, for which she requested a day's casual leave through her leave request dated 17.2.2005 to the 5<sup>th</sup> respondent. On 17.2.2005, pursuant to the Annexure A9 complaint, FIR No.57/05 was filed before the Judicial First Class Magistrate III, Thiruvananthapuram, charging offences under section 323, 294(b) and 354 of the Indian Penal code against the accused, Mr. A.B.Singh.

 (d) From 25.2.2005 onwards the 5<sup>th</sup> respondent as a step to wreck further

vengeance, removed all the jobs which were assigned to her till that day.

(e) While the case was pending before the Police, Regional Director along with another Lady Officer visited the office at Thiruvananthapuram to investigate into the case. It is understood that they took statements from the co-workers of the applicant; they never chose to question her on the issue. Instead the Regional Director showed enthusiasm in accusing the applicant. Applicant was thus constrained to approach the Kerala Women's Commission through her complaint dated 23.2.2005. The Women's Commission forwarded the applicant's complaint to the respondent for enquiry and report by its order No.789/CST/2005/KWC. On the very same day notice was issued to the applicant as well as A.B.Singh who is the opposite party to the complaint to appear before the Commission on 5.5.2005. On 24.5.2005, the Kerala Women's Commission issued notice to the Regional Director, Chennai to inquire and submit report within three days.

(f) Since no action was being taken on her representations, she approached the 2<sup>nd</sup> respondent on 20.4.2005.

(g) While the applicant was continuing in the office at Thiruvananthapuram without any work being assigned to her, she was issued with a memo dated 21.7.2005 by the 5<sup>th</sup> respondent to explain as to why disciplinary action should not be taken against her for not attending any official work for the last 4 months. She submitted her explanation to Annexure A-19 memo before the 5<sup>th</sup> respondent, pointing out the fact that it was he himself who had removed works from her without any valid reason.

(h) While things were so continuing she was issued with Annexure A-1 order

transferring her from Thiruvananthapuram to Bangalore. Applicant represented her objections through representation dated 19.11.2005 before the 2<sup>nd</sup> respondent.

(i) Aggrieved by Annexure A1 order, the same was taken up in challenge before the Hon'ble High Court of Kerala in W.P.C.No.33253/2005-H. On 23.12.2005, W.P.(C).No.33253 of 2005 was disposed of without prejudice to the rights of the applicant to file appropriate application before this Hon'ble Tribunal.

(j) The applicant filed O.A.No.887/2005 challenging the transfer. On 27.12.2005, O.A.887/2005 was disposed of directing the applicant to make a detailed representation to the 1st respondent therein who is to consider and dispose of the same within one month. There was a further direction that till the disposal of the representation, the transfer order shall remain stayed. On 30.12.2005 she represented before the 2<sup>nd</sup> respondent.

(k) Grounds for reliefs:

- i) The impugned orders are vitiated by malafides, arbitrariness and discrimination.
- ii) Annexure A-1 transfer order is issued without any basis. It does not contain any element of public interest.
- iii) The respondents are justifying the transfer order based on some enquiry report submitted by the Regional Director, Chennai. The said enquiry report was never made available to the applicant. The applicant was never questioned nor any statement was taken from her with regard to the incident that occurred on 16.2.2005. The 5<sup>th</sup> respondent was successful in persuading the Regional Director against the applicant.

iv. The malafides on the part of the 5<sup>th</sup> respondent is writ large <sup>on</sup> the face of the records itself.

v. The 5<sup>th</sup> respondent has taken much efforts to put before this Hon'ble Tribunal the anguish and resentment of the staff members towards the applicant. To prove the same a letter from the staff members to the Confederation of Central Government Employees was produced before this Hon'ble Tribunal through reply statement in M.A.29 of 2006 in O.A.887 of 2005. The said letter is in the Government of India letter head. The said document is a concocted one, only to misguide this Hon'ble Tribunal.

vi. The respondents are now taking a stand that the applicant cannot be retained at Thiruvananthapuram as there is no post of skilled worker at Thiruvananthapuram. Annexure A-1 transfer order does not stipulate transfer along with the post.

vii. The applicant though designated as Skilled Worker, has never performed any work of a skilled worker.

viii. The 5<sup>th</sup> respondent is acting hand in glove with A.B.Singh and Venugopal.

3. Brief version of the respondents are as under:

a). The applicant who was qualified Standard VII, was appointed as Skilled Worker on the strength of the Technical Skill possessed by her namely tailoring, Needle Works etc. The Director of Regional Design & Technical Centre, Mumbai vide his letter dated 16.4.1985 has

recommended the applicant's case for compassionate appointment. The applicant had performed the Technical works in Bombay office as evidenced by Office Order dated 27.1.1997.

b). The Thiruvananthapuram Office had utilized her service in the issue of Identity Cards to handicrafts Artisans considering technical skill possessed by her, for assessing the level of artisan's skill. The applicant has also been deputed to the local Handicraft Units and also to handicraft Cluster at Pulumthura near Chirayinkeezh where she was asked to conduct skill test of Artisans. The respondent had assigned the duties of clerical work on some occasions which is based on humanitarian considerations. So the applicant has been transferred to Bangalore which is again a compassionate consideration since the post in which she carries at Thiruvananthapuram is not in existence after her relief on 26.12.2005.

c). The applicant had misbehaved towards the Higher Authorities and other Staff Members on several occasions. Under such circumstances, the continuance of the applicant at Thiruvananthapuram is causing great difficulties and inconveniences of the smooth functioning of the Office.

d). The applicant had willfully rejected the lawful orders and the departmental Administrative Communications issued to her by the respondents on several occasions, was returned back to the office. The said facts itself shows her nature and behaviour towards the Controller Officer.

(e). There was no harassment on the applicant alleged to have been committed by one Mr. Venugopal. The further allegations of the applicant

regarding the protection of Shri Venugopal by the 5<sup>th</sup> respondent in the case of alleged harassment, is baseless and tainted with malafides. The 5<sup>th</sup> respondent had never shown any undue favour to A.B.Singh and his TTA Bill was passed strictly in accordance with Financial Rules. The applicant was never threatened or harassed either by Shri A.B. Singh ~~or~~ by Shri Venugopal. Annexure A-8 representation dated 28.1.2005 is forged and with malafide intention to strengthen her allegations. The statement of the applicant with regard to the alleged incident of 16.2.2005 is built up by her. The contention of the Petitioner that she sustained physical injury is totally false and hence denied. It is pertinent to note that she never complained to the Police about her physical injury in her original complaint. The applicant had directly sent Annexure A-10 representation to the Head of the Department bye-passing the official hierarchy. Even though it warrants Disciplinary Action against the applicant, the Department had taken a lenient view on the matter. The applicant was issued a Memo by the 5<sup>th</sup> respondent for not submitting a written statement of the alleged incident and making a Police Complaint on her own without the knowledge of the 5<sup>th</sup> respondent, which is in violation of the Conduct Rules. The applicant after reading the contents of the said Memo, refused to accept the same, as in the case of the refusal of Relieving Order, Hence, the said Memo was sent to her by Registered Post which was also refused and returned ~~the same~~ with endorsement made by the Postal Department as "Addressee Refused.". The applicant had given publicity of the alleged incident through the Television Channels, Print Media and even went to the Legislative Assembly of Kerala by using her influence.

4. Rejoinder and additional reply and additional rejoinder have also been filed



annexing certain documents on either side.

5. The learned counsel for the applicant argued that the transfer in question to a ~~post~~ <sup>place</sup> where there is no post of skilled worker is, certainly with a malafide intention. It has also been argued that if there is a complaint against a particular person, and in the wake of some inquiry, the person complained had been transferred, there is no question of the complainant too being transferred. The act of the respondents is in clear violation of "*Vishaka Guidelines*".

6. Per contra, the learned counsel for respondents stated that the post of skilled worker, by a separate order, was got already transferred to Bangalore and the documents produced would reflect that the action taken was keeping in view the institutional interest and thus impersonal and unbiased. (The departmental records were also shown to the counsel for the applicant and the counsel for the applicant contended that the purpose of transfer as per records does not match with the reasons given in the impugned order).

7. Though the counsel for the applicant had referred to "*Vishakha Guidelines*", in my view, the same does not apply to the facts of the case. That was a case where expansion of the right to life and personal liberty under Art. 21 of the Constitution had been made, by implicating, "*Sexual Harassment of Working Woman*" as spelt out by the Apex Court in the case of *Kapila Hingorani v. State of Bihar, (2003) 6 SCC 1*. As regards the contention that the reasons for transfer reflected in the records do not tally with that shown in the impugned order, the same too is not exactly correct. Reasons as contained in the counter are not obliterated by giving a   
  further justification in support of transfer.

8. It would be worthwhile, as to how the respondents have dealt with the case of the applicant right from the beginning.

The applicant, appointed as skilled worker in the office of Regional Design and Technical Development Centre at Mumbai way back in 1985, on compassionate grounds on the death of her husband, and later on, along with the post, she had been, at her own request, transferred to Trivandrum in April, 2000. The extent of concession extended to the applicant right from the beginning is evident from the fact that the applicant, who, even according to her own submission vide Ground G, had no technical knowledge, was given appointment on compassionate grounds as a skilled worker, as it was the only post available at that time. Again, in 2000, it was at her request that the applicant was transferred from Mumbai to Trivandrum and that too, with the very post. The applicant had applied for conversion from Technical to Clerical cadre in 2004 and the respondents considered the same but in view of the restrictions of DOP&T OM No. 14014/6/94 Estt (D) dated 09-010-1998, which strictly prohibits change in post when a person appointed on compassionate grounds to a particular post, her request could not be acceded to and the decision was taken at the level of Regional Director. (Notings dated 20-12-2004, 22-12-2004 and 24-12-2004 of the records produced (C/MISC/2004/Admin III) refers.) Again, her complaint against Shri AB Singh, had been considered at the appropriate level in detail and the Asst. Director (Admin III) had remarked vide his note dated 27-05-2005, "*In view of the anarchic situation highlighted by the complainant, we may call for a report from RD (DR) if approved.*" The comments were called for from the Regional Director and as the same did not meet some of the allegations against Shri A.B. Singh, further comments were called for and thus a comprehensive report from the Regional Director could be had by Respondent No. 2. The comprehensive report

inter alia contained the following:-

- (a) That the applicant had refused to receive the relieving order on 26-12-2005, though she was present in the office on that day.
- (b) The applicant has been disobedient and shows scant respect for rules and regulations.
- (c) She is a late comer and habitually absent from duties without permission. Was unauthorizedly absent on a few days and chose to submit her leave application at her leisure time.
- (d) She is in the habit of picking up quarrels with staff members.
- (e) She has not attended office work for 10 months and concentrates her time and energy for giving wide publicity for her alleged incident with HPO through Media, Press etc.,
- (f) Sending false faxes and messages to the Headquarters.

9. Having received such concessions, if the applicant is not in a position to follow that discipline which is expected of an employee, and if on account of administrative reasons, the authorities have effected transfer of the applicant to another place, whether the same could be considered as punitive or accentuated by malafide. In the case of Union of India v. Janardhan Debanath, (2004) 4 SCC 245, when the respondent therein was transferred on account of 'misbehaviour' and hence held to be undesirable to be retained in the same place, in respect of which no inquiry was held, the Apex Court has held as under:-

**6. Per contra, Mr Rajinder Sachar, learned Senior Counsel submitted that in the transfer order itself it has been mentioned that the employees were undesirable, as they had misbehaved. Before effecting transfer there ought to have been an enquiry to find out whether there was any misbehaviour committed by the respondents, or that they were undesirable as stated.**

**9. .... No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the**

public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan (2001) 8 SCC 574).

**12.** That brings us to the other question as to whether the use of the expression "undesirable" warranted an enquiry before the transfer. Strong reliance was placed by learned counsel for the respondents on a decision of this Court in Jagdish Mitter v. Union of India (AIR 1964 SC 449 at p. 456, para 21) to contend that whenever there is a use of the word "undesirable" it casts a stigma and it cannot be done without holding a regular enquiry. The submission is clearly without substance. The said case relates to use of the expression "undesirable" in an order affecting the continuance in service by way of discharge. The decision has therefore no application to the facts of the present case. The manner, nature and extent of exercise to be undertaken by courts/tribunals in a case to adjudge whether it casts a stigma or constitutes one by way of punishment would also very much depend upon the consequences flowing from the order and as to whether it adversely affected any service conditions — status, service prospects financially — and the same yardstick, norms or standards cannot be applied to all categories of cases. **Transfers unless they involve any such adverse impact or visit the persons concerned with any penal consequences, are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion or termination and utmost latitude should be left with the department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration.** (Emphasis supplied)

**13.** Additionally, it was pointed out by learned counsel for the Union of India that as indicated in the special leave petition itself there was no question of any loss of seniority or promotional prospects. These are the aspects which can be gone into in an appropriate proceeding, if at all there is any adverse order in the matter of seniority or promotion. It was also submitted that transfer was within the same circle i.e. the North-Eastern Circle and, therefore, the question of any seniority getting affected by the transfer *prima facie* does not arise.

**14.** The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. **For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the *prima facie* satisfaction of the authority**

**concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether the respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other.(Emphasis supplied)**

10. The above decision of the Apex Court clearly applies to the facts of the case. The Regional Director had furnished the requisite report and the Headquarters have considered the same and decision, on the recommendation of the Regional Director, taken. That there had been occasions when the applicant applied for leave much after the leave was taken could be established by the leave letter submitted by her. That she had conducted a Press conference in February, 2005 could also be seen from the reports, though the applicant in the additional rejoinder asserted that it was the MLA whom the applicant was constrained to approach had convened the Press Conference. The report does not indicate that the Press Conference was called by the M.L.A., The English version of the vernacular, as provided for by the respondents vide Annexure 5(I) reads, "Smt. Shyamala conducted the Press Conference in the presence of P.C. George, M.L.A. and revealed this matter." Her representation dated 15-03-2005 to the Addl. Development Commissioner, Representation dated 20-04-2005 addressed to the Development Commissioner have all been addressed direct and not even through Proper Channel. The official requirement is that any representation to any higher authority shall be only through proper channel. Thus, *prima facie* the conduct of the applicant does not seem to be conducive to the smooth functioning of the office and it is on such an administrative ground that the respondents have effected the

transfer. Ventilation of personal grievance through media had been resented by the Tribunal vide Rajender Ray vs Union of India and others (1988) 6 ATC 590.

11. In so far as malafide is concerned, nothing concrete has been established by the applicant. In any event, since the transfer order has been on the decision of the higher authorities, at Chennai and Delhi, there is no question of malafide against such authorities.

12. Feebly, an argument was advanced that the applicant has been performing only clerical work and as such, posting her on the ground that her technical expertise would be useful at Bangalore as contained in the impugned order would not serve any purpose. This contention is to be rejected. For, it is for the administrative authorities to decide who is to be posted and where as held by the Apex Court in the case of Union of India vs S.L. Abbas (1993) 4 SCC 357).

13. Thus, in ordering the transfer, the respondents have acted within their power and before arriving at the decision, the respondents have taken into consideration all the aspects and the transfer order dated 09-11-2005, relieving order dated 26-12-2005 and order dated 24-01-2006 do not suffer from any illegality. The O.A is devoid of merits and is dismissed. As stay was earlier granted, the same is also vacated and the order dated 26-12-2005 can well be revalidated so that transfer of the applicant would be from a prospective date. She may be given necessary TA/DA if she chooses to apply for the same.

14. Under the above facts and circumstances, there shall be no order as to costs.

Dated the 22<sup>nd</sup> September, 2006.

  
K.B.S. RAJAN  
JUDICIAL MEMBER