

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No. 97/2003

Thursday, this the 15th day of May, 2003

C O R A M

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

1. P. Sayed Shaikkoya,
Executive Officer,
Village (Dweep) Panchayath,
Minicoy Island, UT of Lakshadweep,
residing at Government Quarters,
Minicoy Island, U.T. of Lakshadweep.

..Applicant..

[By Advocate Mr. Shafik M.A.]

v e r s u s

1. The Union of India represented by
the Secretary,
Ministry of Home Affairs,
New Delhi.
2. The Administrator,
U.T. of Lakshadweep,
Kavaratti.
3. The Secretary (Administration),
U.T. of Lakshadweep,
Kavaratti.
4. The Director of Panchayath,
U.T. of Lakshadweep,
Kavaratti.
5. Smt. K. Dommanika,
Accountant,
Field Pay Unit, Minicoy,
Presently appointed as Executive Officer,
Village Dweep Panchayath,
Minicoy.
6. The Chair Person,
Village Dweep Panchayath,
Minicoy Island,
UT of Lakshadweep.

Respondents


[By Advocate Mr. S.Radhakrishnan for R-2, 3 and 4.]

O R D E R

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER




Applicant joined the services in 1973 as Lower Division Clerk and on passing the departmental examination for promotion to Upper Division Clerk, he was appointed as UDC with effect from 25.05.1978. Thereafter, he has been promoted as Accountant with effect from 28.5.1993 and to the cadre of Superintendent with effect from 9.1.1998. While working as Superintendent at the Lakshadweep Public Works Department in Amini Division at Amini Island, applicant was transferred as Executive Officer, Village (Dweep) Panchayath, Minicoy, vide order dated 14.3.2002. Applicant submitted a representation dated 21.3.2002 (Annexure A/4) stating that he is not having the knowledge of Mahal language and sought for retention in Amini Island itself. For that purpose, he also filed O.A. No. 269/2002 which was later on withdrawn and he joined the post of Executive Officer, Village (Dweep) Panchayath, Minicoy, with effect from 4.5.2002. Applicant would submit that he had discharged his duties to the best of the satisfaction of his superiors without any complaint. He was not even issued a warning over 20 years of service or any disciplinary proceedings were initiated against him. While so, Annexure A/2 order has been issued by the third respondent stating that not to disburse any amount due to the applicant. Annexure A/2 is one of the impugned orders in the OA. Applicant made a representation dated 20.1.2003 (Annexure A/5) and thereafter, Annexure A/1 transfer order was issued to him even before completion of his tenure period of two years as per the norms issued by the 2nd respondent. He made further representation (Annexure A/6) dated 5.2.2003 to the second respondent pointing out that the transfer is very much irregular and is only to cause harassment to the applicant and if at all it is necessary for transferring the applicant, he may be transferred to Amini, his native island. However, vide order dated 4.2.2003 (Annexure A/3), which has been conveyed on 10.02.2003 by fax (Annexure A/7), 5th respondent was directed to



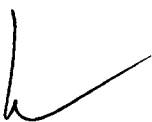
join her duty at the earliest. It is also alleged that 5th respondent is the close relative of the 6th respondent and the 6th respondent has specifically requested for relieving her immediately for posting as per Annexure A/3 in order to save her from transfer due to her long stay at Minicoy. There was no complaint regarding the work of the applicant. It is further submitted that the control of the applicant was shifted to the 4th respondent vide Annexure A/8 order and the 4th respondent is only competent to initiate any action against the applicant. For that reason, applicant urged that the orders Annexures A/1, A/2 and A/3 are vitiated for want of jurisdiction. Aggrieved by the aforesaid orders, the applicant has approached through this O.A. seeking following reliefs:-

- "(i) To call for the records relating to Annexure A/1 and A/5 and to quash Annexures A/1 and A/2 being illegal, arbitrary and violative of law;
- (ii) To call for the records relating to Annexure A/3 and to quash the same to the extent it promotes and posts the 5th respondent as Executive Officer, Village Dweep Panchayath, Minicoy;
- (iii) To declare that the applicant is entitled to be continued at the present posting as Executive Officer, Village (Dweep) Panchayath Minicoy, till the completion of his tenure or to grant him a transfer to Amini Island as has been requested in Annexure A/4;
- (iv) To direct the 2nd respondent to disburse the salary and other allowances due to the applicant and to draw the increment due in January alongwith the salary;
- (v) To issue such other appropriate orders or directions this Hon'ble Court may deem fit, just and proper in the circumstances of the case; and
- (vi) To grant the costs of this Original Application."

2. The official respondents 2 to 4 have filed a detailed reply statement. Respondents No. 1, 5 and 6 though served did not file any reply statement. In the reply statement, the respondents contended that the applicant had worked in his native




island five times, completing four tenures and a partial tenure at Minicoy running to 15 years during his total service of 30 years under the Lakshadweep Administration. There are officials belonging to Amini Island who are senior to the applicant, working outside Amini. Their cases could not be considered for want of vacancies. The case of the applicant could be considered only alongwith the other eligible officials and more deserving person will have to be posted at Amini in the order of priority. The applicant was working as Executive Officer, Village (Dweep) Panchayat, Minicoy. There were certain allegations of financial irregularities against him in the year 1997, which was quantified during February, 2001. Applicant refunded an amount of Rs. 5198/- by challan dated 27.01.2001. The applicant was directed to refund the balance amount of Rs. 4502/- immediately. The audit party from the office of the Accountant General, Kerala, also put up a strong note against the delay in recovering this amount from the applicant. Applicant submitted a representation on 30.03.2002 explaining that he was facing much financial difficulties consequent to continuous treatment and expressing his inability to pay that amount, if any, immediately. At this point, he was transferred as Executive Officer, Village Dweep Panchayat, Minicoy. He was again directed vide order dated 25.05.2002 to refund the amount by means of challan within ten days. It was also mentioned that suitable action would be taken to recover the amount in lump sum from his salary bill if he failed to refund it in time. Since he did not refund the amount on 20.07.2002, the Executive Officer, Village Dweep Panchayat, Minicoy, was directed to recover the amount of Rs. 4502/- from the salary bill of the applicant. Evidently, this could not be done since the applicant himself was the Drawing and Disbursing Officer of Village Dweep Panchayat, Minicoy. Another direction was issued on 28.08.2002 directing him to remit the aforesaid amount. That direction was also not complied with by the



applicant. Therefore, it was decided to initiate disciplinary proceedings against the applicant under CCS (Conduct) Rules and not to disburse any amount due to him from the Village Dweep Panchayat, Minicoy. It was accordingly decided to shift the applicant from the post he was holding, to ensure an impartial enquiry. There was no equivalent vacant post available in Minicoy to transfer the applicant. Therefore, the applicant was transferred to the Directorate of Fisheries, Agatti, as Superintendent in the same grade as that of the Executive Officer. It is urged on behalf of the official respondents that the contention of the applicant that the transfer is actuated by malafides, is baseless and solely intended to mislead this Tribunal. The applicant has neither impleaded any authority in his personal capacity nor alleged any personal motive/malafides against any individual. The 5th respondent was appointed as Executive Officer, Village Dweep Panchayat, Minicoy, and she has already joined the post. The applicant submitted a leave application on 6.2.2003 in the office and left the office without handing over the charges, including office key etc. The respondents had no other alternative except to transfer him out of Minicoy and he was posted at Agatti. There is nothing illegal in transferring the applicant at Agatti. They submitted that the transfer was made in public interest and, therefore, there is no merit in the O.A. and it deserves to be dismissed.


3. I have heard Shri Shafik M.A., learned counsel appearing for the applicant and Shri S. Radhakrishnan, learned counsel appearing for the official respondents.

4. The matter under challenge in the O.A. is that of the transfer of the applicant from Village (Dweep) Panchayat, Minicoy, to Directorate of Fisheries, Agatti, vide Annexure A/1 order dated 31.01.2003, and the order of the Administrator




(Annexure A/2) directing not to disburse any amount to the applicant and the order Annexure A/3, appointing the 5th respondent in place of the applicant. Admittedly, both the counsel agreed that as per transfer policy, an employee will not be transferred from one place to other before completing two years tenure. It is also an admitted fact that the applicant has taken charge of the present post with effect from 4.5.2002 and again the impugned transfer order Annexure A/1 is issued on 31.1.2003, just within 8 months period. The impugned orders A/1, A/2 and A/3 do not impute any reason for premature transfer of the applicant. Normally the Court/Tribunal will not and cannot interfere in the transfers matter unless it is malafide or against the rules or guidelines. It is reiterated in a decision of Hon'ble Supreme Court reported in 2002 (1) SLJ page 87, National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan & Another. This Court is also aware that the Tribunal will be justified in interfering in any transfer matter by exercising its judicial power of review in case the transfer is shown to be an outcome of malafide exercise of power or in violation of statutory provisions. Therefore, the transfer of the applicant in the present case has to be evaluated with special reference to the above.

5. Applicant was put in more than 30 years of service with an unblemished record of service and was in the good books of the respondents. Applicant in ground 5(D) of the O.A. has averred that the applicant was to take 30 Couples to New Delhi for the Republic Day March during, 1997 and he being the Caretaker of the said Group, an advance of Rs. 6100/- was paid to the applicant for his journey to Delhi. Later, it was stated that he was not eligible to claim for IIInd Class AC and about Rs. 1200/- was to be remitted back by the applicant from the advance he had already received. Applicant remitted back the said amount during the

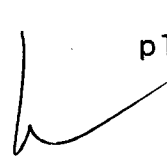


year 2001 itself. However, the respondents directed that the entire advance paid to the applicant in 1997 has to be remitted back forfeiting his claim even to the eligible travelling allowance. In fact, the applicant has sought certain details regarding the same and if at all it is to be repaid as per the rules, he is ready to remit the same, but the respondents was not furnishing the relevant documents submitted in 1997. On going through the impugned orders at Annexures A/1 and A/2, I am of the view that the alleged overtact is one of the reasons, which led to issue the impugned orders aforesaid and consequent to the said orders, the order Annexure A/3 was also issued. It is also an element of displeasure, one could call it as a vengeance, that the applicant has been transferred on account of the above reason. The contention of the respondents that the recovery could not not be done because he was holding the charge of Drawing and Disbursing Officer, will not hold good. On going through the records and submissions made by the learned counsel for the applicant, I note that not a single warning/notice was issued to the applicant ever before and what the respondents would state that they propose to take action against the applicant on the alleged withholding of amount, which in my view, is not justified nor stand to reason. The right to transfer an employee is a powerful weapon in the hands of the employer. It has been laid down in a decision of Hon'ble High Court of Kerala reported in 1979 (1) SLR 309, P. Pushpakaran vs. The Chairman, Coir Board, Cochin and Another, that sometimes the transfer is more dangerous than other punishments. It may, at times, bear the mask of innocuousness. 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.

6. On a reading of Annexures A/1 and A/2, it is very clear that the motivation of this transfer is with a hidden sweet revenge to evade the applicant. I am of the opinion that the transfer order in this case is not issued in good taste of law and the procedure adopted is punitive. Though in para 8 of the reply statement, respondents specifically averred that the transfer was ordered in order to ensure an impartial enquiry, nothing has been put on record to show that what steps the respondents have taken in furtherance to the alleged overtact on the part of the applicant. On the other hand, the applicant's submission is that he has remitted the excess amount as directed by the respondents and he is willing to remit the balance amount, if any, if he is being provided the details regarding the same, which the respondents did not furnish to the applicant despite repeated representation, has some force. Applicant also submitted that if any amount is due to be remitted, a minor penalty procedure should have been initiated and a charge-sheet should be issued to the applicant. The fact that not even a memo/show cause notice or charge sheet has been issued to the applicant till now though the misconduct is alleged to have been committed in 1997. Considering the averments in the O.A. and also the submissions made by the learned counsel that the applicant is prepared to face such an enquiry, I am of the view that this is a matter to be dealt with by the respondents separately and the respondents are at liberty to proceed against the applicant. I am not expressing any views on the proposed disciplinary action which the respondents may take against the applicant. On a perusal of the impugned orders and that of the pleadings made in the reply statement and the arguments advanced,



I am of the view that the above incident (excess drawal of amount and recovery) got a direct bearing on the issuance of Annexure A/1, which is very much faulted especially when there is an allegation that the 5th respondent who has joined in place of the applicant, is the sister of the wife of 6th respondent and the anxiety / eagerness of the 6th respondent is also reflected in Annexure A/2 order. Therefore, I am of the view that the orders A/1 and A/2 have been issued without bonafide, and hence the impugned orders A/1, A/2 and A/3 are liable to be set aside as far as the applicant's transfer is concerned. I am also reminded of the power of judicial review of this Tribunal enunciated in a decision of Hon'ble Supreme Court reported in 1994 SCC (6) 651, Tata Cellular vs. Union of India in which it has held that the Court/Tribunals in exercising powers of judicial review should be more concerned about the feasibility and viability of the decision making process and not the merit of the case. The Court does not sit as an Appellate Court. The power is restricted in an area where the impugned action is taken arbitrarily or in an unreasonable manner. Considering the facts and circumstances of the case and the legal aspects as discussed above, I am of the opinion that when the respondents have an ample opportunity to proceed against the applicant under CCS (CCA) Rules for recovery of the amount in question, which was not taken initiated till date, the impugned transfer in a short cut method or in an indirect method in punishing the applicant, which is not justified. It is, indeed, a punitive action on the part of the respondents and, therefore, the impugned orders are not sustainable in law.

7. In the conspectus of facts and circumstances, I set aside the impugned orders A/1, A/2 and A/3 to the extent it relates to the applicant and direct the respondents to grant appropriate relief flowing out of this order to the applicant as



expeditiously as possible, but in any case, within 30 days from the date of receipt of a copy of this order. The interim order dated 17.2.2003 is made absolute.

8. The O.A. is allowed as above with no order as to costs.

(Dated, 15th May, 2003)



(K.V. SACHIDANANDAN)
JUDICIAL MEMBER

cvr.