

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 121 of 2010

Original Application No. 122 of 2010

Original Application No. 123 of 2010

Tuesday, this the 2nd day of March, 2010

CORAM:

Hon'ble Mr. George Paracken, Judicial Member
Hon'ble Ms. K. Noorjehan, Administrative Member

1. Original Application No. 121 of 2010 -

Shereef Khan M.P., S/o.
 Muhammed Koya K., aged 31,
 Constable (EXE), PIS No. 5100269,
 India Reserve Battalion, Agatti Island. **Applicant**

2. Original Application No. 122 of 2010 -

Abdul Naseer M., S/o.
 Muhammed Koya C., aged 33,
 Constable (EXE), PIS No. 5100011,
 India Reserve Battalion, Agatti Island. **Applicant**

3. Original Application No. 123 of 2010 -

Abdul Fatah B.M., S/o. Muhammed
 Koya A.C., aged 28,
 Constable (EXE), PIS No. 51101049,
 India Reserve Battalion, Agatti Island. **Applicant**

(By Advocate – Mr. P.K. Ibrahim in all the OAs)

V e r s u s

**1. The Commandant, India Reserve Battalion,
 Head Quarter, Kavaratti.**

**Respondent
 in all the OAs**

(By Advocates – Mr. S. Radhakrishnan in all the OAs)

These applications having been heard on 2.3.2010, the Tribunal on the
 same day delivered the following:



ORDER

By Hon'ble Mr. George Paracken, Judicial Member -

The issue involved in these three cases are identical and therefore, we dispose of them by this common order.

2. Facts of the case:-

2.1 All the three applicants are aggrieved by the respondents' letter No. 9/50/2002-IRBN(P-III), dated 5.2.2010, to the extent it affects them. By the said letter 62 personnels of the India Reserve Battalion (in short IRB) posted under IRB Headquarters, Kavaratti, including them are being transferred to IRB, Regional Headquarters, Silvassa in connection with the annual Coy Movement, 2010 (3rd phase) and they are expected to proceed from their respective Islands by MV Kavaratti leaving Kochi on 30th March, 2010 to reach Kochi on 3rd April, 2010. On arrival at Kochi the troops will report to OIC, IRBn, Kochi for their onward movement to RHQ, Silvassa by train. The name of the applicants in the said letter appears at serial Nos. 9, 6 and 3 respectively. All of them have made identical representations dated 3.12.2009 against their transfer.

2.2 Applicant in OA 121 of 2010 submitted that he was a native of Agatti Island and he was working in IRB since 12.3.2000. Earlier he was working in Silvassa, Daman & Diu up to 2008. He was posted in his native place at Agatti only on 21.9.2008. He has also stated that he was a married person and his child is only five months old. His wife is working as a Primary School Teacher in Junior Basic School (North), Agatti Island. She is the



only female member in her family and nobody else is there to look after the child at present. He has, therefore, requested the competent authority to retain him in the same station as there are guidelines issued by the Government that husband and wife, if both are government servants, should be posted at the same station.

2.3 Applicant in OA 122 of 2010 is also a native of Agatti Island and made a similar request on the ground that his wife is working as a Nursery School Teacher in Nursery School, Agatti Island and he has got two children of six years and four years of age.

2.4 According to the applicant in OA 123 of 2010 he got married in the year 2007 and his wife is working as a Staff Nurse CHC at Agatti Island and he has got a five months old child.

3. Respondents have not considered the aforesaid representations of the applicants favourably. Therefore, they had earlier approached this Tribunal vide OAs No. 42 of 2010, 43 of 2010 and 44 of 2010 respectively. This Tribunal vide its order dated 15.1.2010 disposed of those OAs directing the respondents to consider those representations and to inform them individually the reasons for their disagreement if they do not agree with their requests. In compliance of the aforesaid directions, the respondents have passed Annexure A-6 identical orders dated 27.1.2010 rejecting their requests. The respondents have stated in those letters that the IRB was raised in 2000 to cater the need of armed police force for the Union



Territories of Lakshadweep, Daman & Diu and Dadra and Nagar Haveli and to maintain the cosmopolitan character of the Battalion, the recruitments have been made on the basis of 50% from the UT of Lakshadweep and remaining 50% from Union Territories of Daman & Diu and Dadra and Nagar Haveli. The entire force has been deployed in the three Union Territories in the ratio of 2 coys in each Union Territory with HQ Company in UT of Lakshadweep and RHQ Coy in UT of Dadra and Nagar Haveli. According to the Battalion's standing order No. 3,B(IV/VI/VII), the coys deployment at Lakshadweep, Daman & Diu and Dadra & Nagar Haveli will have to be rotated at the interval of 2 years i.e. a coy deployed at Lakshadweep will come to Daman & Diu and Dadra & Nagar Haveli after 2 years of time and the coy in rotation replaces them. The two years tenure will be followed without fail. Coy will move in its entirety i.e. all the platoons and supporting staff of a coy will move from one UT to another UT together and not in parts or segments. Constables and enrolled followers will never be changed and will remain permanent in the coys allocated. They have therefore, submitted that each coy will have to complete its two years tenure in each of the three UTs i.e. UT of Lakshadweep, UT of Dadra & Nagar Haveli and UT of Daman & Diu. C Coy reported in UT of Lakshadweep in March, 2008 and it will be completing it's two years tenure of Lakshadweep in March, 2010 and accordingly it will have to move from UT of Lakshadweep to UT of Dadra Nagar Haveli in its turn as per the move plan of Coys 2010. As regards the instructions of the Government of India, regarding posting of husband and wife at the same station, they have submitted that Administrator of UT of Lakshadweep has taken a very



sympathetic view in the matter and ordered vide office order dated 18th June, 2008 that 1/3rd of the IRBn personnel in each island shall be the native of the respective island so the IRBn personnel get an opportunity to work in their native island for a period of one year on seniority wise. Applicant in OA 121 of 2010 who was earlier deployed at Silvassa reported at BN HQ Kavaratti in March, 2008. On arrival he had submitted a request for posting to Agathi on spouse working ground. The Lakshadweep administration agreed to his request and posted him to his native place i.e. Agathi vide order dated 16.8.2008. His tenure in Lakshadweep was for two years i.e. March, 2008 to March, 2010 and out of the same he has already enjoyed one year and 6 months at his native island. Therefore, he has no ground to make any representation for his continued posting in the Island. Since it is a policy matter that after completing two years tenure at Lakshadweep, a Coy has to move to UT Dadra Nagar Haveli and no relaxation is granted in the matter of transfer to avoid any disparity and injustice to the personnel of Lakshadweep who are going to complete their 4 years tenure in UT of Daman & Diu and Dadra Nagar Haveli and having hopes to come to their native islands after a long time.

3.1 According to the applicants, their transfer orders dated 5.2.2010 and the identical impugned letter dated 5.2.2010 issued to them by the respondents pursuant to the direction of this Tribunal contained in the common order dated 15.1.2010 in OAs 42, 43 and 44 of 2010 are arbitrary, illegal and against the spirit and contents of the Government of India, Ministry of Personnel & Training OM dated 30.9.2009, wherein posting of

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husband and wife at the same station is provided. The said OM reads as under:-

"Posting of husband and wife at the same station

In view of the utmost importance attached to the enhancement of women's status in all walks of life and to enable them to lead a normal family life as also to ensure the education and welfare of the children, guidelines were issued by DOP&T in O.M No. 28034/7/86-Estt.(A) dated 3.4.86 and No.28034/2/97-Estt.(A) dated 12.6.97 for posting of husband and wife who are in Government service, at the same station. Department had on 23.8.2004 issued instructions to all Mins./Deptts. to follow the above guidelines in letter and spirit.

2. In the context of the need to make concerted efforts to increase representation of women in Central Government jobs, these guidelines have been reviewed to see whether the instructions could be made mandatory. It has been decided that when both spouses are in same Central Service or working in same Deptt. and if posts are available, they may mandatorily be posted at the same station. It is also necessary to make the provisions at Paras 3(iv) and (vi) of the O.M. dated 3.4.86 stronger as it is not always necessary that the service to which the spouse with longer service belongs has adequate number of posts and posting to the nearest station by either of the Department may become necessary.

3. On the basis of the 6th CPC Report, Govt. servants have already been allowed the facility of Child Care Leave which is admissible till the children attain 18 years of age. On similar lines, provisions of O.M. dated 12.6.97 have been amended.

4. The consolidated guidelines will now be as follows-

(i) Where the spouses belong to the same All India Services or two of the All India Services, namely IAS, IPS and Indian Forest Service (Group 'A');

The spouse may be transferred to the same cadre by providing for a cadre transfer of one spouse to the Cadre of the other spouse, on the request of the member of service subject to the member of service not being posted under this process to his/her home cadre. Postings within the Cadre will, of course, fall within the purview of the State Govt.

(ii) Where one spouse belongs to one of the All India Services and the other spouse belongs' to one of the Central Services:-

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The cadre controlling authority of the Central Service may post the officer to the station or if there is no post in that station, to the State where the other spouse belonging to the All India service is posted.

(iii) Where the spouses belong to the same Central Service:

The Cadre controlling authority may post the spouses to the same station.

(iv) Where the spouse belongs to one Central Service and the other spouse belongs to another Central Service:-

The spouse with the longer service at a station may apply to his/her appropriate cadre controlling authority and the said authority may post the said officer to the station or if there is no post in that station to the nearest station where the post exists. In case that authority, after consideration of the request, is not in a position to accede to the request, on the basis of non-availability of vacant post, the spouse with lesser service may apply to the appropriate cadre authority accordingly, and that authority will consider such requests for posting the said officer to the station or if there is no post in that station to the nearest station where the post exists.

According to them when both the spouses are Central Government employees and when there are vacancies available, in view of the above OM posting of husband and wife in the same station is mandatory. Such policy was introduced in view of the utmost importance attached to the enhancement of women's status in all walks of life and to enable them to lead a normal family life as also to ensure the education and welfare of the children. Further, the applicants have submitted that there are only 30 personnel who have their wives as Government servants and they are entitled to be posted in their home station in the service of the IRBn raised for Lakshadweep, Daman and Diu and Dadra, Nagar Haveli. While other constables could take their family to the places of their postings, the

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applicants are not in a position to do so. Further, the learned counsel for the applicants argued that the posting of the applicants is to be treated as posting in the battalion and not in any particular company as the company has been created for administrative convenience only. The persons in the battalion can, therefore, be transferred from one company to the other without any administrative difficulty. They have also submitted that public interests demands for their posting at Lakshadweep as that is in consonance with the government policy in the matter of transfer.

4. The respondents in their reply has submitted the IRBn Lakshadweep, Daman & Diu and Dadra & Nagar Haveli is a unique Battalion which was raised in the year of 2000 to cater to the needs of Armed Police in the Union Territories of Lakshadweep, Daman & Diu and Dadra and Nagar Haveli. It was sanctioned by the Government of India vide MHA letter No II-27011/44/93-PF.III (ii) dated 2nd Feb 1996 wherein, it has been specifically stipulated that since the battalion personnel would be required to serve anywhere in the country, care should be taken at the time of recruitment and training that battalion has a cosmopolitan character and suitably orientated. As per direction of Government of India, the recruitment of the all the ranks for the India Reserve Battalion had to be made from three Union territories, namely UT of Lakshadweep, UT of Daman & Diu and UT of Dadra and Nagar Haveli. As per the Government of India Ministry of Home Affairs letter No U-13034/33/96-GP dated 22.10.97, the requirement for the Battalion would be made jointly by three UTs. As per the MHA letter dated 22.10.1997, 50% of the men will be from UT of Lakshadweep and 50%



from UTs of Daman & Diu and Dadra and Nagar Haveli. The standing orders with regard to Constitution, Organization and Deployment Guidelines of India Reserve Battalion are as follows:-

- i) The Battalion constitution and organization as per this Standing Order is permanent in nature. Coys, Platoons and sections allocated is not changeable and will remain permanent.
- ii) Constables and Enrolled followers will never be changed and will remain permanent in the Coys allocated.
- iii) 4 Coys will be deployed in the UT of Daman & Diu and Dadra & Nagar Haveli and two coys in the UT of Lakshadweep.
- iv) The Coy will have frequent rotation at the interval of 2 years in each UT.
- v) Coys will move in its entirety i.e. all the platoons and supporting staff of a coy will be move from one UT to another UT.
- vi) In allocation of coys proper mixing of boys and cosmopolitan outlook of the Battalion will be maintained.

4.1 Further, they have submitted that the applicant in OA 121 of 2010 is a Constable (Exe) of the IRBn, Lakshadweep, Daman & Diu and Dadra & Nagar Haveli which has been raised for the deployment in three UTs i.e. UT of Lakshadweep, UT of Daman & Diu and UT of Dadra & Nagar Haveli. He has been posted in 'C' Coy of the Battalion, which reported at Lakshadweep in March 2008 after completing the tenure in UT Daman & Diu and Dadra & Nagar Haveli. He has already been given an opportunity to stay with his wife, on his request that his wife is working as a teacher in Govt. School, Agatti by giving him posting to his native place (Agatti) w.e.f 16/08/2008.



4.2 Further, after the General Elections of 2004, posting of Police/IRBn men in their native island was prohibited by Note F.No. 1/5/2004-Estt(Pol) dated 25/6/2004 due to the extreme difficulty faced to maintain law & order in Lakshadweep. Being a small place with just 32 Sq Km in all and having small population of only 60,000 persons, almost everyone is known to everyone else and all of them have relations with one political group or other. After due consideration of the above circumstances, it was decided that the Police department would be allowed to post 1/3rd of their strength to their native island and similarly 1/3rd of IRBn men deployed in each island will belong to the respective island vide Administration UT of Lakshadweep Order No. 03/02/2007-IRBn dated 18/06/2008. The respondents have also submitted that recently, Govt. of India MHA has sought the comments from them with regard to the amendment in the transfer policy of the personnel working in IRBn on a reference made by Hon'ble MP (Lok Sabha) from Lakshadweep requesting therein to amend the transfer policy and to allow the IRBn personnel of Lakshadweep to stay in Lakshadweep and the IRBn personnel UT of Daman & Diu and Dadra & Nagar Haveli to stay in Daman & Diu and Dadra & Nagar Haveli. But the said proposal has vehemently been opposed as in the past, the local police and IRBn personnel belonging to these groups of islands were found less effective in handling the situation. The Administration of UT of Lakshadweep by their letter No. F.No/ 1/13/94-Estt POL (IRBN) PT-II/ 1825 dated 19/11/2009 had recommended to continue the existing transfer policy which has been found conducive for the efficiency of the Battalion. Therefore, the respondents have submitted that frequent rotation of the Coy



at the interval of 2 years in each UT is required to maintain effectiveness of the force.

4.3 As regards the Department of Personnel & Training OM dated 30.9.2009 regarding posting of husband and wife at the same station, they have submitted that the Department has implemented it as far as possible by posting the applicant in OA 121 of 2010 to his native islands i.e. Agathi by the Battalion Order F.No 03/02/2007-IRBn dated 16/8/2008. He completed two years tenure at Lakshadweep and therefore he has been transferred to UT of Dadra & Nagar Haveli by Battalion Order F.No. 9/50/2002- IRBn (P-III) dated 5/2/2010. Further they have stated that the Coys move with lock, stock & barrel from one UT to another UT and similar number of personnel move vice versa. If 30 personnel who have their wives as Govt. servants are retained even after completing their normal tenure of two years in Lakshadweep, the consequence is that 30 personnel at UT of Daman & Diu and Dadra & Nagar Haveli are to be retained in the same station even after completing 4 years tenure in these UTs. Therefore, it will be injustice and disparity to those Lakshadweep personnel who have completed their 4 years tenure in out side UTs. Similarly, it will also be injustice to the personnel who belong to UT of Daman & Diu and Dadra & Nagar Haveli and presently posted at various islands in Lakshadweep if they are retained in Lakshadweep even after completing two years tenure. All the personnel posted at various islands who have completed two years tenure have been considered for posting and accordingly their replacements in similar numbers have also been detailed from UT of Daman & Diu and Dadra &



Nagar Haveli for posting in UT of Lakshadweep.

5. We have heard the Mr. P.K. Ibrahim, learned counsel for the applicant and Mr. S. Radhakrishnan, learned counsel for the respondents. The transfer policy of each department is formulated considering its peculiar nature and functions. The applicants shall not forget that they are in India Reserve Battalion which is a para-military organization. The Military/Para Military organizations cannot be compared with the civilian organizations like Ministries and Departments of the Government. An employee who has got the transfer liability cannot escape from transfers. "Posting of husband and wife at the same station" is not a condition of service, but only a guideline for the authorities to make transfers. Within the constraints of the Organization and taking into consideration of the guidelines issued by the government, the respondents themselves have provided opportunity to the members of the IRBn to serve in their own Island for two years periodically so that they can stay with their families. As the manner in which the transfers are made in an organization is entirely the prerogative of the administration of the concerned department, the Courts and Tribunals have very little scope to interfere, as held by the Hon'ble Supreme Court in a catena of cases.

6. In **Mrs Shilpi Bose and others v. State of Bihar & others [AIR 1991 SC 532]** the Hon'ble Apex Court held as under:

"A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to other. Transfer orders issued by the

Competent Authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department."

6.1 In Union of India v. S.L.Abbas [AIR 1993 SC 2444], the Hon'ble Apex court held as under:

"The said guideline however does 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."

6.2 In National Hydro Electric Power Corporation Ltd. v. Sri Bhagwan and others [2002(1) SLJ 86], the Hon'ble Apex Court held as under:

"It is by now well settled and often reiterated by this Court that no Government servant or employee of public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other 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 malafide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals cannot interfere with such orders as a matter of routine as though they are the Appellate Authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned."

6.3 In the case of State of U.P. v. Gobardhan Lal [AIR 2004 SC 2165], the Hon'ble Apex Court held as under:

"It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the

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terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a malafide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the Competent Authority to transfer a particular officer/servant to any place in public interest and is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by malafides or is made in violation of any statutory provision."

6.4 In Royappa v. State of Tamil Nadu [AIR 1974 SC 555], the Apex Court held:

"It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and Appointing Authority has a wide discretion in the matter. The Government is the best Judge to decide how to distribute and utilize the services of its employees. However, this power must be exercised honestly, bona fide and reasonably."

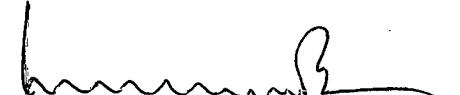
6.5 In Varadha Rao v. State of Karnataka and others [AIR 1986 SC 1955], the Hon'ble Apex Court held as under:

"It is well understood that transfer of a Government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage. That a Government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of Government service and no Government servant can claim to remain in a particular place or, in a particular post unless, of course, his appointment itself is to a specified, non-transferable post."



7. In view of the aforesaid legal position, we do not find any illegality in the orders of transfer warranting any interference by this Tribunal. Therefore, these applications are dismissed. There shall be no order as to costs.


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(GEORGE PARACKEN)
JUDICIAL MEMBER

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