

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 147/2005

Monday, this the 29th day of August, 2005.

C O R A M :

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

M. Pushparaju,
S/o. Mookkkaiah,
Staff Car Driver,
Central Integral Port Management Centre (CIPMC),
Ernakulam,
Residing at Quarter No. B-40,
CPWD General Pool Accommodation,
Athani, Kakkanad. **Applicant.**

{By Advocate Mr. K.P. Dandapani (rep.)}

V e r s u s

Union of India represented by
The Secretary,
Ministry of Agriculture,
Krishi Bhavan, New Delhi.

Plant Protection Adviser to Government of India,
Directorate of Plant Protection,
Quarantine & Storage,
N.H.IV, Faridabad, Haryana : 121 001.

The Assistant Director,
Central Integral Port Management Centre (CIPMC),
Fort Kochi, Ernakulam **Respondents.**

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

[The application having been heard on 29.8.2005, the Tribunal on the same day delivered the following]



ORDER (ORAL)
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant, a member of Scheduled Caste Community, is presently working as a Staff Car Driver under the 3rd respondent. He seeks transfer to his home station at Trichy, considering the special privileges granted by the Government to members of the Scheduled Caste. Various representations were made by the applicant seeking his transfer to CIPM Centre, Trichy. But all those representations were rejected stating that the applicant will be transferred back as and when the regular incumbent joins at Kochi office. Thereafter, the applicant made a detailed representation (A/5), which has also been rejected vide A/6 impugned order dated 19.1.2005 with an observation that "the same will be reconsidered on merit during the next rotational transfers of the Directorate". Aggrieved by the said order, the applicant has filed this O.A. seeking the following main reliefs:

Call for the records leading to Annexure A6 and quash the same as illegal to the extent it denies the transfer of the applicant back to CIPMC, Trichy;

Direct the respondents to transfer the applicant to CIPMC, Trichy with immediate effect considering the special status as the Member of Scheduled Caste;

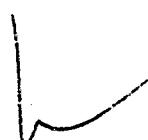
Declare that the applicant is entitled to be transferred back to CIPMC, Trichy, considering his special status as a member of Scheduled Caste; and alternatively

Direct the respondents to transfer other incumbents on turn duty basis to CIPMC, Kochi, at a definite periods cycles".



2. The applicant is a member of Scheduled Caste community. After serving the Indian Army for long 18 years he was reemployed as Staff Car Driver at CIPMC, Trichy. Applicant's grievance is that he has been abruptly transferred from Trichy to Ernakulam without following the guidelines in force. It was averred in the OA that in terms of clause (5) of A/1 transfer policy, the officials belonging to SC/ST community shall be extended concession in the matter of transfer as stipulated in O.Ms dated 24.6.1985 and 21.8.1989 of the Department of Personnel and Training, New Delhi. In another OM dated 20.6.89, it was mandated on the recommendation of Committee of Members of Parliament that employees belonging to SC/ST should, as far as possible, be posted near their native place. The applicant urged that he is eligible for special privileges and protection in the matter of transfer as communicated in A/2 OM referred to above. The applicant submits that he has been transferred to Ernakulam violating all these guidelines, therefore, he prays that the OA may be allowed.

3. The respondents have filed a detailed reply statement rebutting the contention of the applicant regarding special privileges to the members of SC/ST in the matter of transfer. As per para 5 of the A/1 transfer guidelines, officers/officials belonging to SC/ST or who are physically handicapped shall be extended concessions in the matter of transfer as per the rules/instructions of DOP issued from time to time. As per transfer policy of the Directorate, officials who have completed 5 years or more in a sensitive post shall be



transferred to a non-sensitive post and others will be transferred for a period after seven years. The applicant was due for rotational transfer. Moreover, there was an urgent need of posting of Driver in the 3rd respondent's office as no Driver available there and the work of survey etc. were badly suffering. No discrimination/ privilege has been shown to any particular class of employee. The applicant had the longest stay at Trichy and, therefore, it was considered desirable to post him to Ernakulam.

4. Shri U. Balagangadharan, Advocate, appeared on behalf of Mr. K.P. Dandapani, learned counsel for the applicant and Shri TPM Ibrahim Khan, appeared for the respondents.

5. Learned counsel for the applicant argued that in view of concession and protection granted to SC/ST in various affairs, he is entitled to protection in the matter of transfer also as stipulated in A/1 transfer guidelines. He also submitted that his family is in a shattered state due to various miserable occurred and it demands his presence at Trichy. Learned counsel for the respondents on the other hand submitted that the applicant had the longest stay (more than a decade) at Trichy because of the concession granted to him and now it has become necessary to transfer him to Ernakulam due to an urgent need of driver in the third respondent's office as no driver was available there and the work of Survey etc. were badly suffering.



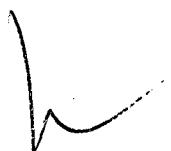
6. We have given due consideration to the pleadings and arguments advanced by the learned counsel for the parties.

7. The applicant's case is that he was transferred to Ernakulam without following the guidelines and the special privileges/ concession available to him as SC candidate. He was also subjected to mental agony due to pulsating family situation. His elder daughter's husband died in an accident and the widowed daughter and her infant has also become his dependent. The wife of the applicant is a chronic T.B. Patient and a heavy expenditure was incurred for the treatment. The applicant has to undergo double establishments due to his transfer to Ernakulam. The entire expenditure of the large family, medical treatment of the wife of the applicant and other expenditure are met from the meagre salary of the applicant, who is only the earning member in the family. Learned counsel for the applicant referred to clause (5) of A1 guidelines which states that "officers/officials belonging to SC/ST community or who are physically handicapped shall be extended concessions in the matter of transfer as per the rules/instructions of DOP&T issued from time to time." Further, A/2 O.M dated 20.6.89 also specifies that " in the case of holders of Group 'C' and 'D' posts who have been recruited on regional basis and who belong to Scheduled Tribes may be given posting as far as possible, subject to administrative constraints near their native places within the region." The applicant urged that many forward community members working in different CPIM Centres, who include both seniors and juniors were spared and the applicant, a SC candidate, was put to lot of



inconveniences. In Annexure A4 seniority list, the applicant figures at serial No. 16. Learned counsel for the applicant took us through various decisions of the Tribunal, viz. (1991) 15 ATC 36, (1989) 9 ATC 563, (1989) 10 ATC 137 to show that as far as possible, the transfer ^{of} SC/ST employees to far-flung area is to be avoided in avoidable cases. He also cited a decision of this Tribunal reported in (1993) 23 ATC 596 stating that due to constitutional protection to SC/ST, their transfer stand on different footing than general category. Further, in a recent recent judgement of Hon'ble High Court reported in 2004 (3) ATJ 116, it was held that illegal transfer order can be rendered null and void even after the incumbent relieved and joined the new station. The learned counsel argued that the applicant is entitled to special privileges granted to SC/ST by the Government. We have also examined the stand taken by the respondents. They contended that the transfer was made in public interest and in exigencies of service. However, in para 7 of the reply statement, the respondents have stated that "..... Keeping in view the difficulties expressed by the applicant, it was felt that his case may be considered for transfer back to Trichy when a regular incumbent become available at Ernakulam Office. A number of posts in the cadre of Driver are vacant and, therefore, the Directorate is facing problems in providing drivers to all the stations. The case of the applicant may be considered alongwith others on merit for posting at Trichy."

8. Since the respondents have expressed their willingness to consider applicant's case in the next turn, we are of the view that the ends of justice



would be met if a direction is issued to the respondents to consider his case sympathetically as expressed above, keeping in mind the clause (5) of A/1 guidelines and also other circumstances narrated in the OA. We order accordingly.

9. With the above observations, the O.A is disposed of. In the circumstances, no order as to costs.

(Dated, the 29th August, 2005)



N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.V. SACHIDANANDAN
JUDICIAL MEMBER

CVR.