

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 158/2005.

Thursday, this the 9th day of June, 2005.

CORAM:

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

M. Balakrishnan,
Peon,
Indian Coast Guard,
Kalvathy Road,
KOCHI : 682 004.

... Applicant.

(By Advocate Mr. K.P. Dandapani)

versus

1. The District Commander,
Headquarters,
Indian Coast Guard District No.4,
C/o. Fleet Mail Office,
KOCHI - 682 004
2. The Commander,
Coast Guard Region (West),
Mumbai : 400 001
3. The Director General,
Coast Guard Headquarters,
New Delhi : 110 001
4. Union of India,
Represented by Secretary to Government,
Ministry of Defence, South Block,
New Delhi : 110 001.


... Respondents.

(By Advocate Mr. TPM Ibrahimkhan, SCGSC)

ORDER

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

The applicant working as a Peon, is aggrieved by the mis-feasance on the part of the first respondent in relieving him of his duties from the first respondent's office with a direction to report at Indian Coast Guard Station, Kavaratti on permanent transfer without even issuing a transfer order. By filing this O.A., the applicant has sought following main reliefs:

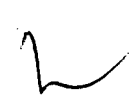


(i) Call for the records leading to the issue of Annexure A/2 and set aside the same as illegal and unsustainable;

(ii) direct the respondents to retain the applicant in the Office of District Commander, Indian Coast Guard, Fort, Kochi.

2. The case of the applicant is that he was appointed as Peon in the Indian Coast Guard Station (ICGS, for short) in 1998 under the first respondent on being sponsored by the Employment Exchange. The first respondent, it is averred, had relieved the applicant to report at Indian Coast Guard Station, Kavaratti, vide Annexure A/2 dated 1st March, 2005 without any reason which is not preceded by any transfer order. He was being compelled to join at Coast Guard Station, Kavaratti, which will badly affect the applicant and his family. The impugned order A/2 is highly arbitrary as it was issued out of extraneous consideration.

3. The respondents have filed a detailed reply statement contending that the applicant was selected for the post of Peon with effect from 25th March, 1998, against the vacancy of Indian Coast Guard Station, Kavaratti. It was clearly mentioned in the requisition letter (R/1) forwarded to the Employment Exchange that the post of Peon to be filled was for Indian Coast Guard Station, Kavaratti and the candidate selected will have to work at Indian Coast Guard Station, Kavaratti. Since the Coast Guard Station at Kavaratti could not commence functioning in 1998, all the staff including the applicant recruited against that Station was initially posted under the first respondent at Kochi, which is the Administrative Authority for Indian Coast Guard Station, Kavaratti. On 15.1.2004, the Indian Coast Guard Station at Kavaratti got commissioned and all the Coast Guard Officers and other staff who were posted against the vacancy of Indian Coast Guard Station, Kavaratti were transferred to Kavaratti Station in the month of December, 2003 and January, 2004 for establishing the office and all the civilian staff for ICGS, Kavaratti were retained in the office of the first respondent at Kochi for transferring them on progressive basis at Kavaratti Station. In the second phase of transfer, the civilian staff



who were recruited for ICGS, Kavaratti, are being transferred to Kavaratti. It is averred that S/Shri Saiffuddin, Chowkidar, and T.C. Mohammed, Sweeper, have also been transferred to ICGS, Kavaratti, with the same relieving order which was given to the applicant. For smooth functioning of the office at Kavaratti, the Commanding Officer, ICGS, Kavaratti, has been asked vide R2 letter to consider transferring the civilian staff recruited for Kavaratti station. As a result, the applicant has also been transferred to ICGS, Kavaratti, the original place of posting. The applicant was not the only one who transferred out as all the remaining civilian personnel have been issued notice for joining the office at Kavaratti. Besides, in the R3 appointment order, it is clearly mentioned that the posting of the applicant is at Kavaratti. Therefore, it cannot be said that there is any malafide intention in transferring him to Kavaratti. The impugned order is rightly issued and therefore, the O.A. deserves to be dismissed.

4. The applicant has filed a rejoinder reiterating his contentions made in the O.A. and further contending that the authority who issued the impugned order, was not competent to do so. If the applicant is asked to be moved out to Kavaratti Station permanently, he will be put to much practical difficulties and he will never be in a position to come back and even the chances of considering his request for transfer to the native place would be foreclosed. The impugned order A2 is issued without jurisdiction and not under the orders of the competent authority. As such the same is liable to be quashed and the O.A. deserves to be allowed.


5. I have heard Shri K.P. Dandapani, learned counsel for the applicant and Shri TPM Ibrahimkhan, learned counsel for the respondents.

6. I have given due consideration to the pleadings, evidence, arguments and the material placed on record. Learned counsel for the applicant argued that the impugned order is not a transfer order, but only a relieving order, which is per se arbitrary and illegal. No public



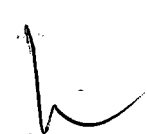
interest is involved in transferring the applicant. His difficulties could not have been considered while transferring the applicant to Kavaratti Station. The applicant made a complaint on 28.2.2005 to the first respondent regarding the indifference and non-cooperation of the boat crew as the boat crew did not wait for him to go back to his Fort Kochi Office after collection of postal articles from Southern Naval Command Office. It was the practice that as soon as the postal articles are collected, he was dropped back at the office in the same boat itself. As per the applicant, the impugned order was issued in this backdrop. Learned counsel for the respondents, on the other hand, persuasively argued that the applicant's posting was originally at Kavaratti Station as per the appointment order issued to him but that could not be given effect to at that time due to delay in commissioning of the Unit at Kavaratti. Now since the unit was commissioned, it was necessitated to deploy the staff already recruited for Kavaratti Station. The applicant was transferred accordingly and the transfer order was issued in public interest.

7. It is borne out from the records that the recruitment of civilian employees by the Indian Coast Guard Headquarters (District No.4) was originally meant for Kavaratti Station and posting orders were also issued accordingly. Annexure R/1 requisition sent by the Headquarters of Coast Guard District No.4 addressed to the Director, Directorate of Employment, Thiruvananthapuram clearly shows that the posts requisitioned therein are meant for Coast Guard Station, Kavaratti, alone. This was reiterated in Annexure R/2 order indicating the position of civilian staff at ICGS, Kavaratti. Further, as per the Defence sanction letter No. CS/o210/931/DO/D(N-II) dated 24.7.1996 mentioned in R/2, they were employed under DHQ-4, Kochi. All the documents produced by the respondents, inter alia, specify that the applicant was selected for Coast Guard Station, Kavaratti and he was adjusted at Kochi till the Unit was established at Kavaratti. By virtue of impugned order A/2 the applicant was relieved of his duties with a direction to report Indian Coast Guard Station, Kavaratti, the original place of posting. The fact that the applicant was retained at Kochi for want of commissioning the Unit at Kavaratti. This, in my view, will not



confer any right on the applicant to be retained at Kochi any further when the Unit at Kavaratti has started functioning. I am, therefore, of the view that there is no infirmity or illegality in issuing the impugned order A/2.


8. Now the question comes whether the authority who issued the order, is competent to do so? From the documents, it is clear that the Coast Guard Station, Kavaratti, is under the administrative control of the Commander Headquarters, Coast Guard District No.4, Kochi, Kerala. Therefore, the competency of the issuing authority cannot be questioned or faulted and the impugned order cannot be said to be vitiated. What remains is that as per the applicant, the impugned order relieving him to report at Kavaratti Station, is passed without issuing the transfer order. This argument is not acceptable due to reason that the applicant was originally recruited for Kavaratti Unit. As already observed, he was retained at Kochi for some time on account of delay in establishing the Station at Kavaratti. In this view of the matter, I do not find any illegality in issuing the impugned A/2 order relieving him to report at Kavaratti. In my view, no separate transfer order is necessitated since the applicant was recruited under the staff strength of Kavaratti Unit. Learned counsel for the applicant has also referred to two decisions reported in 2004 (1) ATJ 378 (wrongly cited) and 2000 LIC 1139, Surendra Mohan Kateryar vs. State of Bihar and Others. I have gone through these decisions. The facts in the cases cited above and the case on hand are entirely different. In this particular case, the applicant is now posted at the original place for which he was recruited. It was not the case of the applicant that he was originally recruited somewhere else than Kavaratti and then transferred out. He was only retained at Kochi till the Office at Kavaratti was established. He is now being relieved to take up the charge at the original place after establishing the office there at kavaratti. There is no misconduct or illegality on the part of the respondents in relieving the applicant without issuing separate transfer order since he was directed to report at the original place for which he was recruited. I am fully convinced that his present posting is in public interest. In a catena of decisions including the decision reported in AIR 2004 SC



2165, State of UP and Ors. vs. Gobardhan Lal, Hon'ble Supreme Court has held that the scope of judicial review to interfere in transfer matter is very limited unless it is shown to be vitiated by mala fides or any fraction of statutory rules. No such circumstance is explained in this case warranting interference by this Court.

9. In the conspectus of the facts and circumstances and the legal position discussed above, I am of the view that the impugned order does not require any interference by this Court. The O.A. being bereft of any merit is dismissed. Consequently, the interim order dated 2.3.2005 shall stand vacated. No costs.

(Dated, the 9th day of June, 2005.)



(K.V. SACHIDANANDAN)
JUDICIAL MEMBER

cvr.