

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.164/13

.....*Friday*..... this the *6th* day of September, 2013

C O R A M :

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

M.H.R.Khasimi,
Deputy Director of Census Operation,
Lakshadweep.

Applicant

(By Advocate: Mr.S.Radhakrishnan)

V e r s u s

1. Union of India
represented by the Secretary to the Govt. of India,
Ministry of Home Affairs, North Block,
New Delhi – 110 001.
2. The Registrar General of India and Census Commissioner,
2/A, Mansingh Road, New Delhi – 110 011. Respondents

(By Advocate: Mr.Sunil Jacob Jose, SCGSC)

This application having been heard on 3rd September, 2013, the Tribunal on *6th* September, 2013 delivered the following order:-

O R D E R

Transfer is the issue involved in this case. The applicant, serving as Deputy Director (Census) Operation, joined the service in 1984 as Senior Technical Assistant in Anthropological Survey of India at Dehradun and was selected by the UPSC and appointed as Asst. Director of Census Operations and posted to Lakshadweep in November, 1995. On routine transfer, he was transferred to Bangalore in 1998 where from in 2007 he was transferred to Gujarat. In April, 2010, he was transferred to Lakshadweep. The normal tenure at Lakshadweep Islands, a hard station, is two years. Hence, he had, in May, 2012 filed a representation that since his wife is employed at Karnataka and is staying with the children, his next transfer be to Bangalore. In February, 2013 the respondents, vide Annexure

A-6 effected his transfer out of Lakshadweep, not to Bangalore, but to Uttarakhand. Thus, the applicant again sent a representation explaining the guidelines which provide for transfer on spouse ground. There arose a vacancy at Bangalore in March, 2013, where the applicant could have easily been accommodated. Yet the respondents had not acceded to his request. Hence, this O.A. seeking the following reliefs:-

- a) "Call for the records connected with the case.*
- b) Declare that the applicant is entitled to get a posting to the station of his choice, where his wife is working, after completion of two tenures in the remote area of Lakshadweep.*
- c) Set aside Annexure A6 order, transferring the applicant from Directorate of Census Operations Lakshadweep to Directorate of Census Operations, Uttarakhand.*
- d) Direct the respondents to transfer the applicant and post him to the Directorate of Census Operations, Karnataka at Bangalore where the vacancy of Deputy Director of Census Operations is arising on 01.03.2013.*
- e) Grant such other reliefs as this Hon'ble Tribunal may deem fit, just an proper in the facts and circumstances of the case".*

2. Respondents have contested the O.A. In the reply, they have highlighted the functional aspects of the Census organization and submitted that fixed tenure of posting or deputation as provided in the orders of Department of Expenditure Office Memorandum on the subject cannot be strictly followed in the office of Registrar General, India. They have also tabulated the period spent by the applicant at Bangalore. Again, they have stated that during his tenure at Karnataka, there was a complaint against the applicant of tampering of office records and a disciplinary case under Rule 14 of the CCS (CC&A) Rules is still pending for the commission and omission on his part. It has also been stated that the posting to Lakshadweep is one of request transfer. The respondents have also referred to certain decisions of the Apex court to hammer home their point that the scope of judicial interference in matters of transfer is the least.

3. In his rejoinder the applicant has stated that his transfer to Lakshadweep was initially characterized as one of request transfer, vide para 2 of Annexure A-10 order dated 21-04-2010; however, the same had been modified by Annexure A-11 order dated 29-04-2010. In fact, his representation in this regard would reveal that his request made was purely

in the institutional interest and not to derive any personal advantages.

4. Counsel for the applicant argued that the guidelines stipulate that when a person serves in a hard station for a tenure, he is entitled to request for a posting at his choice station and subject to availability of vacancy there he would be transferred. In this regard, reference has been invited to OM dated 14-12-1983 (which is said to be still in vogue) with particular reference to para 1 thereof, which reads as under:-

"Tenure of posting/deputation:** There will be a fixed tenure of posting of three years at a time for officers with service of 10 years or less and of 2 years at a time for officers with more than 10 years of service. Period of leave, training etc in excess of 15 days per year will be excluded in counting the tenure period of 2/3 years. **Officers, on completion of the fixed tenure of service mentioned above may be considered for posting to the station of their choice as far as possible"

5. Thus, it was on the basis of this concession given that the applicant soon after completion of his tenure at Lakshadweep requested for posting at Bangalore. Spouse ground is yet another recognizable ground for transfer to Bangalore.

6. Again, the counsel referred to the OM dated 30th September, 2009 wherein it has been provided as under:-

"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."

7. In the very same O.M. it has also been stated -

Where one spouse is employed under the Central Govt. and the other spouse is employed under the State Govt:-

"The spouse employed under the Central Govt may apply to the competent authority and the competent authority may post the said officer to the station or if there is no post in that station to the State where the other spouse is posted."

8. Thus, according to the counsel for the applicant, the professed norms have been violated and judicial interference is readily justified when there is a definite infraction of the professed norms.

9. The senior Central Government Standing Counsel argued that transfer is an incidence of service and Uttarakhand needs the services of senior officers and it was on that ground that the applicant was posted to that place. Again, since the applicant had indulged in some activities of misconduct while at Bangalore on the last occasion, it was felt that his posting out side Bangalore would be congenial.

10. In his oral rejoinder, counsel for the applicant has stated that in Uttarakhand, already there are four Deputy Directors functioning under one Joint Director. As such, the request of the applicant for a choice posting cannot be frustrated on that ground.

11. Arguments were heard and documents perused. It is settled law that who is posted and where is the prerogative of the authority. At the same time, when certain concessions have been made available, such aspects shall have to be kept in mind while invoking the power to transfer. A three Judges Bench of the Apex Court in the case of **State of UP Vs Ashok Kumar Saxena (1998) 3 SCC 303** has held as under:-

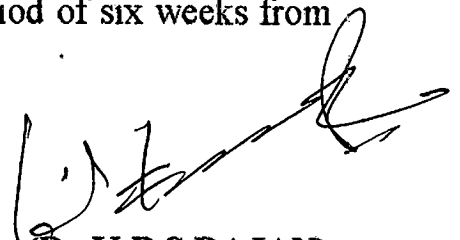
"In N.K. Singh v. Union of India (1994) 6 SCC 98 this Court held that interference by judicial review is justified only in cases of mala fides or infraction of any professed norms or principles (Emphasis supplied)".

12. In the instant case, two of the guidelines go in favour of the applicant. One is the choice station after completing a tenure at the hard station and the other is spouse ground. The spouse is working in the Government High School at Karnataka. There is no chance of her getting posted elsewhere than Karnataka. As such, as per clause (vii) of Annexure A-3 extracted above, the applicant's request certainly deserves consideration. It would have been a different thing if there be no vacancy at Bangalore.

13. That there was certain alleged misconduct earlier committed by the applicant at Bangalore cannot dilute the concession and benefit available to the applicant under the Guidelines. Nor could the reason afforded by the senior Central Government Standing Counsel that Uttarakhand needs experienced persons be justified when there are already four senior level officers functioning there, as submitted by the counsel for the applicant, which has not been refuted by the other side.

14. There thus, remaining a vacancy of Deputy Director at Bangalore, the applicant being entitled to ask for a choice station by virtue of his having done a tenure at Hard Station, coupled with the fact that incidentally, the choice station happens to be in the state where his spouse is employed in a State Government Organization, this **OA is allowed**. Respondents are directed to pass necessary orders posting the applicant at his request to Bangalore, where the vacancy has been kept unfilled by an order of this Tribunal, vide order dated 27-02-2013.

15. This order shall be complied with, within a period of six weeks from the date of its communication. No costs.



(Dr.K.B.S.RAJAN)
MEMBER(J)