

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.190/08

Friday this the 25 th day of April, 2008.

CORAM:

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

N.SATHIAMMA,
W/o Muralidharan Unnithan, Office Superintendent,
Regional Passport Office, Ernakulam,
Residinga tal "KALLAS", 1st Cross Road,
Cheria Kadavanthra, KOCHI – 682 020. Applicant

(By Advocate Shri TCG Swamy)

Vs.

1. Union of India represented by
the Secretary to the Government of India,
Ministry of External Affairs, NEW DELHI.
2. The Joint Secretary (PV),
Ministry of External Affairs, NEW DELHI.
3. The Administrative Officer (PV.IV)
Ministry of External Affairs,
(CPV Division) NEW DELHI.
4. The Regional Passport Officer,
Regional Passport Office, KOCHI. Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC)

The application having been heard on 24.4.2008
the Tribunal on 25.4.2008 delivered the following:

ORDER

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

The applicant at present functioning as Office Superintendent, a Group B post, had been posted to Cochin in 2004, after her earlier tenure of 4 years at Tiruchirapalli. It was on 27th March, 2008 that the applicant was promoted to the post of Office Superintendent vide Annexure A2 order and her posting as per that order was at Cochin itself. However, by Annexure A-1 order of the same date, i.e. 27th March, 2008, she has been transferred to Mallappuram, which comes within the Zone of Kozhikode-Cochin-Bangalore-Malappuram. The applicant has challenged the same on various grounds.

During the pendency of the OA, she has been relieved, vide order dated 8th April, 2008.

2. Various grounds have been raised by the applicant. The applicant is also a physically handicapped person, and is of 56 years of age. There are persons with longer stay of over two decades in the same station but have not been disturbed. There is no administrative necessity warranting transfer as no replacement has so far taken place. The applicant's son is studying in 2nd year Pre-degree course and her spouse is a retired government servant and at this age it would be difficult for her to move to Malappuram. If at all such a transfer out of Cochin is essential, respondents could well consider her transfer to Trivandrum, where vacancy exists.

3. Respondents have contested the OA. According to them, as per transfer policy, transfer could be effected on the basis of longest stay in a station or on promotion and, of course, under certain specific exigencies as enumerated in the guidelines also, transfer could take place. In the case of the applicant, her transfer is purely on account of the fact that she stands promoted to the post of Office Superintendent. Her transfer is on the basis of the professed norms as contained in the guidelines. As regards the longest stay, the respondents contended that retention of some of them is due to the fact that they fall within the exempted category as per the norms and the applicant does not fall under any such norms.

4. Applicant has filed her rejoinder, containing the fact of various others with more station seniority and also having been promoted like the applicant but have not been transferred. Thus, according to the applicant she has been singled out and the same is violative of equality clause.

5. In the O.A. the applicant had annexed Annexure A-6 communication, whereby certain individuals had been referred to a Medical Board. This was for the purpose of considering such cases under the provisions of Annexure A-3 read with Annexure A-4.

The applicant has, moved M.A. No. 330/2008 annexing a copy of the Medical Board Report dated 11-04-2008, as in the case of Annexure A-6.

6. Counsel for the applicant argued that it was unfair on the part of the respondents to issue a relieving order when the case was pending. Again, the contention that she has been transferred on her promotion cannot hold good, since the order promoting her as Office Superintendent also posts her at Cochin and it was by a separate order vide Annexure A-1 that she has been transferred. In addition, certain individuals such as Shri V.P. Joy has been continuing in the same place for a substantial period. Such individuals could have been transferred at the time of their promotion, which took place in April, 2007 vide Annexure A-5 but they have been retained as they were nearing 57 years of age at that time. The same position persists in the case of the applicant at the time of her promotion, but she has been disturbed. It has also been argued that vide Annexure A-3 read with A-4 Memorandum dated 13th March, 2002, requests from physically handicapped employees for transfer to or near their native places may be given preference in respect of all groups of employees and the applicant falls within this category. Counsel for the applicant referred to the decision of the Apex Court in the case of B. Varadha Rao vs State of Karnataka(1986) 4 SCC 131.

7. Senior Central Government Standing Counsel, succinctly submitted that the Respondent's action in transferring or relieving the applicant cannot be faulted with as none of the guidelines has been violated. There are persons who are waiting for their turn for posting to Cochin and the applicant has completed her tenure here and that she was on promotion when the transfer order was issued. Again, as regards the allegation that others have been retained, it has been argued that the said Shri V.P. Joy already stands transferred and in so far as others, their dates of superannuation is fast approaching, right from 2008 onwards till 2010, while the applicant's date of superannuation is only end 2011. It has also been stated by the senior counsel that the applicant has not exhausted her departmental remedy. Again, as regards physical handicap, the applicant has never



raised this point earlier and it is for the first time that this point is pressed into service. Certain decisions of the Apex Court as referred to in the counter reply have been cited by the senior counsel.

8. Counsel for the applicant submitted that this is a deserving case of a physically handicapped old lady, who is at the evening of her career and that if according to the respondents, administrative remedies have not been exhausted, she may be permitted to exhaust that remedy as well.

9. Arguments were heard and documents perused. The guidelines are specific as to when a transfer should be effected and what are the exceptions and exemptions. Sure enough, none of the exempted category is attracted in the case of the applicant. The applicant has been in Cochin in 2004 and she has recently been promoted. She is not within three years of superannuation. As regards other longest stayees, the respondents have clearly indicated in para 5 as to how these individuals fall within the exempted category. As regards, V.P. Joy, it has been stated that the said individual has already been transferred. Exhaustion of departmental remedies is referred to by the respondents only to persuade the Court to dismiss the OA on that ground in view of Sec. 20 of the A.T. Act and not for any other purpose, much less to afford the applicant an opportunity to make a representation. In fact, vide para 4(e) the contention of the applicant is that the fourth respondent stated that he would not receive any representation, but this para has been specifically denied with an amplification that representations, if received, are duly considered. The applicant has thus directly approached the Tribunal. Again, the Medical Board report is as recent as of 11-04-2008 and there does not appear to be any such report in the past, much less the applicant was permitted to be posted at a particular station on the basis of such physical condition. It is apparent that that the same is an after thought and the distinctive difference between Annexure A-6 and Annexure MA 1 is that while the former related to conducting of Medical Board at the instance of the respondents, the latter is one, at the instance of the applicant herself and not one as directed by the

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Respondents.

10. There is no need to refer to any of the decisions of the Apex Court as the symphonic strike by these orders is to the effect that in matters of transfers, unless malafide is alleged and proved, unless the professed norms are violated or unless the transfer is one of punitive in nature, judicial interference is not held to be appropriate.

11. One aspect, however, cannot be lost sight of. The applicant does not seem to be keen in continuing only at Cochin. If posting at Trivandrum is ordered, she may have no objection, as stated in para 4(g). It is not mentioned by the respondents in their reply or during the course of arguments, much less emphasized, that there is acute necessity of the services of the applicant at Malappuram. If, in order to accommodate some other individuals at Cochin as per the provisions and concessions available, the applicant has to be transferred out of Cochin, she could be but not necessarily to Malappuram. The applicant is now running 56 years and within a few months she would be within the fold of exempted category and she could ask for a posting to her place of choice during the last three years of her career. She has even now expressed that she may be posted to Trivandrum. If posting at Trivandrum could be possible, respondents may well consider the same. While so considering, opportunity can also be availed of in considering the Medical Board Report dated 11-04-2008. In that event, the applicant could move to Trivandrum, from where to reach Cochin for medical treatment at regular intervals may not pose problems. While the case of the applicant deserves such a consideration by the appropriate authority with due sympathy, this aspect is at the full discretion of the authority concerned.

12. In view of the above, evidently, the applicant has not made out any case for quashing of the impugned order. There does not appear to be any unfairness in the relieving of the applicant during the pendency of the O.A. However, as observed in the preceding paragraph, the respondent may consider sympathetically the case of the



applicant for posting at Trivandrum as against Mallappuram. The applicant may, in this regard file a representation annexing the medical Board report as well, in which event the respondents may consider the same. This may not be construed to mean that the applicant who already stands relieved may not move to Malappuram. She should first join the new duty station and in case of her request for posting at Trivandrum or for that matter to any other place of her choice falling within any particular zone, if the authority considers it fit to move her to Trivandrum or such other place, then she may be transferred from Mallappuram to Trivandrum on request. This could be possible as Cochin-Chennai-Trichy-Trivandrum-Bangalore is one of the prescribed zones. It is emphasized that this is left purely to the discretion of the competent authority, who may take into account the situation of the applicant on the one hand and the administrative exigencies on the other. Of course, in order to relieve the anxiety of the applicant, prescription of time limit of two months for disposal of such representation would meet the ends of justice and accordingly, it is directed that in case such representation is made, the same be considered judiciously and decision on merit communicated/implemented, within two months of filing of the representation. With this observation, the OA is disposed of.

13. No costs.

Dated 25 th April, 2008.



Dr. K.B.S. RAJAN
JUDICIAL MEMBER

cvt.