CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. Nos. 184/2005 and 192/2005

Tuesday, this the 23rd day of August, 2005

C O R A M :

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

O.A. NO. 184/2005

K. Ravindranathan,
S/o. Shri Viswanathan,
Upper Division Clerk,
Office of Official Liquidator,
High Court of Kerala,
Company Law Bhawan,
III rd Floor, Thrikkara,
KOCHI - 21

... Applicant.

(By Advocate Mr. T.A. Rajan)

V e r s u s

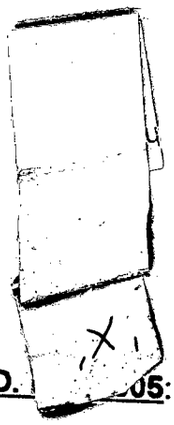
Union of India rep. by
The Secretary to Government of India,
Ministry of Company Affairs,
Shastri Bhavan, 5th Floor, New Delhi.

The Regional Director (Southern Region),
Ministry of Company Affairs,
Shastri Bhavan, Block 1, Vth Floor,
26, Haddows Road, Chennai - 6.

The Official Liquidator,
High Court of Kerala,
Company Law Bhavan,
III rd Floor, Thrikkara,
KOCHI - 21

... Respondents.

(By SCGSC, Shri TPM Ibrahim Khan)



O.A. NO. [illegible]05:

Savy J. Alappat,
S/o. Late A.A. John,
Lower Division Clerk,
Office of Official Liquidator,
High Court of Kerala,
Company Law Bhawan,
III rd Floor, Thrikkara,
KOCHI - 21

... Applicant.

(By Advocate Mr. T.A. Rajan)

Versus

Union of India rep. by
The Secretary to Government of India,
Ministry of Company Affairs,
Shastri Bhavan, 5th Floor, New Delhi.

The Regional Director (Southern Region),
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The Official Liquidator,
High Court of Kerala,
Company Law Bhavan,
III rd Floor, Thrikkara,
KOCHI - 21

... Respondents.

(By SCGSC, Shri TPM Ibrahim Khan)

ORDER

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

The applicants K. Ravindranathan and Savy J. Alappat have filed separate O.As challenging their transfer and relieving orders vide Annexures A/2 and A/3 respectively. Since the issue involved in both these cases is common and one and the same, the learned counsel

appearing for the parties have agreed to its disposal by a common order.

2. The applicant in OA No. 184/05 was commenced his services as Lower Division Clerk in the Department of Industrial Development, Ministry of Industry, New Delhi, on 12.3.1990 . On request, he was then transferred to the office of the Registrar of Companies, Coimbatore, where he joined on 1.6.2003. Thereafter, he was transferred to the office of the Official Liquidator, High Court of Kerala, Kochi on 1.6.2003 and he got promotion to the post of Upper Division Clerk with effect from 23.9.2004 and was continuing there till the time of his present transfer.

3. The applicant in O.A. No. 192/2005 was initially appointed as Lower Division Clerk in the office of Deputy Chief Naval Staff, Armed Force, Head Quarters, Ministry of Defence, New Delhi on 2.12.1992 and thereafter, through Staff Selection Commission, he was appointed as Lower Division Clerk in the office of Registrar of Companies and joined there on 11.6.1996. Thereafter, he was transferred and posted in the office of the Official Liquidator, High Court of Kerala, Kochi with effect from 1.6.2003.

4. It was averred in the O.As that as per the guidelines in vogue in the department, "the transfer in respect of Group 'C' staff of the field officers can only be effected after completion of three years where there

is only one field office of the department in that particular station and on completion of five years where there are more than one field offices of the department in the particular station". Annexure A/1 is the guidelines and according to them they are liable to be transferred only on completion of five years in the present station. There are several others who have completed five years of service in the office, therefore, they are to be transferred in preference to the applicants. The impugned orders A/1 and A/2 transferring and relieving the applicants from the present place of postings are illegal and arbitrary. Aggrieved by the impugned orders, the applicants have filed above O.As mainly praying for the following identical reliefs:

> "(a) To call for the records leading to Annexures A2 and A3 and set aside the same.
>
> (b) To declare that the transfer of the applicants to Chennai as per Annexure A/2 order is illegal.
>
> (c) To direct the respondents to allow the applicant to continue in the office of the third respondent."

5. The respondents have filed a separate reply statements contending that there is no allegation of mala fides against any persons and the applicants cannot challenge Anenxure A2 transfer orders. The transfer orders were issued on the basis of administrative exigencies and public interest by the second respondent, who is the competent authority to

effect the transfer from one station to any other station within the Region. The applicants cannot challenge the A/1 transfer policy. It was further contended that Annexure A/1 is the transfer policy of the Ministry of Company Affairs relating to rotation of staff with respect to those who are working in sensitive posts. The case of the applicants is not falling within the purview of transfer policy as they have been transferred on the basis of specific allegations of misconduct and enquiry conducted against the applicants. Moreover, the staff appointed by the Central Government are liable to work anywhere in India and the Government depending upon the exigencies of work, public interest and also other administrative reason including the receipt of complaint against the misconduct of the official is liable to act if necessary, by transferring the concerned official to maintain discipline and decorum in the office. As such it cannot be said that the transfer can be effected in accordance with transfer policy alone. When a complaint was received against these applicants, a 'fact finding enquiry' was initiated and when the enquiry was in progress, another complaint was received by the Regional Director (SR) from Shri C. Rajendran, Senior Central Government Standing Counsel (SCGSC, for short) alleging that two officials of the office of Official Liquidator had clandestinely and without his knowledge obtained the papers of the case from his office and entrusted them to another counsel. On account of this, the case was not properly put forth before the Court. The enquiry officer naming the said two officials as the applicants had suggested

appropriate action to be taken in the matter. On the complaint received from the SCGSC, vide letter No. 42011/42/2002-Admn.II dated 14.11.2004, the Ministry had directed the second respondent to investigate into the matter and fix the responsibility on the officials of the third respondent who were behind the whole episode. As per the finding, the applicants in both the O.As, namely K. Ravindranathan and Savy J. Alappat were identified as the officials referred to in the complaint. In para 8 of the reply a reference was made in regard to letter dated 22.12.2004 of the Official Liquidator, High Court of Kerala, Kochi, addressed to the Regional Director (SR), Ministry of Company Affairs, Chennai, {the administrative head of field officers}, in which it has been alleged the applicants were involved in various unhealthy activities and that their intention appeared to be to put pressure on the Official Liquidator and even to blackmail him. In the said letter, he also mentioned that he was unable to cope up with the tension and mental agony that the applicants had caused to him by their acts and desired that he himself may be transferred to some other place. He had also suggested transfer of the applicants outside Kerala. Considering the entire aspects of the case and other matters, which are of confidential nature, it was decided by the Ministry to shift both these applicants outside Kerala. The enquiry conducted was only a fact finding enquiry. It was not done as per provisions contemplated in the disciplinary proceedings. Applicants have been transferred on in public interest after considering various issues

involved. Altogether three officials were transferred and the third person, namely Mr. M.B. Ramakrishnan, UDC, has accepted the transfer and joined to the transferred place. Only these two applicants have challenged the orders of transfer before this Tribunal.

6. The applicants have filed separate rejoinders reiterating their contentions made in the OAs and trying to justify the action that they had done and pleaded that it cannot be said to be a misconduct but only to improve the institutional functioning.

7. I have heard Mr. T.A. Rajan, learned counsel for the applicants and Mr. TPM Ibrahim Khan, SCGSC, for the respondents.

8. Learned counsel for the parties took me through various pleadings, evidence and material placed on record. Learned counsel for the applicants submitted that the transfer of the applicants is not justified sine it is not issued in tune with the guidelines A/1. The tenure period of stay in the station has not been completed and the alleged allegation based on which the transfers were affected, is only punitive in nature and, therefore, void abinitio. The learned counsel for the respondents on the other hand persuasively argued that the transfer of the applicants have been effected in public interest and in exigencies of service. The transfer of the applicants has become inevitable for smooth functioning of

the department.

9. I have given due consideration to the arguments advanced by the respective parties and material placed on record. It is an admitted fact that the applicants have not completed five years tenure in the present station and the the transfers are not in conformity with the A/1 guidelines. The pleading of the respondents themselves are that the applicants case does not fall within the purview of transfer policy as they have been displaced from their respective posts on the basis of the complaints received against them and also based on the fact finding enquiry conducted on the complaints.. Moreover, the staff members appointed by the Central Government are liable to work anywhere in India and the Government depending upon the exigencies of work, public interest and also other administrative reason, orders transfer of employees as and when necessary. The transfer of the applicants was necessitated to maintain discipline and decorum in the office. The respondents further took a stand that there may not be any binding instructions that transfer can always be done in accordance with the transfer policy alone. When the over tact of an employee becomes unbearable affecting the discipline and decorum in the office, the recourse would be that such official is shunted out on administrative ground so as to maintain the decorum and discipline in the office. Therefore, it was argued on behalf of the respondents that transfer of the applicants is not punitive in nature. In

this context, it is profitable to quote the decision of Hon'ble High Court of Kerala reported in 1999 (2) KLT 673, Rajan vs. Director General of Police, wherein it was held that the transfer guidelines are only guidelines and it has no statutory force and the transfer can always be done in public interest. The transfer of employees effected on administrative reason and in exigencies of service and public interest has always been upheld by the Hon'ble Apex Court. In the decisions reported in 1994 SCC (L&S) 230, Union of India and Ors vs. S.L. Abbas and (1995) 3 SCC 270, State of MP and Anr. vs. S.S. Kourav and Ors., Hon'ble Supreme Court has held that the the scope of interference in the matter of transfer is very limited unless it is malafide, arbitrary, unfair and unreasonable. It is within the domain of the Administration to decide who should be transferred where. In the cases on hand, it is borne out from the records that the applicants were involved in some unfair/unhealthy practice and complaints were received from other agencies, including the one received from Shri C. Rajendran, Senior Central Government Standing Counsel, putting certain allegations on the employees working in the office of the Official Liquidator, High Court of Kerala, Kochi. In order to find out the actual culprit, a fact finding enquiry was conducted by the enquiry officer. Finding that the applicants and another were involved in the said incident, the enquiry officer strongly recommended to take appropriate action in the matter. To ensure smooth functioning of the office, as recommended by the

Ministry, the impugned orders were issued transferring the applicants from the present place of postings. The contention of the applicants is that they were not given any notice / an opportunity of personal hearing before passing the transfer orders. As against this, the respondents contended that it is not at all necessary as it was a fact finding enquiry and not of a disciplinary proceedings. This was done so as to find out a prima facie case whether any allegation against the applicants is subsisting and I am of the view that no such notice is required to be issued in such situation. The respondents have produced the entire proceedings including the complaints received against the applicants. Since they are confidential in nature and may affect adversely the career of the applicants, I am not revealing the contents of the same. On going through the records, I find that sufficient materials were brought in in the said preliminary enquiry so as to have a reason for the transfer of the applicants from the present place of postings. However, in the matter of the Companies Act, 1956 and in the matter of various Companies (in liquidation) in General Report No. 964 dated 7.6.2005, Hon'ble High Court of Kerala has passed following orders, in which the applicant in OA No. 184/2005 is figuring.

> " Report filed by the Official liquidator praying for an order to :
>
> permit the Official Liquidator to report the above lapse/loss of interest in respect of various Companies (in liquidation) and also such other matters that may be brought out in the

audit report of the local fund auditors which had occurred when one Shri K.Ravindranathan, UDC, was posted in the Accounts Section, to the Regional Director, Chennai, the Administrative Head of Southern Region for appropriate action as the said Shri K. Ravindranathan has since been transferred to the office of the Official Liquidator, Chennai,

and

pass a such other order or orders as deemed fit and proper under the circumstances.

This report coming for an orders on this day upon hearing Shri K. Moni, Counsel for Official Liquidator, the Court passed the following:-

ORDER

Perused the Report and Anenxures A & B. Heard the learned counsel for the Official Liquidator prayer (a) as prayed for, is granted. The competent authority will proceed untrammeled by anything stated in this office."

10. So also, the enquiry conducted on the complaint from Shri C. Rajendran, Senior Central Government Standing Counsel, the applicants have been implicated. However, I reserve my observations on these points. Taking the entire aspects into consideration, I am fully convinced that the transfers of the applicants were made in public interest and on administrative reason. The respondents have transferred the applicant in OA No. 184/05 alongwith the post to the new station so that he could be ensured of a posting in a clear vacancy.

11. Learned counsel for the applicants has brought to my notice the decisions reported in (1987) 4 ATC 473, V. Bhaskaran vs. Deputy Collector (P&E), Office of the Collector of Central Excise, Ernakulam,

Cochin and others, and (1988) 8 ATC 895, Bijoy Kumar Gharami vs. Union of India and Ors., canvassing for a position that the transfer based on misconduct attaching stigma to the applicant is punitive. The transfer as a result of ex-parte enquiry into complaints against the employee is held to be punitive and bad. The respondents have distinguished these decisions by contending that no stigma has been attached to the applicants due to their transfer. It is not an ex parte enquiry, but only a fact finding enquiry. The learned SCGSC also cited a decision reported in AIR 1993 SC 1236, Rajendra Roy vs. Union of India and Another, to show that the Tribunal should not interfere with the order of transfer unless the order is passed mala fide or in violation of the rules. The action of the respondents is fully justified.

12. In the conspectus of the facts and circumstances, I am of the view that the applicants have not made out a case and there is no reason to interfere with the transfer and relieving orders of the applicants. The Original Applications being bereft of any merit are dismissed. In the circumstances, no order as to costs.

(Dated, the 23rd August, 2005)

K.V. SACHIDANANDAN
JUDICIAL MEMBER

cvr.