

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.223/08

Friday this the 25th day of April 2008

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

V.P.Joy,
S/o.Philipose,
Superintendent,
Regional Passport Office, Cochin.
Residing at Ambazhavelly House,
Kanjiramattam P.O., Ernakulam.

...Applicant

(By Advocate Mr.P Ramakrishnan)

Versus

1. Union of India represented by Secretary to Government, Ministry of External Affairs, New Delhi – 110 001.
2. The Joint Secretary (CPV) and Chief Passport Officer, 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, Panampilly Nagar, Cochin.

...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

This application having been heard on 25th April 2008 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is aggrieved by Annexure A-4 order dated 24.4.2008 by which he has been transferred from the Regional Passport Office, Cochin to Regional Passport Office, Malappuram. He submitted that his initial appointment as an LDC itself was on the basis that he is a Orthopeadically handicapped person with 40% disability. He was working

in the Regional Passport Office, Cochin from 1992 onwards and he met with an accident in the year 1994 when his scooter had been hit by a Truck. His right leg was totally damaged and his level of disability has been increased to 50%. Prior to the accident, he had undergone two transfers, one to Kozhikode in the year 1998 and another to Hyderabad in the year 1985. After the accident he was transferred to Ahmedabad in the year 2002. However, on his representation the said transfer order was cancelled and he was retained in Cochin itself. The applicant has produced Annexure A-2 certificate issued by the Medical Board stating that he has got 50% physical disability. He has also produced Annexure A-6 Office Memorandum No.AB-14017/41/41/90-Estt (RR) dated 10.5.1990 clarifying that the guidelines contained in para 2 of the OM dated 10.5.1990 that requests from physically handicapped employees for transfer to or near their native places may be given preference, and it covers the physically handicapped employees in Groups A,B,C and D also. However, a copy of the said OM dated 10.5.1990 has not been annexed with this O.A. Counsel for the applicant has further submitted that the respondents ought to have noted that on earlier occasions also his transfer was cancelled on account of his health condition. The other ground adduced by the applicant is that he is due for his retirement from service in July 2010 and he should not have been subjected to a transfer at this juncture.

2. Counsel for the respondents, on the other hand, submitted that the present transfer is only a general transfer and out of 13 persons so transferred 8 persons are physically handicapped and that no exception can be made in the applicant's case. She has also pointed out that there are no restriction of transfer of a physically challenged person from one place to another and that the applicant has been continuing in Cochin

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continuously from the year 1992 onwards. Further, she has submitted that transfer is an incidence of service and therefore, this Tribunal may not interfere with the transfer of the applicant. She has also pointed out that similar requests from other physically challenged persons who have been transferred may also arise and such requests cannot be acceded to in public interest.

3. I have perused the entire application and also heard counsel for both the parties. Counsel for the applicant has produced a copy of the order in O.A.191/08 dated 9.4.2008 passed by a coordinate Bench of this Tribunal in the case of a colleague of the applicant. In the said case this Tribunal has passed the following orders :-

“ In view of the fact that the representation of the applicant has not so far been disposed of, the Tribunal feels that it would be in the interest of justice if the application is disposed of at the admission stage itself with a direction to the 2nd respondent to consider the representation dated 7.4.2008 (A6) within a period of three weeks from today. The applicant is permitted to make available the latest medical certificate for consideration by the 2nd respondent and while coming to a decision in regard to retention/transfer the 2nd respondent shall take into account the medical certificate as well. In case, the respondents feel that the medical examination shall be by a Medical Board, they may accordingly direct the applicant to undergo such medical examination and a decision of the department should be on the basis of such medical report. Till such time a decision is arrived at as stated above, the applicant shall not be displaced from the present place of posting. O.A is closed. No costs.”

4. In this case, the impugned transfer order was issued to the applicant only yesterday i.e.24.4.2008. He approached this Tribunal without making a representation against the transfer apprehending his imminent relieving from duty at the present place of posting. It is an accepted principle of law that every person who is under transfer has a right to make a representation to the authorities concerned. Since the applicant has not

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made any representation against his transfer, I permit him to make a detailed representation to the 2nd respondent within a period of three days from today. The 2nd respondent, in turn, shall consider the same and take an appropriate decision within a period of two weeks from the date of receipt of a copy of the representation. Till such time, the impugned order dated 24.4.2008 shall not be given effect to. The O.A is accordingly disposed of.

A copy of the order be given to the parties today itself.

(Dated this the 25th day of April 2008)


GEORGE PARACKEN
JUDICIAL MEMBER

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