

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 227 of 2011

Friday....., this the *17th* day of *June*.....,2011

CORAM:

Hon'ble Ms.K.Noorjehan, Administrative Member

Mr.V.P Krishnan

Aged 53 years

S/o Krishna Kunju, Wireless Supervisor

Inter State Police Wireless, Quarter No.2

ISPW Staff Quarters, Kavarathi,

Lakshadweep

.....

Applicant

(By Advocate – Mr. Rinny Stephen Chamaparambil)

V e r s u s

1. Director

Police Tele Communication

Directorate of Coordination (Police Wireless)

Block No.9, CGO Complex

Lodhi Road, New Delhi- 110 001

2. Assistant Director (Administration)

Directorate of Coordination (Police Wireless)

Block No.9, CGO Complex

Lodhi Road, New Delhi-110 001

.....

Respondents

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

This application having been heard on 09.6.2011, the Tribunal
on *17.6.2011* day delivered the following:

ORDER

By Hon'ble Ms. K.Noorjehan, Administrative Member -

1. The applicant is challenging his transfer from Kavaratti to Daman made vide Annexure A-2 office order dated 5.5.2010 and subsequent office order Annexure A-6 dated 14.1.2011. This is the second round of litigation.
2. The contention of the applicant before this Tribunal in the earlier OA No. 519 of 2010 was that he joined the Madras station of the Police Wireless, Directorate of Coordination under the Ministry of Home Affairs, Government of India, New Delhi as Wireless Operator in 1985. He worked in various places such as Gangtok, Trivandrum, Shillong and New Delhi. In the year 2006 he was promoted and transferred to Kavaratti where he is presently working. He challenged his transfer to Daman on the following grounds:
 - i) His son was studying in plus two in Government Senior Secondary School at Kavaratti,
 - ii) his transfer was against the provisions of Annexure A-1 policy of the respondents' department; and
 - iii) he is entitled to be posted in the station of his choice.



3. In view of the clear finding of the Tribunal in the earlier O.A that there has been violation of transfer policy guidelines due to denial of posting to a choice station after completion of 4 year difficult station tenure as against the mandatory two year tenure and on the basis of certain new facts brought in through the present Original Application which are contradictory to the stand taken by the respondents about transfer being effected strictly on the basis of station seniority, the present O.A was admitted.

4. The applicant has reiterated his earlier contentions that he has completed his tenure at hardship stations at Gangtok, Shillong and Kavarathi and he has only 5 years of service left. As per clause 4 of the Annexure A-1 transfer policy guidelines, the respondents are to make sincere efforts to post an individual serving in any of the north-east region State or non-popular stations of Panaji, Gangtok etc to his choice station and near his home station on completion of the prescribed tenure in such stations. Therefore the applicant contends that after completing one tenure in Gangtok, a non-popular station and Shillong a ISPW station and Kavarathi a hardship station for 4 years, he should have been transferred to Trivandrum. The respondents did not even consider his Annexure A-7 representation in the light of Annexure A-1 office memorandum. Only on denial of a reply to Annexure A-7 representation he was compelled to approach this Tribunal. There are vacancies in the 3 stations he has requested for, but still his representation was not entertained

ty

favourably. His compelling reason to stay in Trivandrum is necessiated by the parental care required for his son.

5. The respondents submitted in the reply statement that they issued the transfer order on the basis of first come first go basis in respect of those who have completed mandatory tenure and only in exceptional cases the officials are retained at Trivandrum. Shri A Varghese and Shri P.R Mohanan have been permitted to continue at Trivandrum beyond the station tenure on medical grounds. They added that due to want of vacancy the applicant can not be accommodated at Trivandrum.

6. The applicant filed a rejoinder refuting the submissions of the respondents about the lack of vacancy at Trivandrum or in other stations he has requested for. He reiterates that the transfers are being ordered on consideration other than station seniority. He avers that the post of Wireless Supervisors and Wireless Operators have been merged and only the station seniority in the merged single cadre can be taken for the purpose of station tenure. He points out that Shri V Ponnappan was transferred to Kavarathi in May 2006 along with the applicant. Now one Shri T.P Chandrasekharan who joined Kavarathi in November 2007 is transferred to Hyderabad only with the intention to retain Shri V Ponnappan at Kavarathi beyond his station tenure. Moreover, M/s.Mohammed Rizvi, P Ramakrishnan and K.Rajendran are



retained at Chennai without assigning any reasons. He avers that Shri Jayakumar has requested for a transfer from Trivandrum which was not been considered so far. Had he been transferred, in the resultant vacancy the applicant could have been accommodated. Eventhough the applicant submitted an application under RTI Act seeking a copy of the Minutes of the Meeting of the Committee on Transfer to get a copy of the request made by Shri Jayakumar, these documents have not been provided to him so far. At Annexure A-12 and Annexure A-14 the applicant has furnished true copies of sanctioned strength and working strength of staff of Wireless Supervisors and Wireless Operators in 33 stations in South Zone as on 30.06.2010. Against 8 posts of wireless supervisors and Wireless Operators only 5 posts are filled up at Trivandrum. There are still three vacancies in the merged cadre of Wireless Supervisors/Wireless Operators. In Chennai against 10 posts only 5 are manned. In Kavarathi against 3 posts of Wireless Supervisors as on 30.06.2010, only one post is filled up. He also produced Annexure A-3 which shows that a few officials are permitted to stay at the same station for more than 5 to 10 years.

7. Heard the counsels for the parties and perused the records. What emerges from the rival contentions is the undisputed fact that the applicant is entitled for a posting to his choice station on completion of the prescribed tenure in a hardship station in accordance with clause 4 of Annexure A-1 transfer policy guidelines,

ty

but for want of vacancy at Trivandrum. The counsel for applicant strenuously argued, with the support of additional information obtained through RTI Act, to show that a vacancy at Trivandrum exists or in the alternative, can be made available by acceding to the request of Shri Jayakumar. During the course of argument, the counsel cited the following judgments of the Honourable Supreme Court/Kerala High Court.

- (i) Damodaran V. State of Kerala ; ILR 1983(1) Ker. 143.

Para 11 is reads as follows:

“ 11. I had considered the question at rather great length in the case of Dr.Kuriakose. I pointed out therein that the power to transfer should be exercised reasonably and fairly and in the best interests of the administration. Where the power is exercised without due regard to the interest of the administration or the interest of the public or the provisions of law or the requirements of justice, or where the power is exercised for extraneous and irrelevant considerations, or for mala fide reasons, or as a punishment or as an act of victimisation, in all those cases of perverse exercise or abuse of power, the jurisdiction of this Court is wide enough to strike down the offending order. That the power was exercised without personal animosity or malice would in such cases be no answer. Bad faith does not necessarily mean dishonesty. Mala fide in the legal sense is a fraud on power, but not necessarily a dishonest or malicious act. A person acts mala fide if he exercises the power perversely, or unauthorisedly or improperly or unreasonably. XXXXXXX XXXXXX ”

- (ii) Dr.Sethumadhavan v. State of Kerala and others ; ILR 1991 (1) Ker.650. In para 2 of the judgment a reference is made to

ty

the case of R.D Shetty v. International Airport Authority; 1979 (3) S.C.C 7489, where the Hon'ble Supreme Court held that:

“ It is well settled rule of administrative law that a executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain, of invalidation of an act in violation of them. This rule was enunciated by Mr.Justice Frankfurter in Viteralli v. Saton. XXXXXXXXXXXXXXXX The State as far as possible must adhere to the guideline which it sets for” themselves. XXXXXXXXXX Normally there cannot have any administrative difficulty in giving a posting to the petitioner and the second respondent in the place of their choice accepting the indication given by Ext. P-3 judgment of this Court. “

(iii) Ramadhar Pendey v. State of U.P and Others ; 1993 Supp (3) SCC 35. A portion of para 16 of the judgment reads as follows:

“ xxxxxxxxxxxx It cannot be gainsaid that transfer is a necessary concomitance of every service; but if such a transfer could be effected only on certain conditions, it is necessary to adhere to those conditions. In this case, “the public interest” being absent, the impugned order of transfer cannot be supported. “

(iv) Venkitaramanan Potti v. Travancore Devaswom Board ; 1993(2) KLT 374. A portion of para 7 of the judgment is reads as follows:

“ The authorities are clear that if the transfer is vitiated by mala fides, the action is tainted and it is open to the court to interfere, in exercise of the powers vested in it under Art.226 of the Constitution of India. “

ty.

8. It is seen from Annexure A-3 that 11 officials are continuing at Delhi for periods ranging from 5-10 years. Similar is case with places like Agartala, Gangtok, Imphal, Mumbai, Patna, Port Blair, Shillong, Shimla etc. It is presumed that willing officials are permitted to continue in such hardship stations. However this does not explain the retention of Shri K Rajendran from April 2005 at Chennai or 11 officials at Delhi from October 1999 onwards. The respondents have not given any clarification on this point nor have they filed an additional reply statement for the rejoinder filed on 18.03.2011, eventhough the case came up for consideration on 28.03.2011, 08.04.2011 and 18.05.2011. They have only mentioned about Shri A Varghese and P.R Mohanan who are retained at Trivandrum from 1995 and 2000 respectively on medical grounds. The respondents have also opted to remain silent on the issue raised by the applicant that no action was taken on the request of Shri Jayakumar for a transfer out of Trivandrum. The information the applicant obtained through RTI Act at Annexure A-12 and Annexure A-14 shows that all the sanctioned posts at Chennai and Trivandrum are not filled up in full. Only 5 are posted at Trivandrum against a sanctioned strength of 8. Annexure A-12 also reveals that at Pondichery the working strength is higher than the sanctioned strength. Against one post of Wireless Supervisor two are posted and against 3 posts of Wireless Operators 4 are posted. Against a sanctioned strength of 4, 6 are working at Pondichery, the capital of Pondichery Union Territory

ty

which covers around 4 sq.km. Shri V Ponnappan is retained at Kavarathi beyond the station tenure by posting out Mr.Chandrasekharan who joined later than Shri V Ponnappan by more than one year. Hence the plea of the respondents that the transfer orders are issued strictly on the basis of station seniority and first come first go basis is contrary to the practice followed.

9. I observe from Annexure A-3 and Annexure A-10 that respondents do not follow, a uniform practice in transferring the employees on completion of prescribed tenure. Many are retained far beyond the prescribed tenure, as in the case of Delhi. Few stations are under staffed, like Trivandrum and Chennai and over staffed like Pondichery. This compels me to hold the view that respondents stand that they are strictly following the transfer policy guidelines in respect of station tenure is not true to facts. Moreover when the transfer policy guidelines lay down the rule to adjust transfers for all the employees, in various non popular/hardship/normal stations in such a way that those employees who serve in non popular/difficult stations get choice station, their inability to do so is tantamount to managerial failure and legal malice. It is especially so, when a chosen few have uninterrupted service in their home towns. Therefore I find force in the contention of the counsel for applicant that by considering the requests of both the applicant and Shri Jayakumar, the respondents could have fitted the applicant at Trivandrum. According to the

ty.

counsel the sanctioned strength of the merged cadre of wireless operators and supervisors is not fully filled up at Trivandrum.

10. In view of the foregoing I hold that the applicant is legally entitled for transfer to a place of his choice. Therefore the Annexure A-2 order transferring him from Kavarathi to Daman is set aside. In view of the foregoing, and the dictum laid down by the Apex Court I direct the respondents to consider Annexure A-7 representation of the applicant bearing in mind the observation in paras 8 and 9, the request of Shri Jayakumar for transfer from Trivandrum and to issue modified transfer orders within a period of 8 weeks from the date of receipt of a copy of this order. Till then the applicant will continue to remain at his present station. Ordered accordingly. No costs.

(Dated this the 17th day of June, 2011)


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER

SV