

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 244 OF 2008

Dated the 24th September, 2008

CORAM:-

HON'BLE Dr. K.S.SUGATHAN, MEMBER (ADMINISTRATIVE)

MK Sayed Mohammed Koya,
S/o KK Kunhiikoya,
Assistant Settlement Officer,
Survey & Settlement,
Revenue Department, Kalpeni,
Union Territory of Lakshadweep,
Residding at Matikkadan NellaiHosue,
Kalpeni 682 557, Union Territory of Lakshadweep.

Applicant

[By Advocate: Mr U Balagangadharan for M Millu Dandapani)

-Versus-

1. Union Territory of Lakshadweep,
Represented by its Administrator,
Kavaratti Island 682 555.
2. The Settlement Officer,
Revenue Department,
Union Territory of Lakshadweep,
Kavaratti Island 682 555.
3. The Collector-cum-Development Commissioner,
Kavaratti Island 682 555.
4. The Sub Divisional Officer,
Revenue Department,
Kalpeni Island-682 557.

Respondents

[By Advocates: Mr S Radhakrishnan)

This application having been heard on 3rd September, 2008 the
Tribunal delivered the following -

ORDER

The applicant in this OA was working as a Block Development Officer [BDO] Amini Island in Lakshadweep on ad hoc basis. By his letter dated 18.12.2007 the applicant requested the Administrator to revert him to the post of Asst. Settlement Officer because of some personal reasons. This was followed up by another letter dated 2.1.2008 addressed to the Settlement Officer stating that he has requested for reversion to Asst. Settlement Officer and that on reversion he may be posted at his native island of Kalpeni. By order dated 5.1.2008 the Administrator approved the applicant's reversion to the post of Asst. Settlement Officer in accordance with his request. But thereafter he was posted as Officer on Special Duty for the ongoing pilot project on "cadastral survey" and allowed to draw salary against the post of ASO Kalpeni. Subsequently the applicant was posted to assist District Programme Coordinator for the implementation of NREG scheme by order dated 29.3.2008 (Annexure-A/4). The applicant did not report for duty to the District Programme Coordinator of NREG, but instead he joined as ASO Kalpeni. The respondents thereafter issued an order on 6.5.2008 relieving the applicant from the post of ASO Kalpeni (Annexure-A/9). The applicant has sought quashing of Annexures- A/4 and A/9.

 2] It is contended by the applicant that he sought reversion from the post of BDO solely for the purpose of getting a posting to his native island of Kalpeni. But on reversion he was posted at Kavratti. After the order at A/4 dated 29.3.2008 placing him at

the disposal of District Programme Coordinator NREG was received, the applicant made a representation on 7.4.08 for permitting him to work at Kalpeni because of certain family commitments. This was followed up by another representation dated 29.4.2008 stating that because of his house construction work at Kalpeni it is necessary for him to remain at Kalpeni and requesting the respondents to reconsider their decision to post him at Kavratti. But instead of acceding to his request the respondents issued an order dated 6.5.2008 declaring that he stands relieved from the post of ASO, Kalpeni. The orders at A/4 and A/9 are therefore illegal and arbitrary.

3] The respondents have contested the OA. It is stated in the reply statement that the UT Administration has to make stop-gap arrangements to implement the programmes and policies of the Government of India. The NREG is an important programme of the Government of India to provide livelihood security to the households in the rural areas by providing at least 100 days of employment every year. The services of the applicant was decided to be utilised for the effective implementation of the NREG programme in the Islands. The posting of the applicant to assist the District Programme Coordinator was solely for administrative convenience. There is no intention to harass any employee.



4] I have heard the learned counsel for the applicant Shri U Balagangadharan and the learned counsel for the respondents Shri S. Radhakrishnan. I have also perused the records carefully.

5] There are several judicial pronouncements of the apex Court on the issue of transfer of public servants. In the *State of UP vs. Siya Ram (2004) 7 SCC 405*) the Hon'ble Supreme Court has held that transfer is not only an incidence of service but a condition of service and the employee has no legal right to be posted at any particular place. Transfer, unless shown to be malafide or in violation of statutory provisions, the Court cannot interfere with such transfers. The following extract from the judgment of the apex Court in that case is relevant:

"5...Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. V- Shri Bhagwan."

6] The applicant in this case contended that he sought reversion from the post of BDO to Asst. Settlement Officer only for the purpose of getting a posting in his native island of Kalpeni. But his letter dated 18.12.2007 addressed to the Administrator does not stipulate any such condition. The letter dated 18.12.2007 is reproduced below:



"To
The Hon'ble Administrator,
UT of Lakshadweep,
Kavaratti Island.

(Through the Director (Services) Secretariat, Kavaratti).

Sub: Request for reversion to the post of Asstt. Settlement Officer from the post of Block Development Officer - submitted.

Sir,

With due respect, I beg to submit the followings for your kind perusal and early favourable orders, please.

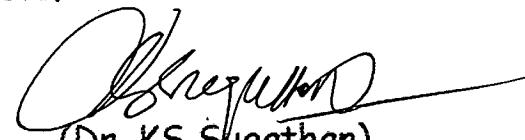
At present I am working as Block Development Officer Amini on adhoc basis with effect from 20.3.2006 F.N. Due to some personal reasons, I compelled to request reversion to the post of Asstt. Settlement Officer. Therefore, it is requested that I may please be reverted to my regular post of Asstt. Settlement Officer as early as possible date. It will be a boon to my personal life."

7] In his subsequent letter addressed to Settlement Officer dated 2.1.2008 the applicant has requested that on reversion he may be posted at Kalpeni, his native island. It is important to note that his request for posting at Kalpeni which is not addressed to the Administrator, is totally independent of his request for reversion to the post of ASO. As the letter requesting reversion does not stipulate any condition regarding his posting, it is not possible to accept the contention that he is entitled to posting at Kalpeni on his reversion. It is also noted from the reply statement that his transfer from Kalpeni to Kavratti for the NREG work was purely guided by administrative requirement. They have even described him as an efficient official. The contention of the applicant that his relieving order dated 6.5.2008 is not preceded by a formal transfer order has no merit, because the order dated



'29.3.2008 clearly states that his services are placed at the disposal of the District Coordinator, NREG at Kavratti. It is for the Administration to decide what is the best manner of utilising the manpower available for implementing various schemes, as long as it does not deprive any employee of his legal rights. Working in a place of his choice is not a legal right available to an employee. There is no malafide alleged in this case. In the light of the established legal position it is not possible to accept to prayer of the applicant for quashing the orders at A/4 and A/9. However, the respondents shall consider his representation dated 7.4.2008 and 29.4.2008 (Annexures-A/5 and A/7) and pass appropriate orders keeping in mind the applicant's track record and the fact that he also requested for posting at Kalpeni by his letter dated 2.1.2008.

8] For the reasons stated above, the OA is disposed of with a direction to the respondents to consider the representation dated 7.4.2008 and 29.4.2008 (Annexures-A/5 and A/7) and pass appropriate orders within a period of three months from the date of receipt of copy of this order. No costs.



(Dr. KS Sugathan)
Member (Administrative)