

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 263/90
~~XXXXXX~~

199X

DATE OF DECISION 31-7-1990

MP Attakoya Applicant (s)

M/s PM Sayeed, TPM Ibrahimkhan &

PK Aboobacker Advocate for the Applicant (s)

Versus

The Administrator, Respondent (s)

U.T. of Lakshadweep, Kavaratti & another

Mr PV Madhavan Nambiar Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. To be circulated to all Benches of the Tribunal? *Yes*

JUDGEMENT

(Mr. AV Haridasan, Judicial Member)

The applicant Shri MP Attakoya, a Police Constable working in Androth Police Station under the second respondent, the Superintendent of Police, U.T. of Lakshadweep, Kavaratti has in this application filed under Section 19 of the Administrative Tribunals Act challenged the validity of the order of general transfer of Police Constables issued by the second respondent on 26.3.1990 at Annexure-A3, as far as it relates to the transfer of the applicant from Androth to Kiltan Island being arbitrary, illegal and against the guidelines contained in the circular of the Administrator of U.T. of Lakshadweep dated 27.1.1986(Annexure-A5) and has prayed that the respondents

..2...

to continue

may be directed to allow[✓] the applicant/as Police Constable in Androth. Shorn of details the facts of the case can be briefly stated thus:

2. As a result of continued representations made by the applicant as well as the members of his family, the applicant was transferred to Androth Island on 11.1.1988 while he was working in Minicoy. This order of transfer was granted on his request to the applicant taking into account of the fact that his wife was employed in Androth, that he had to look after his aged and ailing parents and also to enable him to fulfil his long cherished desire of constructing a house in his native place at Androth. The applicant himself has undergone a major surgery for Hernia in the recent past anticipating that he would be allowed to continue in Androth for a period of three years at least in accordance with the guidelines regarding transfer contained in Annexure-A5 circular of the Administrator. As per the norms in that guidelines, a Police Constable who is transferred to a particular Island should be allowed to continue there for a period not less than 3 years. The guidelines further provides that as far as practicable, if both the spouses are employed, they should be accommodated in one station. But to the applicant's surprise, the impugned order at Annexure-A3 was issued by the second respondent on 26.3.1990 transferring him from Androth to Kiltan Island which is one of the northernmost Island of the Lakshadweep Group of Islands. The applicant made a representation on 27.3.1990 to the second respondent

...3...



mentioning the difficulties which he would be put to in the event of the transfer being carried out and requesting that the order of his transfer may be cancelled. But the second respondent has not taken any action to cancel the impugned order of transfer. As the impugned order of transfer has been made in violation of the guidelines in the circular relating to transfer (Annexure-A5) and as the order of transfer is arbitrary, illegal and tainted with malafides and as the applicant apprehends that the same has been issued at the instance of Shri MP Nallakoya, Inspector of Police, who is working as a Reader under the first respondent, it is prayed that the impugned order may be set aside and the respondents may be directed to retain the applicant at Androth and a direction may be given to the second respondent to take appropriate action on the representation at Annexure-A4 made by the applicant.

3. The respondents in the reply statement ^{have} sought to justify ^{the} the impugned order of transfer on the ground that it was necessitated in administrative exigencies as there were complaints against the applicant. It has been contended that the apprehension of the applicant that the transfer order was issued at the instance of any officer is false and baseless. It has also been contended that the policy of the Administration is not to retain Police Constables in native Islands for more than 2 years. It has been further averred that since ^{taking} into account the administrative convenience and circumstances not covered by the guidelines of transfer,

the Administration had to decide that the applicant should be transferred out of his native Island ~~xxxxxxxxxxxx~~ the impugned order passed in the interest of service is not liable to be interfered with. The respondents have also averred that the transfer of the applicant would not in anyway disable the applicant from completing the construction of his house which is already on the verge of completion.

4. In the rejoinder filed by the applicant, he has averred that the complaints alleged to have been received against him has no factual basis and that the order of his transfer is a colourable exercise of power.

5. We have heard the arguments of the learned counsel on either side and have also perused the documents produced. The two grounds on which the applicant has challenged the validity of the impugned order of transfer are that the order has violated the norms contained in the guidelines regarding transfer and that he apprehends that the order of transfer was issued at the instance of Shri MP Nallakoya who is working as a Reader under the first respondent. Annexure-A5 is a copy of the circular of the Administrator dated 27.1.1986. The direction No.iii in this guideline reads as follows:

"A Government servant whose services are transferable, i.e. one who holds a post which is interchangeable with other posts under the Administration, and who is not a Group 'D' employee, will normally be transferred from one post to another after three years and will not normally be transferred before completing two years in a post. No Government servant except Group D Government servants shall continue in the same post for more than three years or be transferred before

completing three years without the general or special approval of the Administrator. Approval for continuing in a post for more than three years will normally be accorded where it would not be in the interests of administration to transfer the employee keeping in view his special knowledge or experience or because he is dealing with confidential matters, etc."

Direction No.ix in the circular reads as follows:

"In cases where both husband and wife are Government servants, they should be posted in the same station as far as possible. Where the husband and wife are employed in different departments, their transfers and postings will be made after mutual consultation between the two transferring authorities."

The grievance of the applicant is that these two guidelines have been violated in transferring him out of Androth Island before the completion of a period of three years. The learned counsel for the applicant submitted that the violation of these guidelines vitiates the order of transfer. The learned counsel for the respondents on the other hand, argued that guidelines are only guidelines and that while there are circumstances not contemplated in the guidelines, the Administration should have the liberty to transfer the officers and such transfers cannot be challenged unless the order of transfer is vitiated by malafides. Guidelines though are only guiding principles and not statutory rules are nevertheless intended to be acted upon and not to be violated. If the guidelines are not to be followed, then the Government need not issue such guidelines. So it is not as if the guidelines can be ignored freely by the Department while issuing orders of transfer. But it has been held by the Supreme Court and various High Courts and the Central Administrative Tribunals in a catena of decisions that

the guidelines are for guidance of its officers in the matter of regulating transfers; but they do not clothe the officers with any immunity from transfer. The Supreme Court has in *Varadha Rao V. State of Karnataka* (1986 Lab IC 1806) observed as follows:

".....It is well understood that transfer of a Government servant who is appointed to a particular cadre of transferable post from one place to another is an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage. That a Government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of Government service and no Government servant can claim to remain in a particular post unless, of course, his appointment itself is to a specified, non-transferable post. As the learned Judges rightly observe:

"The norms enunciated by Government for the guidance of its officers in the matter of regulating transfers are more in the nature of guidelines to the officers who order transfers in the exigencies of administration than vesting of any immunity from transfer in the Government servants."

It is no doubt true that if the power of transfer is abused, the exercise of the power is vitiated. But it is one thing to say that an order of transfer which is not made in public interest but for collateral purposes and with oblique motives is vitiated by abuse of powers and an altogether different thing to say that such an order per se made in the exigencies of service varies any condition of service, express or implied, to the disadvantage of the concerned Government servant".

The above observations makes it abundantly clear that the guidelines enunciated by the Government in the matter of transfer cannot be enforced as they do not confer on the Government servant any immunity from transfer or any enforceable right. Therefore, the Government servant has no right to claim that the order of transfer has to be cancelled since it has violated a particular guideline enunciated by the Government.

6. In *Gujarat Electricity Board V. Atmaram Sungomal Poshani* reported in (1989) 2 SCC 602 : (1989 Lab IC 1374)

the Supreme Court has stated as follows:

Transfer of a government servant appointed to a particular cadre of transferable post from one place to the other is an incident of service. No government servant or employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled, the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other."

The above quoted authorities would make it clear that the transfer of a Government servant who is working in a transferable post is an incident of service, that he has no right to continue at a particular place or in a specified post and the guidelines do not clothe the Government servant with an immunity from transfer. The judicial intervention in the matter of transfer is called for only when the order of transfer is ^acolourable _b exercise of power or when there is malafides. So merely on the ground that the guidelines have been violated in not allowing the applicant to continue for a full term of three years or that his wife is working in Androth the applicant cannot challenge the order of transfer.

7. But the applicant has a case that the order of his transfer is ~~malafide~~ as he apprehends that the order is issued

at the instance of Shri MP Nallakoya, Reader under the first respondent. This averment has been refuted by the respondents in the reply statement. It has been stated that the order of transfer was not issued at the instigation of any officer, but only in the interest of service because the policy of the Administration is not to retain a Police Constable in his native Island for more than two years and also because there were complaints against the applicant. Regarding malafides what is stated is that the applicant apprehends that the impugned order of transfer was issued at the instance of Shri MP Nallakoya. While in the reply statement, the respondents have refuted this averment, there is not even a ^{or} ~~bold~~ ^{an} assertion either in the application or in the rejoinder that Shri Nallakoya ~~has influenced the second~~ respondent in issuing the impugned order of transfer. Shri Nallakoya being only a subordinate to the respondents 1&2, it is difficult to understand how he could have influenced the decision of the second respondent in deciding that the applicant should be transferred out of Androth Island. The learned counsel for the applicant invited our attention to Annexure-A6 which is a copy of a letter written by S.H.O., Androth to the second respondent regarding the complaint against Police personnel H.C.24 Kunjumon and P.C. Attakoya. The complaint mentioned in Annexure-A6 refers to complaints against the applicant and HC Kunjumon. Exhibit-R3 is a copy of the complaint alleged to have been made by one Muthukoya Haji to the Administrator, U.T. of Lakshadweep

wherein it was alleged that Police Constable Attakoya and Kunjumon were bent upon helping one Shaikinte Veetil Pookoya against him. Exhibit-R4 is a copy of the telegraphic message issued to the SHO, Androth regarding this complaint. This message reads as follows:

"Complaint received against Head Constable Kunhimon and Constable Attakoya of your station stating they are interfering in local public(.). Ensure that these two personnel should not indulge in such dirty acts if they are doing so and they be warned to keep away from it(.). Report compliance(.)."

This communication is dated 16.5.1988. Annexure-A6 sent by the SHO, Androth to Lackpol Kavaratti on 17.5.1988 which reads as follows:

"Kindly refer your signal F.No.2/16/88 Police dated 16.5.88 instance regarding complaints against Police personnel. H.C.24 Kunjumon & P.C.Attakoya looking after S.B.Work and they have to mingle with public for intelligence collection and such a way they must witness each and every incident occurring in Island for reporting to the superiors. Some interested parties on misunderstanding lodging baseless allegations against them. It is fact that they are not reported to be interfering in any problem in a partial attitude. However they are advised not to indulge in any unauthorised activities."

Relying on Annexure-A6, the learned counsel for the applicant submitted that it may be seen that the SHO has verified whether there was any basis for the allegations against the applicant and has reported that the complaints were baseless and that therefore there is absolutely no merit in the contentions of the respondents that the applicant was transferred in the interest of service as there has been complaints against him. This according to the learned counsel exposes the hollowness of the case of the respondents that the applicant was transferred by

reason of complaints received against him and this necessarily shows that there has been some ulterior motive in transferring the applicant out of Androth. The learned counsel for the respondents invited our attention to Annexure-R6, a portion of the report submitted by the Inspector of Police, SHO, Androth Police Station to the second respondent in the subject "on ^hslaught of minority groups houses and properities on Congress(I) workers of Androth on 26.11.1989 and thereafter." The learned counsel for the applicant vehemently opposed the reception into evidence a part of the report. We also felt that there is substance in the objection that a part of a document cannot be received in evidence. The learned counsel for the respondents submitted that in the interest of security it is advisable not to publicise the entire report and that since the portion of the report produced as Annexure-A6 alone refers to the applicant, the other portion being irrelevant, there is ^{no} ~~is~~ ^{in evidence.} ~~impropriety~~ in accepting that part of the report. However, the learned counsel for the respondents produced for our perusal the entire report of which Annexure-A6 is a part. We have gone through the entire report and are ^hsatisfied that Annexure-R6 alone refers to the applicant and that it can be prejudicial ^{public} ~~to the interest of security~~ to publicise the other materials contained the whole of the report. Therefore, we have accepted Annexure-R6 in evidence. In Annexure-R6, it is stated as follows:

"Regarding the involvement of local police personnel I submit the following. No complaints have been received by me against the local police constables from either

Congress(I) or LVS circles, HC.79 M.Nallakoya, PC's 195 M.P.Attakoya, 199 M.C.Hamza, 202 A.B.Attakoya and 334 P.I.Sainul Hameed are alleged to have propagated in favour of P.M.Sayed M.P. while PC 285 Kunhi Koya E did so in support of Dr.KK Mohammed Koya. It is a fact P.C. 195 and 199 were most of the time found moving along with congress(I) leaders and visiting their houses for reasons known to them only (PC 195 is deployed on SB Work).


It is a fact that the local constables favour one party or the other. But no evidence is available to prove their involvement in local politics. It is also a fact that local constables are not effective in controlling the law and order situation, since they are found reluctant to deal against the party they are supporting. Any complaint received against any police constable will be enquired into and facts will be informed."

The above quoted report of the SHO would show that there has been ^{an} ~~an~~ allegation that the applicant supported a particular political party. It has also been reported that the local police constables are not effective in controlling the law and order situation since they are found to be reluctant to act against the party they are supporting. The learned counsel for the respondents submitted that ^{was} it ~~in~~ ⁱⁿ view of this particular situation that it was decided that the applicant has to be transferred out of Androth being ^a local ~~man~~ especially when ^{he} there are allegations that ~~he~~ owes allegiance to a particular political party. The learned counsel further submitted that for effective control of the law and order situation, it is important that persons with absolute non-commitment ^{to political parties} ~~have~~ ^{to} be posted and that therefore the decision to transfer the applicant out of Androth was purely based on the interest of service and administration and not on account of any ulterior motive or yielding to any external pressure. The learned counsel for the applicant submitted that Shri Kunhi Koya against whom also there has been a complaint, has not been

transferred from Androth and that are other local officers who are not transferred out of Androth Island. Meeting this argument, the learned counsel for the respondents submitted that the respondents would be watching the performance of the officers and would be transferring those who are found not effective and that some persons have not been transferred out by the impugned order cannot make the transfer of the applicant made in public interest arbitrary or illegal. We are of the view that the decision to transfer the applicant whose duty is connected with the enforcement of law and order taking into account of the administrative exigencies cannot be interfered with ^{merely} for the reasons that he has not been ⁵ allowed to continue there for full three years or that his wife is also employed in the same station and that there has been a derogation from the general guidelines because in ordering transfers circumstances which were not contemplated in the guidelines may have also to be taken into account in the public interest. We are therefore of the view that the impugned order of transfer does not call for judicial intervention.

7. In view of what is stated in the foregoing paragraphs, we find no merit in the application and therefore we dismiss the same without any order as to costs.


31.7.90
(A.V. HARIDASAN)
JUDICIAL MEMBER


31.7.90
(S.P. MUKERJI)
VICE CHAIRMAN

31.7.1990

trs.

R.A.118/90 in OA 263/90 &
M.P. 834/90 in RA 118/90

M.P.Attakoya - Applicant/Review Applicant

-Versus-

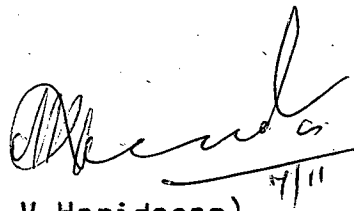
The Administrator,
 Union Territory of
 Lakshadweep, Kavaratti
 & Another - Respondent/Review Respondent

O R D E R

(Mr..A.V.Haridasan, Judicial Member)

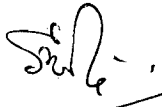
The applicant, a Police Constable working in Androth Police Station under Union Territory of Lakshadweep has the filed/Original Application challenging the order of his transfer from Androth to Kiltan. We have after hearing both the parties dismissed the application by our judgement dated 31.7.1990. The applicant has filed the Review Application on 22nd October, 1990 seeking ~~for~~ review of our judgement. As there is eleven days delay in filing this application on receipt of a copy of the judgement by him the applicant has filed Misc. Petition No.834/90 for condonation of delay. Owing to lack of transport facilities he could reach the main land and file the application only on 22nd October, 1990. Considering the difficulty for reaching main land from Lakshadweep, the delay of eleven days has to be condoned. Hence, the delay in filing the application ^{can be} ~~is~~ condoned. But in the review application no ground warranting a review of the order is seen even alleged. It has been averred in the review application that the applicant had undergone a very serious operation, that his wife is employed in Androth, that his old parents residing at Androth are suffering from serious illness, that his house construction

is in the midway, and that for these reasons his transfer from Androth causes undue hardship to him. But we have considered all these aspects while disposing of the main application. Hence, these matters cannot be further gone ⁱⁿ into ^a review application. The only other averment in the review application is that the ^{applicant} ~~he~~ ^{has} sent a representation on 16.8.1990 to the Superintendent of Police, Lakshadweep at Kavaratti seeking a reconsideration of the order of his transfer. The fact that the applicant has made a representation seeking a reconsideration of the question of his transfer on 16.8.1990 after we ^{pronounced} ~~our~~ our judgement in the Original Application cannot be canvassed as a ground for review of our judgement. Therefore, as there is absolutely no merit in the review application, the same is liable to be dismissed. Hence, if Hon'ble Vice Chairman agrees the review application may be dismissed, without issuing notice, by circulation.

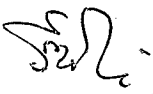

(A.V. Haridasan)
Judicial Member


Hon'ble Shri S.P. Mukerji, Vice Chairman

I entirely agree. The order may be pronounced in the open court.


Hon'ble Shri A.V. Haridasan

Judgment pronounced in open court today.


9.11.90


9.11.90