

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.265/2002

Thursday, this the 5th day of September, 2002.

CORAM;

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

M.Muthukoya,
Amin,
Minicoy Island,
U.T. of Lakshadweep. - Applicant

By Advocate Mr Shafik.M.A.

Vs

1. Union of India represented by
Secretary,
Ministry of Home Affairs,
New Delhi.
2. The Administrator,
U.T. of Lakshadweep,
Kavaratti.
3. The Collector-cum-Development Commissioner,
U.T. of Lakshadweep,
Kavaratti.
4. I.Moosa,
Amin, Androth Island,
U.T. of Lakshadweep. - Respondents

By Advocate Mr S Radhakrishnan(for R.1 to 3)

By Advocate Mr TM Abdul Latiff(for R-4)

The application having been heard on 5.9.2002 the Tribunal on
5.9.02 delivered the following:

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant, working as Amin, Kavaratti Island of
Lakshadweep under the third respondent and hailing from the

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island of Amini, had made a request for a transfer to his native island since he was left with just about 3 years' service before superannuation. However, by A-3 order dated 23.3.2002, he was transferred to Minicoy island. By A-4 order dated 26.3.2002, he was relieved. A-5 dated 28.3.2002 is his joining report. The applicant got his personal effects shifted to the new place of duty, i.e. Minicoy where a residential accommodation was allotted to him. While being so, by A-1 order dated 16.4.2002, in partial modification of A-3 order, the transfer of one Shri I Moosa, Amin, Minicoy Island to Androth was kept in abeyance and consequently the applicant was recalled and directed to report at the Collectorate forthwith for further posting. The applicant is aggrieved by this order as it is, according to him, improper, arbitrary and unjust. The applicant seeks an order from this Tribunal quashing the impugned A-1 order to the extent it recalls his transfer to Minicoy and transfers him back to Kavaratti and declaring that the applicant is entitled to continue in his present posting at Minicoy in pursuance of A-3 order.

2. In their reply statement, respondents 1 to 3 resisted the O.A. stating that since no representation against A-1 order was made, this O.A. was premature and that the recall of the transfer order and the retention of the 4th respondent at Minicoy were in pursuance of R-1 representation made by the latter, i.e. Shri I. Moosa, against A-3 transfer order. According to the respondents, there was only one post of Amin at Amini Island whereas 5 natives of Amini were working as

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Amins in different Islands and as the present transferee to Amini as per A-3 order being the seniormost in the priority list would retire only on 30.11.2002, the applicant's case could be considered only after 30.11.2002 in his turn. Transfers made in administrative exigencies should not be interfered with, the respondents have urged. The 4th respondent has opposed the O.A. on the ground that his transfer to Minicoy was necessary since he was well-versed in Mahal language which was used for administrative matters in that Island, that his wife, an Anganwadi worker, was a rheumatic patient and that the applicant who had wanted a transfer to Amini could not have any grievance against the A-1 order. The impugned order was passed by the Administration taking into account the 4th respondent's petition and that did not offend the applicant's legal right, it is urged.

3. We have considered the pleadings and other material on record. We have also heard Shri M.A.Shafik, learned counsel for the applicant, Shri S.Radhakrishnan, learned counsel for respondents 1 to 3 and Shri T.M.Abdul Latiff, learned counsel for respondent-4. In the course of the hearing, it was pointed out on behalf of the applicant that since he was left with less than 3 years service for retirement, he would be satisfied, if an undertaking was given to the effect that he would be accommodated in Amini when the vacancy of Amin would arise there next. However, the learned counsel for respondents 1 to 3, under instructions from the respondents, was not in a position to give any assurance in that regard. Shri Shafik would point out that the applicant who proceeded

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to Minicoy in pursuance of A-3 order had not only joined there, but had occupied the quarters allotted to him. To transfer him again, without any valid reason was against natural justice. In the alternative, respondents should be gracious enough to offer him a transfer to his native island at the very next opportunity, learned counsel for the applicant would plead. Shri Radhakrishnan mentioned that the 4th respondent's request was considered by the administration and on humanitarian grounds, it was decided to allow him to continue in Minicoy. This was beyond the applicant's challenge and the Tribunal should not interfere in such a situation. Shri Lathiff, appearing on behalf of the 4th respondent would place reliance on the Hon'ble Supreme Court's judgement in State of Madhya Pradesh Vs S.S.Kanwar and others, AIR 1995 SC, 1056 to support the proposition that the transfer orders made in the interest of administration, should stand, unless those were vitiated by malafides or by extraneous considerations, without any factual foundation.

4. On a careful consideration of the facts of the case, we are of the view that the impugned order lacks transparency and that therefore the avowed administrative interest is not quite apparent in that order. The applicant on his own right had requested (See A-2 dated 14.9.2000) for a transfer to his native island Amini in the first place. No humanitarian consideration came into play on the alleged ground that there was no vacancy immediately available there. He is due to retire on superannuation on 31.8.2004 and is within the 3 year period, when transfers are not normally resorted to. Be that

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as it may, he was transferred from Kavaratti to Minicoy as per A-3 order and was relieved on 23.3.2002. He joined there without demur on 28.3.2002. He ^{is} seen to have vacated his quarters at Kavaratti, transported his personal effects to the new place of duty, i.e. Minicoy and occupied the quarters allotted to him at Minicoy where his wife would be joining him from Amini. These are facts which are not effectively countered. In our opinion, therefore, to ask the applicant to go back to Kavaratti is definitely a costlier proposition which the administration is willing to accept for showing the alleged humanitarian consideration to a person who has been in Minicoy since May 1997. The respondents are not in a position to promise transfer to the applicant to his native island even in November, 2002 when a retirement vacancy would arise. That certainly is their look out. But as things stand, the order forcing the applicant out of the place where he has duly occupied the allotted accommodation, is perverse and we therefore, consider it a fit case for judicial intervention. We hold that the applicant should be permitted to remain in Minicoy as per A-3 and that the modification order A-1 dated 16.4.2002 in so far as it affects the applicant prejudicially is unsustainable. We, therefore, dispose of this O.A. with the following directions:

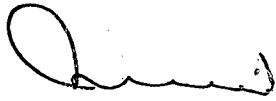
The impugned A-1 order is set aside in so far as it adversely affects the applicant. The applicant is

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entitled to continue in his present posting at Minicoy
in accordance with A-3.

5. Parties shall bear their respective costs.

Dated, the 5th September, 2002.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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APPENDIX

Applicant's Annexures

1. A-1: True copy of the order F.No.1/4/99-LR/Estt dt.16.4.2002 issued on behalf of the IIIrd respondent.
2. A-2: True copy of the representation dt.14.9.2001 submitted before the 3rd respondent.
3. A-2a: True english translation of A-2.
4. A-3: True copy of order F.No.1/4/99-LR/Estt dt.23.3.2002 issued by the 3rd respondent.
5. A-4: True copy of the order F.No.11/1/2001-BDO(Kvt) dt.26.3.2002 issued by the BDO, Kavaratti Island.
6. A-5: True copy of the joining report dt.28.3.2002 submitted by the applicant.