

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.29/97

Wednesday, this the 26th day of February, 1997.

CORAM:

HON'BLE MR AV HARIDASAN, VICE CHAIRMAN

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Haridas V
Senior Clerk Steno
Office of the Superintendent of Police
Central Bureau of Investigation
Cochin. - Applicant

By Advocate Mr NN Sugunapalan

Vs

1. Superintendent of Police(HQ).
Central Bureau of Investigation,
Head Office, Block-3,
CGO Complex, Lodi Road,
New Delhi.
2. Superintendent of Police,
Central Bureau of Investigation,
Kathrikadavu, Kaloor.P.O.
Cochin-17.
3. Director,
Central Bureau of Investigation
Head Office, Block-3,
CGO Complex, Lodi Road,
New Delhi.
4. Central Bureau of Investigation
represented by its Director,
Head Office, Block-3,
CGO Complex, Lodi Road,
New Delhi. - Respondents

By Advocate Mr TPM Ibrahim Khan, SCGSC

The application having been heard on 26.2.97 the
Tribunal on the same day delivered the following:

..2...

a

O R D E R

HON'BLE MR AV HARIDASAN, VICE CHAIRMAN

The applicant who is a Senior Clerk Steno in the office of the Superintendent of Police, Central Bureau of Investigation, Cochin is aggrieved by the order dated 5.12.96 of the first respondent transferring him to Central Bureau of Investigation, Patna in the same capacity with immediate effect in public interest until further orders. Aggrieved by this, he made a representation to the third respondent. His present grievance is that the first respondent has issued the impugned order at A-2 directing the relief of the applicant from Cochin with immediate effect to enable him to join the CBI, Patna. In the representation submitted by the applicant to the third respondent, he had pointed out that he had been working in various distant places before he was posted to Cochin two years back, that there are several persons who had longer stay at Cochin than the applicant who have been retained here, and that his family back ground is such that his absence from the native state would cause undue hardship to him as also to his aged parents. The applicant has alleged in this application that the first respondent has issued the impugned order at A-2 before the third respondent could consider the grievance of the applicant projected in his representation and to take an appropriate decision. This action on the part of the respondents, according to applicant, is motivated by malice as the applicant had made a complaint

against the second respondent, that he had irregularly denied allotment of accommodation to him against the rules in that regard with the connivance of the first respondent.

2. The order transferring the applicant from Cochin to Patna as also the order at A-2 directing his relief with immediate effect, according to the applicant, being vitiated by malice and violative of guidelines in regard to transfer are liable to be struck down. With the above allegations the applicant has filed this application under Section 19 of the Administrative Tribunals Act to quash the impugned orders at A-1 and A-2 and for a direction to respondents to allow the applicant to continue at Cochin branch of the CBI.

3. The respondents through the reply statement filed by the second respondent, resist the application and refute the allegations of malafides. The second respondent has stated in the reply statement that the allotment of quarters was done in accordance with the rules and when a clarification was obtained, a re-allotment was made, and that there was no irregularity or illegality in these actions. He has stated that he had no malice in his mind against the applicant and that the order issued by the first respondent transferring the applicant to Patna was made in public interest to meet the urgent need of the administration.

4. Having perused the pleadings and other materials on record and having heard the learned counsel appearing for

the parties, we do not find any substance in the allegation that the impugned orders are motivated by malice. The 1st respondent who issued the order of transfer A-1 has nothing to do with the allotment of quarters to applicant in Kerala and his connivance is not needed for the second respondent to make such allotment. The second respondent has also clearly explained the circumstances under which the allotment and re-allotment have been made and we are satisfied that he also did not have any malafides in his mind against the applicant. Learned counsel for applicant with considerable tenacity argued that the fact that the applicant has been singled out for transfer to a distant place where persons serving in the identical capacity and having longer stay at Cochin are retained shows discrimination and arbitrariness and for this reason the Tribunal is justified in interfering with the action. It has been held by the Hon'ble Supreme Court that the guidelines do not clothe an officer holding transferable job to claim as of right that he should be retained at a particular post or in a particular place and the guidelines do not confer any indefeasible right on him to be enforced. Administrative interest and public need are the paramount considerations and personal convenience and inconvenience of the officers concerned can only be subject to public interest. It has been held in a catena of rulings that unless patent malafides are established, the Tribunal will not interfere with the routine administrative orders like transfer. In this case, we are not able to draw an inference of malafides. Learned counsel for applicant

brought to our notice that the impugned order at A-2 has been passed by the first respondent while a representation was made to the third respondent and therefore the authority to whom the grievance has been projected has not applied his mind to it. It is seen from A-2 that whatever was stated in A-2 had the approval of the third respondent and that it was being done in public interest. Therefore on this ground also interference is not called for.

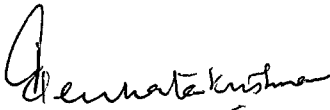
5. A careful reading of A-1 shows that the transfer of the applicant is not a permanent one as what is stated is that it would have effect until further orders. Under these circumstances, what the applicant should have done as a disciplined official, is to give effect to the orders of transfer immediately and seek a re-posting to Cochin or to a convenient place.

6. In the light of what is stated above, we do not find any reason to interfere with the impugned order of transfer and therefore the relief as prayed for by the applicant is not granted. However, we make it clear that the applicant may, after giving effect to the order of transfer by reporting at Patna, make a representation either for a re-posting to Cochin or a posting to a convenient place to the third respondent detailing all the reasons for seeking such a posting. We

direct that if such a representation is received from the applicant, the third respondent shall consider the grievance of the applicant with due sympathy and issue appropriate orders within a period of three months from the date of receipt thereof.

7. Application is disposed of as above. No costs.

Dated, the 26th February, 1997.


PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


AV HARIDASAN
VICE CHAIRMAN

trs/272

LIST OF ANNEXURES

1. Annexure A1: True copy of office order No.1420.A/1996 dated 5.12.1996 issued by the 1st respondent.
2. Annexure A2: True copy of the Letter No.G-11016/1/96/AD.III dated 26.12.1996 issued by the 1st respondent.

.....