

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION: 16.10.1989

PRESENT

HON'BLE SHRI A.V.HARIDASAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.301/89

P.Kidave - Applicant

V.

1. Union Territory of
Lakshadweep represented
by the Administrator,
Union Territory of
Lakshadweep,
Kavarathi.

2. Director of Medical and
Health Services, Union
Territory of Lakshadweep,
Kavarathi.

3. Attakoya,
Radiographer, Indira
Gandhi Hospital,
Kavarathi.

- Respondents

M/s PS Usuph &
P Samzacharia

- Counsel for
applicant

Mr PV Madhavan Nambiar, SCGSC - Counsel for
respondents

O_R_D_E_R

The applicant is a Radiographer working in
the Medical and Health Service of the Union Territory
of Lakshadweep. He joined the service on 4.3.1978.
and he was posted in the Government Hospital at Minicoy.
He is a native of Kadamat island. After serving at
Minicoy for 8 years and a few months at Kavarathi

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on his application he was transferred to Primary Health Centre at Kadamath which is his native island. He joined duty there on 24.10.1986. While working at Minicoy and also at Kadamath he had been made to work in Kavarathi, Amini and Androth islands on several occasions. As per the letter of the Union Ministry of Home Affairs dated 25.4.1970, Government servants locally recruited should not be posted outside their native islands except ^{when} absolutely necessary. In the circular issued by the Collector-cum-Development Commissioner in 1988 laying down policy and guidelines of transfers of Government servants in Union Territory of Lakshadweep, it has been stated that ~~transfer of~~ ³ Government servants shall not be transferred before completing 3 years without general or special approval of the Administrator. The second respondents has issued the an order No.5/7/88-DMHS(Estt) transferring/applicant from Primary Health Centre, Kadamath to Indira Gandhi Hospital, Kavarathi. The applicant has filed this application challenging this order of transfer on the ground that it is issued with malafide intention at the influence of politicians and has prayed that the above said order of transfer may be quashed.

2. Respondents 1&2 have filed a reply statement.

The impugned transfer order has been justified on the

ground that Shri K Attakoya who ^{was} ~~is~~ working as Radiographer at Indira Gandhi Hospital, Kavarathi having been granted leave of 120 days for haj pilgrimage, the service of the applicant is absolutely essential in that hospital which is a referral hospital. It has also been contented that the transfer has been made with concurrence of the authorities.

3. I have heard the counsel appearing on either side and also perused the documents produced.

4. In the circular issued by the Collector-cum-Commissioner, Administration of the Union Territory of Lakshadweep dated 23.11.1988, a copy of which is at Annexure-VI, it has been stated as follows:

"It has come to the notice of the Administrator that transfers of government employees are being made frequently before completion of three years in the same post by the completion of three years in the same post by transferring authorities without obtaining the approval of the Administrator. This is contrary to the instructions already issued".

It has been made clear ~~that~~ ^{letter that} in this ~~copy~~ ^{copy}, these instructions should be strictly followed. In this case, admittedly, the applicant had not completed his tenure of three years in Kadamath island. It was before the completion of the period of three years that the impugned order of transfer has been issued. Further, in the Government of India, Ministry of Home Affairs letter No.1/12(33)/69-ANL(I) dated 25.4.1970,

a copy of which is marked as Annexure-V. At Clause-7,
it is seen stated as follows:

"The President is also pleased to decide that locally recruited Government servants including persons belonging to the mainland but recruited locally should not be posted outside their 'native islands' except when absolutely necessary".

In his case the applicant is a native of Kadamath island. So as per the instructions contained in this letter, ~~unless~~ except when it is absolutely necessary, it is not proper to transfer him out of his native island. In the reply statement filed by the respondents, it has been contented that the transfer has been made because his services are required in Indira Gandhi Hospital, Kavarathi, since Shri Attakoya, Radiographer working there has been granted 120 days leave and since ~~only~~ ^{on} after his return from leave he has been asked to join duty at Kadamath. As per the direction of this Tribunal dated 1.6.1989, the applicant has taken over charge as Radiologist at Kavarathi subject to the outcome of this application. The transfer was justified in the reply statement of respondents on the ground that Indira Gandhi Hospital, Kavarathi should not suffer from want of a Radiographer it being a referral hospital and since Shri Attakoya has been granted leave and transferred on return from leave to Kadamath. The situation of ~~there~~ ^{There} being no Radiographer in the Indira Gandhi Hospital, Kavarathi

during the leave period of Shri Attakoya has been avoided by the applicant taking over as Radiographer at Kavarathi pursuant to this direction. Shri Attakoya Radiographer, Indira Gandhi Hospital, Kavarathi who has been transferred to Kadamath has been impleaded as the third respondent in this case. He has remained absent. No inconvenience at all ^{would} ~~will~~ be caused if Shri Attakoya ^{re-join} is asked to rejoin duty in Indira Gandhi Hospital, Kavarathi on return from leave and if the applicant is given a posting back to Kadamath, his native island. The learned counsel for the applicant submitted that the applicant has started construction of residential building in his native place and that if he is transferred to Kavarathi before the construction of the house is over, it would not be possible for him at all to complete the construction and that the respondents may be directed to repost him at Kadamath ~~since~~ on return of Shri Attakoya. ^{from leave.}

5. I am of the view that interest of justice requires allowing the applicant to remain at Kadamath for a few more months so that he can complete the construction of his house. ~~From~~ Annexure-IV office memorandum issued by the Senior Medical Officer of the Directorate of Medical and Health Services, Kavarathi shows that the applicant had ~~done~~ done very good work in clearing the pending works at P.H.C. Amini during the period from 3.12.1986

to 12.12.1986. This shows that the applicant is a person who is sincere towards his duties. To transfer such a sincere worker at a time when he is engaged in construction of a residential house is likely to bring about frustration in his mind which may reflect in ~~his~~ ^{the} discharging ^{of} his duties in future. It is always better not to give room for that. In these circumstances, I am of the view that the impugned order at Annexure-VII ^{VII} dated 1.5.1989 transferring the applicant to Indira Gandhi Hospital, Kavarathi and Shri Attakoya to Primary Health Centre, Kadamath on return from leave has to be quashed. The respondents are directed to repost the applicant in Primary Health Centre, Kadamath immediately, ^{on return of Shri Attakoya from leave.} 3

6. The application is disposed of as above.

There will be no order as to costs. *Issued CC copy of this order to the Counsel for the applicant as per request*



(A.V. HARIDASAN)
JUDICIAL MEMBER
16-10-1989