

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 324
T. A. No.

1990

DATE OF DECISION 8.3.91

G. P. Prasad

Applicant (s)

Mr. K. Ramakumar

Advocate for the Applicant (s)

Versus

Union of India rep. by Secretary Respondent (s)
Ministry of Surface Transport, New Delhi
and others

Mr. K. Prabhakaran, ACGSC

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S. P. MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. N. DHARMADAN, 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? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

This is an application filed against the transfer of the applicant from the office of the O.I.C., Lakshadweep Harbour Works Cochin to the office of the Assistant Engineer (C), Lakshadweep Harbour Works, Androth.

2. The applicant is working as Inspector of Works under the Andaman Lakshadweep Harbour Works, Cochin under the Ministry of Surface Transport. He was appointed in the office in 1968 and posted to Amini Island on 9.1.1971. Later he was transferred to the office in the mainland at Calicut on 14.5.1973. On his promotion from the post of Engineering Assistant to the post of Inspector of Works in 1976, he was transferred and posted under the Principal Engineer

(Marine), Andaman Harbour Works Circle, Port Blair. But he was transferred back to Calicut w.e.f. 28.8.1978. The applicant was again transferred to Port Blair in October, 1980. He filed an original petition before the High Court of Kerala challenging the transfer but it was dismissed. He filed Writ Appeal No. 525/84 which was disposed of on the basis of the statement of the respondents that the respondents would "restore the applicant, petitioner to his position in the mainland." There could be no objection to his being transferred from Calicut to Cochin." This judgment was passed on 11.12.1984. But according to the applicant the direction in the judgment was not implemented upto 5.12.1985. Thereafter, while he was working at Cochin, he was again transferred under the impugned order dated 24.3.1990 to Androth. The applicant alleges that this order was issued at the instance of the third respondent who is bent upon harrassing the applicant by giving him inconvenient transfer so as to dislocate his family position. The applicant submitted that his junior Shri Manoharan who has put in about 14 years in the mainland is even now allowed to continue in the present place. The applicant's aged mother is alone at his native place xx Ranni and he is not able to lookafter her. He further submitted that his wife and children xx xx xx xx xx are at Calicut as his wife is employed as Teacher in a Government High School at Calicut. By this transfer, the applicant is kept away from his mother at Ranni as well as his wife and children at Calicut. The transfer is against the guidelines issued by the Government directing xxxxxxxx that as far as possible, husband and wife should be posted in the same place. This transfer is a malafide

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and has been issued with ulterior motive to overreach the observation contained in the judgment of the High Court of Kerala at Annexure-E.

3. The third respondent filed a detailed counter affidavit on behalf of the respondents. He denied all the allegations and averments in the application and submitted that the impugned transfer has been effected in the exigencies of service as major work of Breakwater is being executed at Androth and the Executive Engineer in his letter No. LHW/DE/Estt./Camp. Calicut dated 23.3.90 made a request for posting a senior supervisory officer other than Assistant Engineer on priority basis to lookafter civil works at Androth as indicated in Annexure R-1. In the note in Ext. R-1 the Deputy Chief Engineer stated that the applicant has already completed more than 10 years service in the mainland and his service can be utilised in construction works of breakwater at Androth which is one of the major works to be completed within the specified time.

4. The applicant has filed a rejoinder denying the statements of the third respondent in the counter affidavit. He has produced Annexures F, G and H along with it as enclosures in order to establish that the services of the applicant though requisitioned for the major works of the construction of the breakwater, the same were not actually utilised for the specified works.

5. Having heard arguments of learned counsel for both parties, we are of the view that though the present transfer of the applicant has been made on the basis of letter

Annexure R-1 issued by the Executive Engineer, Androth and the note Annexure R-2 issued by the Assistant Executive Engineer, his services were not utilised for the purpose for which he has been transferred. It is seen from Annexure 'G' allotment of work among the staff dated 5.6.1990 that the applicant after his transfer on duty on the basis of transfer on 2.6.90 was put in charge of execution and proper maintenance of all the residential buildings available there. He was also/attend all other duties assigned by DCE/E/AE from time to time. Another pertinent fact to be noted in this connection is that the Deputy Chief Engineer in his note Annexure R-2 proposing the transfer of the applicant from Cochin to Androth made a suggestion that Shri P. C. Vinod, I.O.W.(Electrical) is also to be transferred to New Delhi in the exigency of service. But from Annexure 'G' it can be seen that Shri Vinod has not been transferred to New Delhi/ but he has been assigned ~~XXXX~~ the work of looking after all T & P and its stores. He was also/maintain all records, ledgers, receipt and issues connected with T & P store and ~~XXXXXXXXXXXX~~ render assistance to IOW Electrical in the workshop for repair works of machineries, crafts, vehicles, etc. So the exigency of service highlighted by the respondents to support the transfer of the applicant cannot be sustained in the facts and circumstances of this case. However, we are/inclined to interfere in this transfer order at this stage particularly because the applicant has already taken charge at Androth when

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the interim relief granted in this case was vacated as per the order dated 8.5.1990.

6. Because of the peculiar circumstances in which the applicant is placed; namely his old mother is alone at his native place and his wife and children are ~~further~~ away from the native place due to wife's employment at Calicut, it will be proper to consider the case of the applicant sympathetically by the appropriate authority and grant transfer to the mainland to the extent possible. Under these circumstances we think that this O.A. can be closed with the observation that if the applicant files a representation for getting a transfer over to the mainland, it will be considered sympathetically in the light of the observations made above and dispose of the same as expeditiously as possible without any delay by the respondents.

7. The application is disposed of as above. There will be no order as to costs.

Dharmadan
(N. DHARMADAN)
JUDICIAL MEMBER

KMN

8.3.91

S. P. Mukerji
(S. P. MUKERJI)
VICE CHAIRMAN

8.3.91