

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 34/2003

Tuesday this the 11th day of February, 2003

CORAM

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

C.O.Saromma,
W/o MC Koyamma,
U.D.Clerk, Office of the Secretary
to the Administration,
Union Territory of Lakshadweep
Cochin.3.Applicant

(By Advocate Mr. VB Harinarayanan)

V.

1. Union of India, represented by
the Administrator,
Union Territory of Lakshadweep
Secretariat, Kavaratti.
2. The Secretary,
Administration of Union Territory of
Lakshadweep, Kavaratti Island.
3. The Secretary,
Office of the Secretary to Administration
Union Territory of Lakshadweep
Cochin.3.
4. K.F.Aysha,
UD Clerk (on leave)
Port Office, Cochin.Respondents

(By Advocate Mr.S.Radhakrishnan for R.1to3
Mr.MV Thamban (for R.4)

The application having been heard on 11.2.2003, the Tribunal
on the same day delivered the following:

O R D E R

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

The applicant a native of Kalpeni Island in
Lakshadweep commenced service as Lower Division Clerk under
the second respondent in the year 1979. She was transferred
to Minicoy on promotion as UD Clerk in 1991. In 1993 she
was transferred to Kavaratti from where she was transferred
to Govt. High School, Kalpeni in the year 1996. Later she
has been transferred to Sub Divisional Office, Kalpeni in
1998 and to Kavaratti in 1999. Although she is married to a

✓

Head Constable for the last 15 years unfortunately they could not get a child so far. Both of them were advised to take treatment for infertility in the mainland. Accordingly on her request the applicant was transferred to the office of the third respondent in June, 1999. Her husband also got a posting to Kochi. They commenced treatment only in the year 2000. They are continuing their treatment still. The Specialist under whom she is taking treatment in Cochin Hospital, Kochi issued A.1 certificate stating that for their continued treatment staying together for a period of two years is essential. As the applicant has been continuing in Kochi for about three years apprehending that she would be transferred in the midst of her treatment on 3.1.03 the applicant made a representation to the first respondent stating that as she and her husband have been advised to remain at Kochi and continue treatment for a period of two years she may not be disturbed. However, to the utter dismay of the applicant she found Annexure.A3 order dated 14.1.03 by which she has been transferred to Port Office, Kavaratti posting the 4th respondent in her place. The transfer of the applicant was made only to accommodate the 4th respondent at Kochi on her request. Alleging that the action is arbitrary and malafide as three persons who have longer stay than the applicant at Kochi have been left undisturbed while choosing the applicant who is undergoing treatment, for a transfer out of Kochi merely for accommodating the 4th respondent who has managed to remain in Kochi excepting for a shortwhile, the applicant has filed this application seeking to set aside the impugned order and for a direction to the respondents to allow the applicant to continue in the present station.



2. Respondents 1 to 3 in their reply contend that the fourth respondent having completed her tenure in the present place had to be given a posting at Kochi to enable her to stay with her husband who is working at Kochi, and that the person who has longer stay than the applicant one Mrs. Divya being wife of a State Informatics Officer, to transfer whom concurrence of the Ministry is required, the applicant being the next person was shifted. They also contend that in the Indira Gandhi Hospital, Kavarathy, Telemedicine facility with Amritha Institute of Medical Sciences & Research Centre is available.

3. The 4th respondent in her reply has stated that she having been transferred to Kochi to join her husband on her representation and after an interview with the first respondent is entitled to be posted in Kochi and pleads that her posting may not be interfered with.

4. The applicant has filed a rejoinder in reply to the reply statement filed by R 1 to 3. She has stated that the retention of Akhila who was continuously working in Kochi from 1994 onwards and the other two who have longer stay than the applicant and the transfer of the applicant while she is yet to complete her treatment for infertility is highly arbitrary and irrational.

5. I have carefully gone through the pleadings and all the materials placed on record and have heard the arguments of Shri Harinarayanan, learned counsel of the applicant and Mr. S. Radhakrishnan, who is appearing for R.1 to 3 and Shri M. V. Thamban, learned counsel for R.4. Transfer of an officer holding a transferable post is a routine administrative matter on which judicial intervention is

(L)

normally not justified unless it is seen that the order is vitiated by malafides or total arbitrariness bordering on legal malafides. However, while effecting transfer to the extent possible the norms and guidelines evolved should not be ignored. Although guidelines do not cloth an officer with a right to enforce a claim either for retention in or for a transfer to a particular place, total discard of the guidelines making a policy of pick and choose is also arbitrary. With these general principles in view I will examine the legality, propriety and correctness of the impugned order.

6. It is undisputed that the transfer of the applicant has been made only for the purpose of accommodating the request of the 4th respondent for a posting in Kochi as her husband is posted in the Telecommunication Department at Kochi. It is the policy of the administration to the extent possible to accommodate spouses in the same place so that they have a family life also. The 4th respondent was posted in Lakshadweep while her husband has been working in the main land for more than three years although she has been working for a shortwhile in between in Kochi only on a leave vacancy. The requirement of accommodating the 4th respondent at Kochi therefore is undoubtedly in public interest. But the question is whether that requirement is met in the proper way. The applicant has specifically stated that leaving three persons, Akila, Divya and Sudha undisturbed have longer stay in Kochi than her and choosing her for transfer especially when she and her husband are undergoing treatment for infertility which require their stay in Kochi is arbitrary.

A handwritten signature consisting of a stylized 'M' and a diagonal line.

7. In the reply statement of respondents 1 to 3 they have admitted that Divya has longer stay but contend that she being wife of a State Informatics Officer to transfer the officer permission of the Ministry is required. They do not make any statement regarding Akila and Sudha. The allegation in the application that Akila and Sudha have longer stay in Kochi, that the respondents having not been specifically denied the same has to be treated as admitted. Nothing has been stated to justify choosing the applicant for transfer while Akila and Sudha who have longer stay have been permitted to continue. No rule or instructions has been brought to my notice to establish that transfer of Divya is impermissible. For accommodating the request of the 4th respondent to join her husband in Kochi, the respondents should not have jeopardised the treatment of the applicant and her husband for infertility. As both of them are nearing the end of reproductive periods, any disturbance of this treatment under Specialist in Kochi will be fatal to their desire of begetting a child. The applicant had made a representation Annexure A2 on 3.1.2003. Without considering this representation the applicant has been transferred to accommodate the 4th respondent on the basis of her representation dated 6.1.2003. In the reply statement respondents contend that the representation of the applicant for transfer to Kochi will be considered during the general transfer subject to availability of a vacancy. It is difficult to understand why the more pressing reason of the applicant to stay in Kochi was not considered. It is also not known why the request of the 4th respondent was taken up urgently without waiting for the general transfer. It is further difficult to understand why when three persons in the grade with longer stay at Kochi are left undisturbed why the applicant who has a genuine problem in leaving Kochi for

02

two years to take treatment for infertility a means to achieve her greatest desire in life has been picked or chosen for immediate transfer. I have no hesitation to hold that the action is vitiated by utter arbitrariness and total non-application of mind to relevant considerations. Therefore I find that this Tribunal is bound to interfere in the matter.

8. In the light of what is stated above I find that the impugned order is not sustainable. The impugned order is therefore, set aside. The respondents 1 to 3 are directed to put back the applicant as U.D.Clerk under the third respondent's office at Kochi to enable her and her husband to continue and complete the treatment for the period as advised by the doctor in Certificate Annexures A.1 and A5. The above direction shall be complied with within a period of three weeks from the date of receipt of a copy of this order. The respondents 1 to 3 will be free to accommodate the 4th respondent at Kochi either by transferring one who is over due for transfer considering length of stay in Kochi or in any other manner without shifting the applicant from Kochi. No costs.

Dated the 11th day of February, 2003



A.V. HARIDASAN
VICE CHAIRMAN

(s)