

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.345/2002

Wednesday, this the 7th day of August , 2002.

CORAM;

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

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

Muraleedharan.K.
Assistant Passport Officer,
Passport Office,Kozhikode
Residing at 'Sai Kripa',A-306,PHED Road,
Eranielipalam, Kozhikode-673020. .. Applicant

(By Advocate Sri M.A.Shafik)

vs.

1. Union of India,
represented by Foreign Secretary,
Ministry of External Affairs, New Delhi.
2. The Secretary(PCD),
Ministry of External Affairs, Patiala House,
Tilak Marg, New Delhi.
3. The Chief Passport Officer & Joint Secretary(CPV),
Ministry of External Affairs,
New Delhi.
4. The Passport Officer,
Passport Office, Kozhikode.
5. Mr. J.C.Sharma,
The Secretary(PCD),
Ministry of External Affairs, Patiala House,
Tilak Marg, New Delhi.
6. Smt.Gloria Kumar,
The Passport Officer,
Passport Office, Kozhikode. .. Respondents

(By Advocate Mr.M.Rajeev,ACGSC(R1-4)
Mr.C.Rajendran, SCGSC((R5-6)

The application having been heard on 7.8.2002 the Tribunal on
the same day delivered the following:


.2.

O R D E R

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

The applicant is a permanent Attache of the Ministry of External Affairs. While working in Berne, the applicant made a request on 24.4.2001 for appointment as Assistant Passport Officer('APO' for short) either at Kozhikode or at Cochin on deputation. The request of the applicant was considered and the competent authority by order dated 11.7.2001(A-6) approved the deputation of the applicant for a period of 2 years to the post of APO, Kozhikode. It was provided in the order that the deputation would be for a period of 2 years, that it could be terminated before the period of 2 years or can be extended as per the administrative requirements. On the basis of A-6 order, the applicant joined as APO, Kozhikode on 14.9.2001. The grievance of the applicant is that by order dated 16.5.2002(A-1), he was unjustifiably transferred to C.P.O. headquarters, New Delhi and by order dated 17.5.2002, he was relieved while he was on leave. It is alleged in the application that the transfer of the applicant while he had been deputed to a particular post, is illegal that the transfer is motivated by malafides in the minds of the respondents 2 and 4 who have been impleaded as respondents 5&6 in their names and that the order is not supported by any valid administrative requirements.


2. The respondents 1 to 4 have filed a reply statement and the respondents 5 and 6 have also filed a reply statement



refuting the allegations of malafides. The applicant has filed a rejoinder and an additional rejoinder.

3. We have gone through the entire pleadings and material placed on record. There is a question of law raised as to whether an employee on deputation to a particular post in a particular place can be transferred within the organisation to another post or place without his consent during the period of deputation. Shri Shafik, learned counsel of the applicant argued that the applicant had sought appointment as APO, either at Kozhikode or at Cochin and not for any other posting under the CPO and that, having been deputed to work as APO, Kozhikode, he is not liable to be transferred to any other offices under the CPO without his consent. In support of his contention, learned counsel referred us to the ruling of the Madras Bench of the Tribunal in D.K.Goel Vs Union of India and another, SLJ 1992(1)(CAT), 258. Considering a situation almost similar, the Bench observed as follows:

"24. From the conspectus of the various factors as briefly mentioned above, we are of the opinion that, in the absence of a specific provision in the rules or regulations of the Government or in the deputation terms, a deputationist to a particular post in a particular place cannot be transferred by the receiving departmental authorities to another post in another place without the consent of the deputationist. If the receiving department can no longer accommodate a person in the particular place or post, it can only ask the deputationist to express his willingness for posting to an alternative place or post. If the deputationist is not willing, the only way out is to repatriate the deputationist to his parent establishment in accordance with the terms of deputation. As we have already stated earlier, one of the factors which would have been taken into account by the deputationist before consenting for deputation would be the place of posting also. We cannot see how such a deputationist can be forced to a posting in a place which is not to his liking. We are therefore,

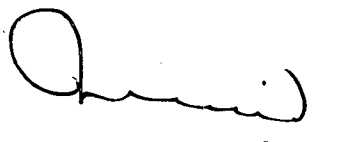


.4.

of the view that there is a basic lack of jurisdiction in transferring such a deputationist in a particular post in a particular place, to another place or another post against his will."

The situation in this case is practically identical. In this case, the applicant had in his representation A-3 sought deputation as APO either at Kozhikode or at Cochin and not for any other posting under the CPO. A-6 order by which the applicant was taken on deputation also indicate that the applicant was specifically taken on deputation to work as APO, Kozhikode. There was no condition incorporated in the order that he was liable to be transferred as APO to any other Passport Office or any post under the CPO. The reasons which prompted the applicant to apply for deputation as APO, Kozhikode were his need to educate his daughter there and his desire to serve in his native place as APO. Under these circumstances, if the respondents found it difficult to manage with the applicant as APO, Kozhikode or was not happy with his performance, what the respondents could have done is to repatriate him to his parent cadre in accordance with law, which course is still open to them and not to transfer him to another office without his consent.

4. In the light of what is stated above, we allow the application and set aside the impugned orders A1 and A2. We have not gone into the other rival contentions as that is not necessary. There is no order as to costs.



(T.N.T. NAYAR)
ADMINISTRATIVE MEMBER



(A.V. HARIDASAN)
VICE CHAIRMAN

/trs/

A P P E N D I X

Applicant's Annexures:

1. A-1 : True copy of the Office Order No.V.IV/575/1/2002 dated 16.5.2002 issued by the 3rd respondent.
2. A-2 : True copy of the order dated 17.5.2002 issued by the 4th respondent received on 20.5.2002.
3. A-3 : True copy of the representation dated 24.4.2001 of the applicant before the 3rd respondent.
4. A-4 : True copy of the forwarding letter dated 24.4.01 of the Ambassador of India, Berne.
5. A-5 : True copy of the Order No.Q/P8/575/1/2000 (Pt.) dated 30.5.2001 of the 1st respondent.
6. A-6 : True copy of the Order No.V.IV/575/7/2001 dated 11.7.2001 of 1st respondent.
7. A-7 : True copy of the representation dated 1.10.2001 submitted by the applicant to the 3rd respondent.
8. A-8 : True copy of the e-mail Message dated 15.4.2002 of the applicant to the 3rd respondent.
9. A-9 : True copy of the Order No.KOZ/841/1/2001 dated 10.5.2002 of the 4th respondent.
10. A-10: True copy of the representation dated 18.5.2002 submitted by the applicant before the 3rd respondent.
11. A-11: True copy of the report of granted cases disposed by the applicant from 14.9.2001 to 31.12.2001.
12. A-12: True copy of the e-mail Message dated 15.4.02 of the applicant to the 3rd respondent.
13. A-13: True copy of the News item appeared in New Indian Express daily dated 21.12.2001.
14. A-14: True copy of the FAX Message dated 27.8.2001 sent by the 4th respondent to the applicant.
15. A-15: True copy of the order No.KOZ/841/1/2001 dated 3.10.2001 issued by the 4th respondent.
16. A-16: True copy of the Order No.KOZ/841/1/2001 dated 9.10.2001 issued by the 4th respondent.
17. A-17: True copy of the Office order No.15/2000 issued vide order F.No.A-19011/22/83-E.I dated 10.5.2000 issued by the Under Secretary, Ministry of Commerce.
18. A-18: True copy of the OM No.21/48/97-CS.I dated 20.8.99 issued by the Ministry of Personnel, P.G & Pensions.
19. A-19: True copy of the Office Instructions dated Nil issued by the IVth respondent.
20. A-20: True copy of the Circular No.KOZ/841/1/2001 Vol.II dated 26.4.2002 issued by the 4th respondent.

Respondents' Annexures:

21. R-1 : True copy of extract of the Recruitment Rules, 1996 (Hindi & English version) dated 15.2.1996 for the C.P.O from Gazette of India.
22. R-6(1): True copy of order No.KOZ/841/1/2001 dated 17.9.2001 issued by the 6th respondent.
23. R-6(2): True copy of letter dated 27.2.2002 written by KK Vijayachandran, Asst. Kozhikode Passport Office.
24. R-6(3): True copy of letter dated 4.3.2002 written by N.Ashokan, Daftry of Kozhikode Passport Office.
25. R-6(3a): English version of Malayalam letter in Annexure R6(3).
26. R-6(4): True copy of letter dated 27.3.2002 written by UDC Pankaja Kumari, V. of Kozhikode Passport Office.
27. R-6(5): True copy of OM No.KOZ/841/1/2001 dated 18.4.2002 issued by the 6th respondent.
28. R-6(6): True copy of Office note dated 18.4.2002 written by the applicant.
29. R-6(7): True copy of Pay fixation order dated 15.10.99 of 6th respondent issued by the Ministry of Commerce.
30. R-6(8): True copy of order No.28/1999 (WD Series) dated 27.10.1999 issued by the Min. of Commerce.
31. R-6(9): True copy of Internal note dated 22.12.99 sent to Jt. Secretary Shri SM Acharya by Jt. Secretary Shri U.S.Bhatia, Min. of Commerce.
32. R-6(10): True copy of Passport Officer's remarks on 12.4.02.
33. R-6(11a): True copy of clipping of Madhyamam Malayalam daily dated 24.4.02.
34. R-6(11b): True copy of English translation of Annexure R6(11)a.
35. R-6(11c): True copy of clipping of Deshabhimani Malayalam daily dated 24.4.2002.
36. R-6(11d): True copy & English translation of Annexure R6(11)c.
37. R-6(11e): True copy of clipping of Kerala Kaumudi Malayalam daily dated 24.4.02.
38. R-6(11f): True copy of English translation of Annexure R6(11)e.
39. R-6(11g): True copy of clipping of Janmabhumi Malayalam daily dated 24.4.02.
40. R-6(11h): True copy of English translation of Annexure R6(11)g.
41. R-6(11i): True copy of clipping of Mangalam Malayalam daily dated 24.4.02.
42. R-6(11j): True copy of English translation of Annexure R6(11)i.
43. R-6(11k): True copy of clipping of Malayalam Manorama Malayalam daily dated 24.4.02.
44. R-6(11l): True copy of English translation of Annexure R6(11)k.
45. R-6(12): True copy of Training Programme on Managing Organisation Effectiveness.
46. R-6(13): True copy of Note dated 1.4.02 issued to the Public Relations Officer by the 6th respondent.

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28.8.02