

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A. NO.358/2010**

Dated this the 10<sup>th</sup> day of November, 2010

**C O R A M**

**HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER  
HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER**

A. N. Mohanan  
Superintendent  
Regional Passport Office  
Cochin-36

Applicant

By Advocate Mr. N. Nagaresh

Vs

1 Joint Secretary(PVA) & Chief Passport Officer  
Ministry of External Affairs, CPV Division  
New Delhi.

2 Regional Passport Officer  
Cochin.

Respondents

By Advocate Mr. Sunil Jacob Jose, SCGSC

The Application having been heard on 2.11.2010 the Tribunal delivered the following:

**ORDER**

**HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

The applicant, a physically handicapped person having more than 50% disability and working as Superintendent in the Regional Passport Office, Cochin is aggrieved by his transfer from Cochin to Malappuram.

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2 The applicant entered service under the respondents at RPO, Ernakulam as LDC in 1978. He had worked in Kozhikode, Vijayawada and Hyderabad. In 2002, his transfer order to RPO Ahmedabad was challenged by him upon which the transfer was cancelled. Thereafter, he was transferred to Madurai. The applicant made oral request not to effect the transfer. While so, he was transferred to Hyderabad on temporary basis (A-5). Aggrieved, he moved the Tribunal through O.A. 473/2009 which was allowed. The applicant submitted that he is a physically handicapped person having hardly 2 years of service for retirement. Hence aggrieved by the transfer to Malappuram he has filed this O.A to quash the same and for a declaration that he being a physically handicapped employee is not liable to be transferred out of Cochin.

3 The respondents opposed the O.A by filing reply statement. They submitted that officials who have more disability than him have already been transferred from RPO, Cochin office to different places due to exigency of service. The applicant has all India transfer liability. They also relied on the judgment of the High Court of Kerala in WP NO. 5989/2008 and 10006/2008. They relying on the decisions of the various Courts submitted that transfer is an exigency of service and no court would generally interfere with a transfer unless it is shown to be illegal or vitiated by mala fides.

4 The applicant has filed rejoinder producing Annexures A-10 and A-11 medical certificates issued by the Chief Cardiologist of Indira Gandhi Cooperative Hospital, Ekm. The respondents filed additional reply statement

5 The main contentions of the applicant is that physically handicapped persons are treated as preferential category, they should



be transferred only to or near their native places, the transfer order is against the findings of the Tribunal in Annexure A -6 order, they have hardly two years of service, there are persons being transferred only once during their entire service, and that he has to look after his 89 year old mother. The contention of the respondents is that transfer is the prerogative of the Department, it is in the exigency of service, no court has any power to interfere with transfer unless it is shown to be illegal or vitiated by malafide and the judgment of the High Court in the transfer case of physically handicapped persons.

6 As per the revised transfer policy of the Regional Passport Offices the following decision has been taken:

- (i) Transfer shall be effected strictly based on the length of stay of an official at a station except when it becomes necessary to transfer the official for the following reasons:  
on the basis of departmental proceedings.....
- (ii) Transfer shall be done strictly within the main zones or overlapping zones (out of zone transfer shall be considered only on request of the official)

**General terms and conditions:**

- (i) The cases where officials themselves are suffering from critical disease such as cancer, brain tumour and those who have undergone open heart surgery and those who are more than 50% physically handicapped shall be considered by the Board sympathetically to not to transfer them. The requests should be supported by proof of illness/handicap from Govt. Hospital. However, in case it becomes necessary to transfer officials also, efforts shall be made to transfer them to the nearest station. In case it is found at a later stage that an official has submitted false information about illness as above, strict disciplinary action shall be initiated against him/her.
- (iii) One year prior to superannuation, efforts shall be made to post the official at the station of his/her choice in view of

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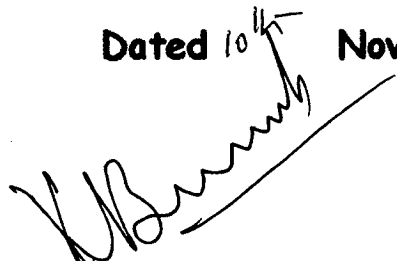
welfare oriented policies of GOI.

(ix) Criterion of length of stay one station shall be strictly followed for the purpose of transferring officlas i.e. Longest stay has to move first. Efforts shall be made to keep the number of transfers to the minimum possible ....."

7 There is no dispute that the applicant is a physcially handicapped person. The contentions of the applicant are that there are persons having less number of transfers than him and that he having various illness requires frequent medical check up in the Co-operative hospital, Cochin, his aged mother needs special care, family commitments demand his presence at Kochi and now he is to retire within two years. That apart, the Government of India DOPT has issued Transfer Guidelines to the effect that employees within two years of retirement shall not generally be transferred. The general guidelines issued by the Government are binding on the respondents. Ordinarily, the Tribunal would not interfere with the transfer order unless such transfer is vitiated with malafides or are issued by persons not competent to pass such orders. However, we find that the case of the applicant has not been considered in the light of the general guidelines issued by the Government. Viewed in the above circumstances, we are of the view that the O.A. is to be allowed.

8 Accordingly, we allow the O.A and quash Annexure A-8 transferring the applicant to Passport office, Malappuram.

Dated 10<sup>th</sup> November, 2010.

  
DR. K.B. SURESH  
JUDICIAL MEMBER

  
K. NOORJEHAN  
ADMINISTRATIVE MEMBER