

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 359

1992

DATE OF DECISION 7.4.92

V. J. Joseph

Applicant (s)

Mr. M. Girijavallabhan Advocate for the Applicant (s)

Versus

The Union of India represented by Secretary, Ministry of Food Processing, New Delhi and others Respondent (s)

Mr. K. A. Cherian, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicant who is working as Bosun in the Fisheries Survey of India, Cochin challenges Annexure-II order of transfer dated 17.2.92 transferring him from Cochin to Porbander.

2. According to the applicant, he was appointed to the post of Bosun on 14.2.79 at Bombay and he has been transferred from place to place and ultimately on 27.11.89, he came to the home State from Goa. The following extracts from the application will give the details of the applicant's transfer:

<u>Date</u>	<u>From</u>	<u>Transferred to</u>
1. 12.3.79	FSI, Bombay	F.S.I. Visakhapatnam
2. 10.3.80	FSI, Visakhapatnam	FSI, Paradeep, Orissa

3.	19.1.82	FSI, Paradeep Orissa	FSI, Visag.
4.	28.6.85	FSI, Visag	FSI, Panjim
5.	27.2.86	FSI, Panjim	FSI, Marma-Goa
6.	27.11.89,	FSI, Marma Goa	FSI, Cochin on a request made in Oct. 1988

here and complete <sup>b</sup>

3. It is stated that he was not able to continue/ the term of five years because of the impugned transfer order. He challenges the transfer order on various grounds including malafide. The applicant submits that it is contrary to Annexure-A-3 minutes of the meeting held on 28th June, 1991 laying down the principles for transfer. As per Annexure-A-3 the Director General of Fisheries Survey of India has been directed to "identify individuals who have been posted in particular place for a long duration and such officials be moved while effecting transfers." According to the applicant the impugned transfer is contrary to the decision contained in Annexure-A-3 minutes in which there is a indication that transfer can be affected after identifying the individuals who have been posted in a particular place for longer period.

4. The respondents in the reply statement stated that the applicant is bound to comply with the transfer order which has been issued in the exigency of the work and he does not deserve any sympathetic consideration and that the minutes Annexure-A-3 contains only a decision arrived at on the basis of a discussion on 28.6.91 regarding the transfer and that the Annexure A-3 is irrelevant and the Department has not adopted any policy on the basis of it in regard to transfers. <sup>b</sup>

5. The applicant has filed a rejoinder and stated that persons having longer stay in Cochin are allowed to continue in Cochin. He has also given names of two persons. He further submitted that he is a person having some personal ailment and he may be allowed to continue at Cochin for a further period so as to enable him to complete the full term.

6. When the matter came up for final hearing, the learned counsel for the applicant brought to our notice the statement of the respondents in para 14 of the reply and submitted that he will be satisfied if the applicant is allowed to submit his grievance before the higher authorities so that he may apprise his case before them for granting the reliefs.

In para 14, the respondents have stated that the applicant did not make any representation against the transfer to any of the departmental authorities. He has approached this Tribunal without resorting to this alternative forum.

7. The learned counsel submitted that if the applicant files a representation to the authorities, the same will be considered by the department.

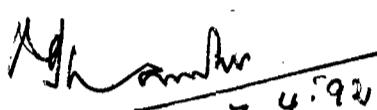
8. Having heard the matter in detail, we are of the view that interest of justice will be met in the case if we dispose of the application with proper directions. Accordingly, we direct the applicant to file a detailed representation, highlighting his grievance against the transfer, within a period of two weeks from today, through proper channel, submitting advance copy to the second respondent. If such a representation is received by the respondent, the second respondent shall consider the

grievance of the applicant and pass orders on the same as expeditiously as possible, at any rate within a period of one month from the date of receipt of a copy of the representation.

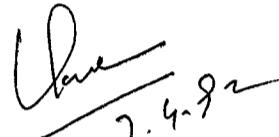
Till then, the transfer order Annexure-A-2 transferring the applicant from Cochin to Porbander shall be kept in abeyance.

9. The application is disposed of as above.

10. There will be no order as to costs.

  
7.4.92

(N. DHARMADAN)  
JUDICIAL MEMBER

  
7.4.92

(N. V. KRISHNAN)  
ADMINISTRATIVE MEMBER

kmn

**ANNEXURE 'A'.**

BEFORE THE HONOURABLE CENTRAL ADMINISTRATIVE  
TRIBUNAL AT ERNAKULAM.

O.A. No. 359 of 1992.

V.J. Joseph, Bosun  
Fisheries Survey of India,  
Kochangadi, Cochin -- 5. X      X      X      Applicant.

Vs.

<p>1. Union of India represented by the Secretary, Ministry of Food Processing, New Delhi.</p> <p>2. The Director General, Fisheries Survey of India, Botawala Chambers, Sir, P.M. Road, Bombay -- 1.</p> <p>3. The Zonal Director, Fisheries Survey of India, Kochangadi, Cochin -- 5.</p>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	<p>Respondents.</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------

REPLY STATEMENT FILED BY THE RESPONDENTS.

1. I am the third respondent in this case. This reply statement is filed on behalf of the other respondents also for which I am authorised. I am familiar with the facts of the case. The allegations and averments contained in the Original Application are denied except what is expressly admitted hereunder.
2. On the allegations in paragraph 6 of the Original Application, it is to be mentioned that the applicant was originally appointed as Bosn (C) at Bombay. His work as bosun is on board the fishing vessels. It was in public interest that transfer orders were issued to the applicant on different occasions during his service. But he was posted to Panjim, Goa with effect from 28--6--85 which is a station nearest to his home town. Thereafter, when a vacancy of bosun ~~xx~~ occurred at Cochin base, considering the request of the applicant he was transferred to Cochin on 27--11--1989. Thereafter, for a period of  $2\frac{1}{4}$  years, applicant continued at his home town. Now his services are essentially required

34

at Probandar. He has been transferred to Porbandar vide Order No. F-8-6/92 E.I. dated 17-2-1992.

3. As per the terms and conditions of his appointment which terms and conditions have been accepted by him, he is liable to serve anywhere in India.

4. He is possessing a certificate of competency for holding the post of Bosun (C) and therefore transfer of such an employee working on board a fishing vessel is always ordered, taking into account various facts such as suitability for the particular job involving different types of fishing operations with regard to his experience, efficiency commensurate with operational requirements etc.

5. The applicant is not entitled for any protection for retention at Cochin on account of his membership to the Executive Committee of the Association. Such protection is available only to the person holding an office declared as the Chief Executive of the Association. Hence, the allegation that his transfer is ordered to cause harassment on account of his membership of the Association is far from truth and only intended to give false picture to the entire matter.

6. This department has not adopted any policy not to transfer an employee before the completion of 5 years of service at a station. Contrary contention is not correct. I may be permitted to point out that the copy of the minutes produced by the applicant would indicate that it is not always possible to accommodate every officer due to the exigencies of public service. This minutes of the meeting in which the Joint Secretary on 28-6-1991 discussed various matters raised by the Central-Government-Fishing-Seamen-Association, Cochin. This discussion were in the intra-departmental committee meeting held at New Delhi. It is only the gist of the discussion circulated among the participants. Therefore, the copy of the minutes is irrelevant and misleading. Even in Annexure A III it has been specifically mentioned that every

effort is made to safeguard the legitimate interest of the staff and that it is not always possible to accommodate every officer due to the exigencies of public interest.

7. There are 21 persons in the category of bosun belonging to Kerala now working in Fisheries Survey of India. Now on vessels operating from Cochin base, there are only six posts of bosun. Therefore, it is impracticable to accommodate all the persons working in the post of bosun at Cochin. The transfer of the applicant to Porbandar is necessitated in public interest on operational reasons. So, there arises no question of measure of austerity and harassment etc., as alleged by the applicant.

8. In view of the position explained above, the present transfer of the applicant ordered in public interest from one place to another within the terms and conditions of his appointment, cannot be caused or reason for grievances to the applicant. He has completed 2 1/4 years of continuous stay at Cochin since his transfer to his hometown with effect from 27--11--1989.

9. On the ground stated in paragraph 6 of the Original Application, it is submitted that the transfer of the applicant is ordered only in public interest. The contrary allegations in ground A are not correct. The transfer order is legal, proper, valid and not arbitrary nor tainted with malafides.

10. The applicant is possessing certificate of competency and is working on board the vessel. His transfer is ordered in the exigencies of the Public interest. Therefore, the allegation of a sort of victimisation for his active involvement in the trade union activities, is without any basis.

11. Applicant is only a member of the executive of the Association. He is not entitled for protection from transfer and for retention at Cochin.

*b2  
Adv*

12. The second respondent has been extending the maximum help to his employees by posting them in their own States wherever base office of Fishery Survey of India are available and this fact has been admitted by the applicant himself by stating that he was posted at Cochin in November 1989 on his request. He was not given any assurance to keep him there for a certain number of years according to his desire.

13. There is no Government Order not to incur any expenditure on transfer Travelling Allowances but the directions are to restrict the expenditure wherever possible. It does not mean that employees whose services are required at a particular spot, should not be transferred when public interest demanded it.

14. The applicant did not make any representation against the transfer to any of the departmental authorities. Had he got any real grievance, he would have made representation to the authority, who issued the transfer order. Therefore, his declaration ~~is~~ in paragraph 7 of the Original Application that he has availed himself of all the remedies available to him under the relevant service Rules etc., is actually incorrect.

15. Regarding the reliefs sought for by the applicant, it is humbly submitted that the transfer order is issued strictly in public interest and fully within the administrative competency of the Director General and hence it is not liable to be set aside. It is to be re-iterated here that, this department has not evolved any policy to keep any person for 5 years at one place.

16. No discrimination or violation of Article 14 and 16 of the Constitution of India has been made in issuing the order of transfer of the applicant out of Cochin. Consequent on the shifting of the vessel from another Base to Porbandar many employees from various Base-Office have been transferred.

*Adv*

(Annexure 'A' contd.)

17. Applicant's case does not deserve any sympathy and hence the Original application is liable to be dismissed. It may also be noted that the work of Fishing Vessels is of an operative nature and such changes and transfers become unavoidable for ensuring proper working of the organisation.

18. Since the services of the applicant are urgently required at Porbandar base-office, the stay already ordered may be vacated.

For the reasons above explained, it is humbly prayed that this Honourable Tribunal may be pleased to dismiss the Original Application with costs.

Verification.

I, T.V. Ninan son of Shri. V. Varghese aged 47 years, working as Zonal Director-in-Charge do hereby verify that the contents of paras 1 to 18 are true to the best of my knowledge, information and belief and I have not suppressed any material facts.

Dated this the 31st day of March, 1992.

Sd/-

K.A. Cherian,  
ACGSC.

Signature:

Sd/-

Name and  
Designation. SENIOR FISHERIES  
SCIENTIST, FISHERY  
SURVEY OF INDIA  
COCHIN--5.

(True Copy)

ADVOCATE.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 359  
T. A. No.

1992

DATE OF DECISION 7.4.92

V. J. Joseph

Applicant (s)

Mr. M. Girijavallabhan

Advocate for the Applicant (s)

Versus

The Union of India represented  
by Secretary, Ministry of Food Processing, New Delhi and others Respondent (s)

Mr. K. A. Cherian, ACGSC

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicant who is working as Bosun in the Fisheries

Survey of India, Cochin challenges Annexure-II order of transfer dated 17.2.92 transferring him from Cochin to Porbander.

2. According to the applicant, he was appointed to the post of Bosun on 14.2.79 at Bombay and he has been transferred from place to place and ultimately on 27.11.89, he came to the home State from Goa. The following extracts from the application will give the details of the applicant's transfer:

<u>Date</u>	<u>From</u>	<u>Transferred to</u>
1. 2.3.79	FSI, Bombay	F.S.I. Visakhapatnam
2. 10.3.80	FSI, Visakhapatnam	FSI, Paradeep, Orissa

*Adv.*

3.	19.1.82	FSI, Paradeep Orissa	FSI, Visag.
4.	28.6.85	FSI, Visag	FSI, Panjim
5.	27.2.86	FSI, Panjim	FSI, Marma-Goa
6.	27.11.89,	FSI, Marma Goa	FSI, Cochin on a request made in Oct. 1988

here and complete 5

3. It is stated that he was not able to continue/ the term of five years because of the impugned transfer order. He challenges the transfer order on various grounds including malafide. The applicant submits that it is contrary to Annexure-A-3 minutes of the meeting held on 28th June, 1991 laying down the principles for transfer. As per Annexure-A-3 the Director General of Fisheries Survey of India has been directed to "identify individuals who have been posted in particular place for a long duration and such officials be moved while effecting transfers." According to the applicant the impugned transfer is contrary to the decision contained in Annexure-A-3 minutes in which there is a indication that transfer can be affected after identifying the individuals who have been posted in a particular place for longer period.

4. The respondents in the reply statement stated that the applicant is bound to comply with the transfer order which has been issued in the exigency of the work and he does not deserve any sympathetic consideration and that the minutes Annexure-A-3 contains only a decision arrived at on the basis of a discussion on 28.6.91 regarding the transfer and that the Annexure A-3 is irrelevant and the Department has not adopted any policy on the basis of it in regard to transfers. 42

42

LM  
ADV

5. The applicant has filed a rejoinder and stated that persons having longer stay in Cochin are allowed to continue in Cochin. He has also given names of two persons. He further submitted that he is a person having some personal ailment and he may be allowed to continue at Cochin for a further period so as to enable him to complete the full term.

6. When the matter came up for final hearing, the learned counsel for the applicant brought to our notice the statement of the respondents in para 14 of the reply and submitted that he will be satisfied if the applicant is allowed to submit his grievance before the higher authorities so that he may apprCise his case before them for granting the reliefs.

In para 14, the respondents have stated that the applicant did not make any representation against the transfer to any of the departmental authorities. He has approached this Tribunal without resorting to this alternative forum.

7. The learned counsel/submitted that if the applicant files a representation to the authorities, the same will be considered by the department.

8. Having heard the matter in detail, we are of the view that interest of justice will be met in the case if we dispose of the application with proper directions. Accordingly, we direct the applicant to file a detailed representation, highlighting his grievance against the transfer, within a period of two weeks from today, through proper channel, submitting advance copy to the second respondent. If such a representation is received by the respondent, the second respondent shall consider the

lm  
pdv

grievance of the applicant and pass orders on the same as expeditiously as possible, at any rate within a period of one month from the date of receipt of a copy of the representation. Till then, the transfer order Annexure-A-2 transferring the applicant from Cochin to Porbander shall be kept in abeyance.

9. The application is disposed of as above.

10. There will be no order as to costs.

*Sd/-*  
(N. DHARMADAN)  
JUDICIAL MEMBER

*Sd/-*  
(N. V. KRISHNAN)  
ADMINISTRATIVE MEMBER

kmn

CERTIFIED TRUE COPY

Date ..... 16-6-92 .....

*Reema*



(True Photostat copy)

*Advocate*  
ADVOCATE.