

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O.A.No.361/2004

Thursday this the 1st July 2004

CORAM:

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

Mrs.Evilin Daniel, W/o Joseph George  
Assistant, Regional Passport Office  
Kochi, R/o Qrs.No.2/1  
Passport Office Quarters, Perumanoor, Kochi-5.  
Applicant.

(By Advocate Mr.T.C.Govindaswamy)

Vs.

1. Union of India represented by the Secretary to the Govt of India, Ministry of External Affairs, New Delhi.
2. The Joint Secretary(PV), Ministry of External Affairs New Delhi.
3. The Under Secretary(PV) Ministry of External Affairs New Delhi.
4. The Regional Passport Officer, Regional Passport Office, Kochi.

(By Advocate Mr.C.B.Sreekumar, ACGSC)


Respondents.

The O.A having been heard on 1.7.04 and on the same day the Tribunal ordered the following:


O R D E R

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

The applicant, a lady belonging to Scheduled Tribe community of Idukki District presently working as an Assistant in the Regional Passport Office, Kochi, aggrieved by Annx.A1 order dated 25.3.2004 by which she was transferred to Passport Office Trichy, made a representation to the 2nd respondent and requested that she be spared from transfer on the ground that her health was bad, that she had already undergone three surgeries, that her husband is an employee of State Civil



Supplies Department in Kochi, that her daughter aged 8 years is studying in Kochi and staying with her and that the transfer would not only jeopardise her health but her family life also. It is also indicated in the representation that there has been a policy guideline for retaining the husband and wife at the same station. Finding that before her representation is considered she would be relieved, the applicant has filed O.A No.305/2004 which was disposed of at the admission stage as the learned counsel on either side agreed that the 2nd respondent be directed to consider the representation and give the applicant an appropriate reply keeping in abeyance the relief of the applicant. In purported implementation of the above said direction, the impugned order Annx.A10 has been issued by the 3rd respondent stating that not transferring persons senior to her on length of stay/service was covered by corrigendum on transfer orders issued on 20.4.04, that several representations received for cancellation of transfer orders had not been considered and the representations received for retention on the basis of medical and educational grounds were not considered and therefore, the applicant had to be relieved with immediate effect. Aggrieved by Annxs.A1 and A10 the applicant has filed this OA for a direction to the respondents to allow the applicant to continue in her present station as if Annx.A1 order has not been issued. It has been alleged in the application that Annx.A10 order is unsustainable because the 2nd respondent who was directed to consider the representation has not considered the same and the 3rd respondent has no locus standi to dispose of the said representation and the impugned order is violative of the transfer policy and not issued in exigencies of service.



2. Initially, the learned counsel of the respondents under the instruction of the respondents filed a statement on 7.6.2004 wherein it was contended that the transfer/deployment of officials are being done according to the need of the department, that those who have had longer stay retained were persons physically handicapped and that the applicant had been transferred within the zone in terms of the Annexure R1 transfer policy.


3. The applicant filed a rejoinder wherein she inter alia contended that the transfer zone of Assistant is Trivandrum Cochin - Kozhikode and therefore, the transfer of the applicant to Trichy is against the transfer norms as Trichy is in another transfer zone which comes under Chennai - Bangalore zone.

4. Additional statement was thereafter filed purportedly under instructions from the respondents on 16.6.2004 alongwith a Fax message Annx.R2. The Fax message reads as follows:

"Please refer to your Fax No.CHN/551/3/2004 dated 8.6.2004 Reg.OA No.361/2004 filed by Smt.Evelin Daniel. Our comments to defend the case in the CAT are as under.

(a) While it is true that as per the existing transfer policy of CPO, an Assistant is to be transferred only within the transfer zone laid down therein, but due to exigencies of work and on functional grounds an Assistant can be transferred out of zone also.

(b) Smt.Evelin Daniel is not the only Assistant who has been transferred out of zone. There were 13 other Assistants who were transferred out of zone in the last Transfer Board out of which 11 were ladies. All of them including Smt.C.S.Sulabha who was transferred from Trichy to Cochin in place of Smt Daniel have obeyed the government orders and have joined the next station of their transfer.



(c) Moreover, this transfer is only for a period of three years. Smt. Daniel can be transferred back to Cochin on the expiry of her three years tenure in Trichy.

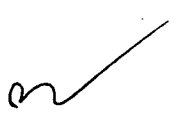
You may file an appropriate reply in the CAT on the basis of above arguments and keep us posted with the development of the case.

Sd/-

(Ravi Shankar)  
Under Secretary."

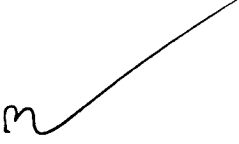
5. I have carefully gone through the entire record and have heard Mr. T.C. Govindaswamy counsel of applicant and Mr. C.B. Sreekumar, ACGSC, counsel of the respondents.

6. Generally the Courts and Tribunals would hesitate to interfere with administrative orders like transfer and deployment of members of the staff which would be made to suit the administrative functions and requirement by the competent authority. In cases where proper reasons are seen the Tribunal instead of deciding the correctness of the transfer itself may put it back to the administration for reconsideration and taking appropriate decision. In this case, when the applicant was transferred from Kochi to Trichy retaining persons with longer stay and at a time when the applicant was unwell and her 8 years old daughter studying in Kochi the Tribunal directed the 2nd respondent, the Joint Secretary (PV), New Delhi, to consider and dispose of the representation. The 2nd respondent was bound in terms of the orders in O.A No. 305/04 to consider the representation and to take appropriate decision. I find that the 2nd respondent has not considered the representation in spite of a definite direction in that regard. The action of the second respondent in not considering the representation in the



light of the directions contained in the order of the Tribunal and the issue of impugned order by the third respondent who was not competent to issue such an order in view of the specific direction in the order of the Tribunal in OA 305/04 discloses their scant regard for the orders of the Tribunal.

6. The learned counsel of the applicant argued that according to the transfer norms, Annx.R1, the applicant being an Assistant in the zone of Trivandrum - Kochi - Kozhikode could not have been transferred to Trichy which comes under the Chennai - Bangalore - Trichy zone and that the contention of the respondents in the additional statement filed on their behalf by the counsel that this transfer was made on exigencies of service cannot be accepted as the same is only an after thought as it was not stated either in the impugned order of transfer or Annx.A10. I find considerable force in the argument. The applicant coming under the transfer zone Trivandrum - Kochi Kozhikode could have been normally transferred only within the zone unless transfer outside the zone was essential in the exigencies of service. In the impugned orders Annexures.A1 and A.10 it was not indicated that the transfer of the applicant was in the exigencies of service. Annexure.A1 order was only a routine order of periodical transfer and not a special order of transfer in the exigencies of service. Even in Annexure.A.10 order there is no case that the transfer was necessary to meet any exigency.



.6.

In the result, the application is allowed in part and the impugned orders Annexures.A1 and A.10 are set aside. No costs.

Dated the 1st day of July, 2004



(A.V.HARIDASAN  
VICE CHAIRMAN

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