

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 372/90
XXX

XXX

DATE OF DECISION 31-7-1990

MC Koyamma _____ Applicant (s)

M/s TPM Ibrahimkhan & _____ Advocate for the Applicant (s)
Shefik MA
Versus

The Administrator, _____ Respondent (s)
U.T. of Lakshadweep, Kavaratti & another

Mr PV Madhavan Nambiar _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, Judicial Member

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

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

This application filed under Section 19 of the Administrative Tribunals Act is by a Police Constable working in Kalpeni Island in the Union Territory of Lakshadweep, challenging his transfer to Minicoy Island. The facts lie in a narrow compass.

2. The applicant is a native of Kalpeni Island where his wife is working as a Lower Division Clerk in the Agricultural office. Since his presence at Kalpeni was felt essential to be with his family and for enabling him to construct a house, on his repeated representations, he was posted at Kalpeni by order dated 16.3.1988. But following the report of a quarrel

between him and a local man by name Koya, the second respondent on 7.5.1990 ordered the transfer of the applicant to Minicoy Island by a telegraphic message(Annexure-A1). The SHO, Kalpeni immediately issued an order passporting the applicant to Minicoy Island on the same day(Annexure-A2). The applicant submitted a representation to the Administrator, the first respondent praying that the transfer may be cancelled. As there was no reply, the applicant has filed this application challenging the orders at Annexure-A1 and A2 and praying that they may be quashed and direction may be given to retain him at Kalpeni.

In the application it has been alleged that he made a complaint as a member of the ruling party against Shri Koya on 4.5.1990 since he damaged the headlight of his cycle he has been transferred yielding to the influence of Shri PP Hamsa Koya who is the local president of the ruling party. It has been further alleged that since the order of transfer without allowing him to complete a term of at least three years in Kalpeni, his native place where his wife is employed violates the guidelines and as the same is tainted with malafides, the same may be quashed.

3. In the reply statement filed by the respondents, it has been contended that it was on the basis of a report from SHO, Kalpeni, that the applicant abused a local man and made a false complaint against him in the Police Station, that the applicant was transferred on ~~xxx~~ public interest, and that such transfers though against certain norms, are necessary in the exigencies of service.

4. We have heard the arguments of the learned counsel on either side and have also gone through the records produced. It is well settled by now by a catena of decisions of the Supreme Court, High Courts and the Central Administrative Tribunal, that transfer of a Government servant holding a transferable post, is an incident of service, that guidelines in the matter of making transfer do not clothe the officers with an immunity from transfer nor do they confer on them any ^eenforceable right and that judicial intervention in orders of transfer will be justified only when there is manifest malafides. In this case, the applicant has been transferred from Kalpeni by Annexure-A1 and A2 orders before he has completed a term of three years though he came to be posted there on his request and though his wife is working ^{there} in a Government department. As per the guidelines(Annexure-A4), normally an official will not be transferred from a place before completion of three years. The guidelines further provides that in cases where both the spouses are employed as far as possible they should be posted in the same station. The impugned orders in this case break these guidelines. But guidelines are not exhaustive of all circumstances. There may be circumstances which are not contemplated in the guidelines when transfers without strictly observing the guidelines would be essential in the interest of service. This case ~~xxx~~ is a classical example of one such circumstance. Admittedly the applicant is transferred by the impugned order on the basis of a report by the S.I. of Police, Kalpeni, that he abused a local person

and made a false complaint about him. In the application itself it has been alleged that on 4.5.1990, a person called Koya a local leader of the ruling party had destroyed the headlight of his cycle, that he had made a complaint in the Police Station against such person and that Shri PP Hamsa Koya, the President of the local unit of the ruling party has influenced the second respondent and has caused him to issue the impugned order of transfer. So even according to the allegations in the application, the quarrel between the applicant and Shri Koya is the root cause for his transfer. Annexure-R1 is a photostat copy of the report made by the Sub Inspector of Police regarding the complaint made by the applicant. It is seen mentioned by the S.I in this report that crime No.3/90 of Kalpeni was registered on the basis of the applicant's complaint, that on enquiry he came to know that the applicant Koyamma abused Koya using filthy language and tried to steal fittings of cycle of Koya, that there was a push and pull between them and that a respectable local person intervened and separated them. It has also been reported as follows:

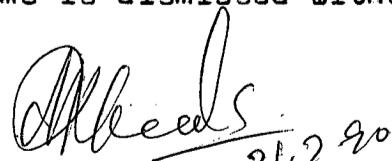
".....I submit that MC Koyamma is always quarrelsome with public in general as well as co-workers. Certain constable taking advantage by inciting MC Koyamma in unwanted matters since one B Syed Koya brother of accused in Sr.3/90 known to have filed a private case at FJCM Androth against 5 constable including MC Koyamma a confid. report reg. trend prevailing among a few constables have already being submitted to C.I PHQ. para PC 133 MC Koyamma is an acute head ache in all corner."

I submit that the leading cr.3/90 is not an assault of police man by local people."

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Even after the respondents have filed reply statement producing the Annexure-R1 report of S.I. justifying the impugned order of transfer, the applicant has not filed any rejoinder stating that the S.I. has made a false report about what lead to the crime No.3/90. Though it is stated that Shri Hamsa Koya has influenced the second respondent and has caused him to issue the ~~impugned~~ order of transfer and that therefore the transfer is tainted with malafides, there is absolutely no attack against the truthfulness of the report of the S.I. of Police. We do not find any reason to believe that the S.I. of Police should have made a false report against a person working under him and have said that he was the aggressor if as a matter of fact he had been attacked by a local man. From the report of the SHO, Annexure-R6 it appears that the applicant instead of helping maintenance of law and order has himself been party to some quarrels. In such circumstances, the decision of the respondent No.2 to transfer him out of that station cannot be faulted.

5. In the circumstances of the case, we are convinced that the impugned order of transfer was issued only in the interest of service and that it is not tainted with malafides requiring judicial intervention. Hence the application fails and the same is dismissed without any order as to costs.


31-7-90
(AV HARIDASAN)
JUDICIAL MEMBER


31-7-90
(SP MUKERJI)
VICE CHAIRMAN

31-7-1990

trs