

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O. A. No.  
XDXAXXNXX

410

1990

DATE OF DECISION 20.12.1990

A Kunhikoya \_\_\_\_\_ Applicant (s)

M/s P.S.Usuph & P.U.Ziyad \_\_\_\_\_ Advocate for the Applicant (s)

Versus

Administrator, Union Territory Respondent (s)  
of Lakshadweep & 2 others

Mr.N.N.Sugunapalan, SCGSC \_\_\_\_\_ Advocate for the Respondent (s)  
(for R.1 & 2)

CORAM:

The Hon'ble Mr. S.P.Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V.Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? NO
2. To be referred to the Reporter or not? NO
3. Whether their Lordships wish to see the fair copy of the Judgement? NO
4. To be circulated to all Benches of the Tribunal? NO

JUDGEMENT

(Mr.A.V.Haridasan, Judicial Member)

The applicant, Shri Kunhikoya a native of Andrott Island in the Union Territory of Lakshadweep is working as a Pharmacist under Lakshadweep Administration. He has filed this application under Section 19 of the Administrative Tribunals Act, praying that a writ of certiorari or any other appropriate order or direction may be issued quashing the order dated 7.5.1990 of the Director of Medical and Health Services, Kavaratti at Annexure-II to the extent of his posting to Primary Health Centre, Amimi and the posting of the third respondent to the Primary Health Centre, Andrott.

2. The material averments in the application can be briefly stated as follows. The Island Bitra is a very

small island with a population of ~~XXXXXX~~ about 100 with rare transport facilities. On account of this condition the Administration had adopted a policy that the Government servants posted at Bitra would be required to serve there only for a period of one year and thereafter only ~~in case~~ when no other suitable hand is available, a second posting would be made from among those who have already served there. The applicant has been serving the Lakshadweep Administration as Health Inspector for the last 13 years. He was first posted to Bitra in the year 1977. He worked there for one year and five months i.e. from 26.11.1977 to 5.4.1979. Nobody other than the applicant worked in Bitra for more than one year as Health Inspector. But again by order dated 2.5.1989 he was posted to Bitra. Being aggrieved by the second posting, the applicant made a representation to the first respondent, Administrator, U.T. of Lakshadweep, requesting for cancellation of the posting. On this representation, Annexure-I the Administrator made the following order.

"He may proceed to Bitra since he has completed 3 years in his own island. However, after doing his term in Bitra we should give him posting in his own island and we would as far as practicable adopt this as a policy for such a posting."

Assured that he would get a posting to his native island after completion of one year at Bitra, the applicant without challenging the order of transfer to Bitra, on the ground of violation of long standing policy joined at Bitra. But now the second respondent has passed the impugned order, Annexure-II

dated 7.5.1990 transferring the applicant to Primary Health Centre, Amini, while posting the 3rd respondent who is also a Pharmacist belonging to Andrott island, at Primary Health Centre, Andrott from Kalpeni. The third respondent is highly influential and he has got the support of Shri P.M.Syed, M.P. While he was working at Andrott, on 8.5.1987 he was transferred to Bitra, But on account of his high influence in the department of Health and Medical Service and in the Administration, the third respondent got the transfer cancelled and got a posting to Primary Health Centre, Kalpeni. Now after the applicant has completed his one year tenure at Bitra a difficult station, when the first respondent was bound by his commitment in Annexure-I to give him a posting to his native island, Andrott, the respondents have issued the impugned order of transfer, posting the applicant to Amini, while giving a posting to the third respondent at Primary Health Centre, Andrott. This has been done yielding the influence of the third respondent. The applicant made a representation to the first respondent requesting for a transfer to his native island, Andrott reminding the Administrator of his order in Annexure-I, that the applicant would be given a posting at his native island after completion of his tenure at Bitra. But this representation has been rejected without assigning any reason and one Shri P.M.Venugopalan, Pharmacist has relieved the applicant from Bitra with a direction to report at Kavaratti for further orders. Aggrieved by his transfer

to Amini against the promise made in Annexure-I by the first respondent and the favouritism shown to the third respondent in giving him a posting at Andrott, the applicant has filed this application challenging the Annexure-II order and praying that the respondents may be directed to give him a posting to his native island, Andrott.

3. The respondents have sought to justify the impugned order on the ground that the applicant has already served in his native island, Andrott for a period of 7 years out of his total service of 13 years, and that in order to give the benefit of posting to native island to the four Pharmacists belonging to Andrott, it has become necessary to post the applicant at Amini. They have contended that this adjustment was made in the exigencies of service. The applicant has filed a rejoinder stating that the third respondent who has put in only 9 years of service had already been posted at Andrott for more than 5 years, and that no other Pharmacists excepting the applicant has been posting at Bitra more than once. He has also given the details of posting of Pharmacists in Bitra starting from 1973 onwards.

4. We have heard the arguments of the learned counsel on either side and have also carefully perused the documents produced.

5. Transfer is a routine administrative matters. It is an incident of service in the case of Government

servant holding a transferable post. Judicial intervention in matters like transfer is justified only if there is glaring malafides or arbitrariness; otherwise it should be left to the discretion of the authority competent to effect transfer. But in this case we find that the applicant has worked in a difficult station like Bitra for a period of 2 years and 5 months in two terms. That it is the policy of the administration to post a person to Bitra for a period of one year only, and that if no other suitable hand is available only, a person would be posted there for a second term of one year on rotation is not disputed. The averment in the application and in the rejoinder of the applicant that no other Pharmacist has worked for more than a year in Bitra is also not controverted. During 1977 to 1979, the applicant had worked at Bitra for one year and five months. When he was again posted to Bitra in the year 1989, he made the Annexure-I representation to the Administrator. Considering the fact that the applicant had at the first instance worked in Bitra for 1½ years and that he has been again posted there for the second time, the Administrator passed an order on his representation as follows:

"He may proceed to Bitra since he has completed 3 years in his own island. However, after doing his term in Bitra we should give him posting in his own island and we would as far as practicable adopt this as a policy for such a posting."

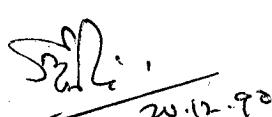
he  
As he has been assured that he would get a posting back to  
his native island at Andrott on the basis of the order

of the Administrator, the applicant proceeded to join at Bitra and worked there for a year. The first respondent having committed in Annexure-I, that the applicant should be given a posting in his home island after completion of his term at Bitra should have kept up the promise while transferring the applicant from Bitra. But by the impugned order at Annexure-II, the applicant was transferred to Amini, while the third respondent has been posted to Andrott. The averment in the application, that the third respondent got his transfer to Bitra in the year 1977 cancelled is not disputed. The present posting of the third respondent to Andrott is sought to be justified in the reply statement on the ground that he has completed 3 years tenure at Kalpeni. While the respondents 1 and 2 contend that it is not possible to post the applicant who has worked at Andrott for 7 years during his 13 years of service, they have sought to justify the posting of the third respondent at Andrott though he had already worked for  $5\frac{1}{2}$  years within the period of 9 years of his service. The applicant has specifically averred in the application that the third respondent has been given posting at Andrott while he was posted at Amini disregarding the commitment in the Annexure-I because of the influence exerted by the third respondent and his supporters. Curiously enough this averment has not been contraverted in the reply statement at all. The third respondent though served

this application with notice in has chosen not to appear before the Tribunal. It is evident that there are Pharmacists under the Administration who have never been posted at Bitra, and that the applicant has already served in Bitra for 2 years and 5 months. In this background we are of the view that the respondents should have honoured the commitment made in Annexure-I by the first respondent, that the applicant should be given a posting at Andrott on completion of his term at Bitra. The failure to honour this commitment and to post the third respondent to Andrott, in our view is not at all reasonable, and justifiable. Hence, we are of the view that the impugned order of transfer has to be quashed to the extent of the posting of the applicant to Amini instead of Andrott.

6. In the result, the application is allowed. The order dated 7.5.1990 of the second respondent is quashed to the extent of the posting of the applicant to Amini and the respondents are directed to post the applicant at Primary Health Centre, Andrott as assured by the first respondent in Annexure-I, within a period of one month from the date of receipt of this order. There is no order as to costs.

  
(A.V. HARIDASAN)  
JUDICIAL MEMBER

  
(S.P. MUKERJI)  
VICE CHAIRMAN

20.12.1990

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM

RA-8/91 in  
O. A. No. 410 of 1990  
T.A. No.

DATE OF DECISION 25-4-1991

KC Mullakoya

Review Applicant (s)

Mr K Ramakumar

Review Advocate for the Applicant (s)

Versus

A Kunhikoya & 2 others

Respondent (s)

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?
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

AV Haridasan, Judicial Member

There is no error apparent on the face of record and the averments that the order was passed without hearing the parties affected is not correct. The review applicant was the third respondent who refused to accept notice and who did not appear before us. Since he did not appear before this Tribunal, it was not possible to hear him. If he has a case that the endorsement that he refused to accept notice is not true and that no step was taken to effect service on him, the course open for him is to pray for setting aside the order ~~if~~ passed ex parte. Hence there is no ground for reviewing the order. Accordingly the review application is rejected.

( AV HARIDASAN )  
JUDICIAL MEMBER

25-4-1991

( SP MUKERJI )  
VICE CHAIRMAN

25-4-1991