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**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00173/2018

Monday, this the 11th day of June, 2018

C O R A M :

**HON'BLE Mr. U. SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER**

Sri.Subhash Babu V.B.,
Civilian Motor Transport Driver (Ordinary Grade),
S/01784, Indian Coast Guard Station,
Vizhinjam – Harbour Road, Vizhinjam P.O.,
Thiruvananthapuram – 695 521.

...Applicant

(By Advocate – Mr.P.K.Madhusoodhanan)

V e r s u s

1. The Commander,
Coast Guard Region (West),
Head Quarters, Worli Seaface Post Office,
Worli Colony, Mumbai – 400 030.
2. The Commanding Officer,
Indian Coast Guard Station, Vizhinjam,
Harbour Road, Vizhinjam P.O.,
Thiruvananthapuram – 695 521.
3. The Commander,
Coast Guard District Head Quarters No.4,
Kalavathy Road, Fort Kochi – 682 001.
4. Sri.Sunil Kumar S, S/01770,
Civilian Motor Transport Driver (Ordinary Grade),
Coast Guard District Head Quarters No.4,
Kochi – 682 004.
5. The Director General,
Coast Guard Head Quarters,
New Delhi – 110 001.

...Respondents

(By Advocate – Mrs.Mini R Menon,ACGSC [R1-3 & 5])

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This Original Application having been heard on 6th June 2018, the Tribunal on 11th June 2018 delivered the following :

ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

O.A.No.180/173/2018 is filed by Shri.Subhash Babu V.B., who is employed as a Civilian Motor Transport Driver (Ordinary Grade), at Coast Guard Station, Vizhinjam against his transfer to DHQ-4, Kochi. He seeks setting aside of Annexure A-5 order in so far as it applies to him.

2. His primary contention is that he has been posted at Vizhinjam on compassionate grounds on “permanent basis”. So his displacement from the present station is illegal and contrary to the rules governing transfer in the respondent organization. When the O.A was heard on 14.2.2018 for the first time this Tribunal ordered stay of Annexure A-5 order *qua* the applicant till the next posting date and the said stay is still in force.

3. The applicant states in the O.A that he is an Ex-Serviceman who has worked for 17 years in the defence services. He had been appointed as Civilian Motor Transport Driver at Indian Coast Guard Station, Beypore, Calicut on 17.11.2011 on the basis of his Ex-Serviceman status. He submits that there are personal circumstances which compel him to be present in Vizhinjam. These are, primarily, the ill health of his aged parents which necessitated constant care and medical attention which only he can facilitate. It was on this ground that he had sought a posting to the

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Vizhinjam Station under the respondent organization in 2014. Finally he was granted transfer on compassionate ground from ICGS Beypore to ICGS Vizhinjam as per order dated 31.12.2014 (Annexure A-3). He submits that his parents continue to be in his care while he is posted at Vizhinjam.

4. The applicant claims that he was shocked to receive the transfer order. As per Annexure A-5, 12 personnel of different designations working in the respondent organization have been transferred to different stations and his name also finds a place in the impugned order requiring him to move to DHQ-4, Fort Kochi. Aggrieved by the same he had submitted a representation dated 5.2.2018 to the respondents (Annexure A-6) requesting cancellation of his transfer order on compassionate grounds citing the poor health condition of his parents. He is aggrieved by the fact that there has been no response to the said representation.

5. As grounds, the applicant submits that he had been transferred from Beypore to Vizhinjam on extreme compassionate grounds and the transfer had been on “permanent” basis. He submits that there is no administrative exigency or organizational interest in the transfer and affirms that he has not been involved in any disciplinary case or suffered any punishment during his service under the respondent organization. The 4th respondent who is a resident of Chathanoor would not be interested to move to Vizhinjam and thus Annexure A-5 order is primarily meant to harass the applicant. Also,

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many other staff currently working at Vizhinjam had been continuing at the same station for several years. Non-consideration of the representation filed by him (Annexure A-6) is a serious infringement of his personal rights.

6. The respondents have filed a detailed reply affidavit wherein the contentions of the applicant have been strongly denied. Firstly, it is stated that the applicant has not exhausted departmental remedies before rushing to the Tribunal. The applicant had submitted that he has filed a representation. Afterwards he had proceeded on two days leave on 5th February itself and has remained absent for 13 days till 19th February. The representation to be considered had to be first verified and authorized with relevant documents before it could be transmitted to Coast Guard Region (West), Mumbai, a requirement which could not be fulfilled because the applicant decided to play truant. Thus it is incorrect to state that the respondents have rejected his representation. The provision under Section 20 of the Administrative Tribunals Act requires this Tribunal to summarily reject the O.A on this ground alone.

7. The applicant had been appointed under the respondent organization on 17.11.2011 at Beypore against a existing vacancy. The medical condition from which his parents are reportedly suffering were understood to have existed since 2007 and thereby at the time of joining at Beypore also. The job for which he had applied and was selected requires readiness

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on the part of the applicant to serve anywhere in India. Yet the respondents have taken a sympathetic view of the stated condition of his parents and transferred him to Vizhinjam where he has joined in January, 2015. As per Transfer Policy for Civilians (Annexure R-1) only one request for transfer on compassionate ground is to be considered during the entire service of the civilian personnel and the applicant has already completed three years in his chosen station.

8. The respondents also refute the contention of the applicant that his service under the respondent organization has been blemishless. He had been a receipt of Show Cause Notices dated 18.12.2015, 5.1.2016, 6.11.2017 as well as Warning Letters dated 31.1.2012 and 22.11.2017 as per Annexure R-7. Annexure R-8 and Annexure R-9 documents further indicate that the applicant has been guilty of serious misdemeanour.

9. Shri.P.K.Madhusoodhanan appeared on behalf of the applicant and Smt.Mini.R.Menon, ACGSC appeared on behalf of the respondents. All pleadings and documents were examined.

10. The main contention of the applicant is that he had been transferred on “permanent” basis to Vizhinjam at his request and is now being moved out by the impugned order despite the fact that the grounds under which his compassionate posting had been granted continued to exist. This Tribunal is

not of the view that much credence can be attached to the adjective “permanent” which appears in Annexure A-4 relieving order (the same does not appear in the transfer order at Annexure A-3). Besides “permanent” transfers are a phenomena which does not find a place in the Transfer Policy either. The applicant had been the beneficiary of a posting to his native place at his request and has completed more than three years at Vizhinjam. The respondent organization is a armed force which has infrastructure and personnel distributed all over the Indian coastline. While compassionate postings are indeed a requirement under the policy, this cannot be the primary consideration governing the deployment of staff. Besides the conduct of the applicant, as is evidenced from certain documents such as Annexure R-7, Annexure R-8 and Annexure R-9, has been anything but exemplary.

11. In this context we may usefully refer to the judgments of the Apex Court in the case of ***Mrs. Shilpi Bose v. State of Bihar and Ors***, wherein it has been held :-

“The courts should not interfere with transfer orders which are made in public interest and for administrative reason unless that transfer orders are made in violation of any mandatory statutory rule or on the ground of the malafide. A government servant holding a transferable post has no vested right to remain posted at one place or the other; he is liable to be transferred from one place to other. Transfer order issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instruction or orders, the courts ordinarily should not interfere with order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which should not be conducive to public interest”.

12. Reliance can also be placed in the judgment in *Union of India v. SL Abbas (1993) 4 SCC 357*, wherein it has been held :-

“Who should be transferred where is a matter for the appropriate authority to decide. Unless the order or transfer is vitiated by malafides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is not doubt, the authority must keep in mind the guidelines issued by the Government of the subject if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government Employee a legally enforceable right”.

13. Considering all factors we come to the conclusion that the O.A is devoid of merits and is liable to be dismissed. We proceed to do so. The order staying Annexure A-5 order issued on 14.2.2018 is hereby vacated. No costs.

(Dated this the 11th day of June 2018)

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

(U.SARATHCHANDRAN)
JUDICIAL MEMBER

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List of Annexures in O.A.No.180/00173/2018

- 1. Annexure A-1** – A true copy of the medical certificate dated 6.2.2018 issued to applicant's parents in respect of Heart diseases.
 - 2. Annexure A-2** – A true copy of the letter dated 20.10.2014 issued by commanding officer, ICGS, Beypore.
 - 3. Annexure A-3** – A true copy of the letter No.270/2/44 dated 31.12.2014.
 - 4. Annexure A-4** – A true copy of the relieving order vide letter No.270 dated 21.1.2015 issued by the Commanding Officer, ICGS, Beypore.
 - 5. Annexure A-5** – A true copy of the Transfer Order No.270/2/44 dated 5.1.2018 of the First Respondent.
 - 6. Annexure A-6** – A true copy of the representation dated 5.2.2018 issued by the 2nd respondent.
 - 7. Annexure R-1** – A true copy of the Coast Guard Headquarters Policy letter CP/0518 dated 22 Nov. 2006.
 - 8. Annexure R-2** – A true copy of the Coast Guard Region (West) Memorandum for appointment 266/38/176(v) dated 29 Jul. 2011.
 - 9. Annexure R-3** – A true copy of Section 20 of Administrative Tribunal Act.
 - 10. Annexure R-4** – A true copy of the representation for transfer to Indian Coast Guard Station Vizhinjam by applicant dated 9 Jan. 2014.
 - 11. Annexure R-5** – A true copy of the representation for transfer to Indian Coast Guard Station Vizhinjam by applicant dated 12 Aug. 2014.
 - 12. Annexure R-6** – A true copy of the Integrated Headquarters Ministry of Defence letter CP (G)/2601/Transfer Policy dated 11 Aug. 2015.
 - 13. Annexure R-7** – A true copy of the Show Cause Notices and Letter of Advices issued to the applicant.
 - 14. Annexure R-8** – A true copy of the Letter of Advice issued to the applicant.
 - 15. Annexure R-9** – A true copy of the letter from Army Supply Corps, Pangode.
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