

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.180/00012/2018

Tuesday this the 29th day of May, 2018

CORAM:

Hon'ble Mr.U.Sarathchandran, Judicial Member

Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member

1. A. Prathibha,
D/o. Anirudhan, aged 39 years, Regional Officer,
Central Board of Film Certification, Thiruvananthapuram,
Residing at T.C. 41/2512, Anduvilakathu Veedu,
Thottam, Manacaud P.O., Thiruvananthapuram – 695 009.

..... **Applicant**

(By Advocate – Mr. S. Mohammed Al Rafi)

V e r s u s

1. Union of India, represented by its Secretary,
Ministry of Information and Broadcasting,
'A'Wing, Shastri Bhavan, New Delhi – 110 001.
2. The Director (Films),
Ministry of Information and Broadcasting,
'A'Wing, Shastri Bhavan, New Delhi – 110 001.
3. Central Board of Film Certification,
Represented by Chief Executive Officer,
9th Floor, Phase I, Films Division Complex, 24,
Dr. G. Deshmukh Marg, Mumbai – 400 026.
4. The Under Secretary,
Ministry of Information & Broadcasting,
'A'Wing, Shastri Bhavan, New Delhi – 110 001.
5. The Secretary,
Ministry of Personnel Public Grievance & Pension,
Department of Personnel & Training, New Delhi – 110 001.

6. Ms. V. Parvathy, Deputy Director,
Directorate of Advertising and Visual Publicity,
Soochana Bhavan, Phase-V, CGO Complex,
Lodhi Road, New Delhi – 110 003.

..... **Respondents**

(By Advocate – Mr. N. Anilkumar Sr. PCGC(R) for R1 to 5)

This Original Application having been heard on 23.05.2018, the Tribunal on the 29.05.2018 delivered the following:

ORDER

Per: E.K. Bharat Bhushan, Administrative Member

OA 12./2018 is filed by Ms. A. Prathibha, Regional Officer, Central Board of Film Certification (CBFC), Thiruvananthapuram against the orders from Annexures A1 to A4 effecting her transfer from her current post and repatriating her to her parent cadre viz., Indian Economic Service.

2. The reliefs sought in the OA are as follows:

(a) To call for the records leading to Annexures A1 to A4 and quash the said orders to the extent repatriating and transferring the applicant as Regional Officer, Central Board of Film Certification, Thiruvananthapuram in the interests of justice.

(b) Direct the respondents No. 1 to 5 to allow the applicant to work as Regional Officer, Central Board of Film Certification, Thiruvananthapuram in the interests of justice.

(c) Award costs of these proceedings; and

(d) Grant such other and further reliefs as this Hon'ble Tribunal deems fit and proper in the interests of justice.

3. Applicant is an officer belonging to the Indian Economic Services, 2003 batch. While she was working as Deputy Economic Adviser, Department of Consumer Affairs, Government of India, she had applied pursuant to an Office Memorandum

No.11011/6/2013-DO(FC) dated 17.12.2013 calling for applications to fill up the post of Regional Officer at the Regional Office, Central Board of Film Certification, Thiruvananthapuram on deputation basis, copy of which is at Annexure A5. She obtained cadre clearance from her Cadre Controlling Authority, viz., the Department of Economic Affairs on 21.10.2013, a copy of which is produced at Annexure A6. She was invited to appear for an interview by the first respondent by OM dated 21.8.2014, copy produced as Annexure A7. After the interview, the applicant was selected and appointed on deputation basis for a period of 4 years from the date of joining by order dated 10.9.2014 issued by the first respondent, a copy of which is available at Annexure A8. A gazette notification was issued on 24.10.2014 appointing the applicant in exercise of powers under Section 5(2) of the Cinematographic Act, 1952 read with Rule 9 of Cinematographic (Certification) Rules, 1983. Again it was indicated in the notification that her appointment was for a period of 4 years with effect from 7.10.2014 or until further orders (Annexure A9). While working at Thiruvananthapuram, the applicant was granted non functional selection grade, consequent to which her present post was redesignated as Director.

4. She is aggrieved by a set of orders at Annexures A1 to A4 issued by the respondents. Annexure A1 issued by the 4th respondent is an order deploying senior grade IIS Group A officers to 7 regional offices of the Central Board of Film Certification including the one occupied by the applicant at Thiruvananthapuram. Annexure A2 is an order issued by the 3rd respondent on 22.12.2017 directing the 6th respondent Ms. V. Parvathy, Deputy Director, DAVP, New Delhi to take over as Regional Officer, Thiruvananthapuram. Annexure A3 issued on 4.1.2018 is an order issued by the Respondent No.2 addressed to the applicant as well as others informing that DOP&T

has agreed for relaxation of the three months notice period as per terms of OM No.6/8/2009-Estt.Pay.II dated 17.6.2010. Annexure A4 is a further communication from Respondent No.3 dated 5.1.2018 directing the applicant to hand over charge of her post to Ms.V.Parvathy, the 6th respondent.

5. The applicant submits that irreparable hardship has been caused to her on account of her premature and abrupt repatriation without any prior notice. She submits that the premature repatriation has been ordered in gross violation of OM No.6/8/2009-Estt.Pay II dated 17.6.2010 which specifically stipulates that premature reversion to the parent cadre of a deputationionist can be effected only after giving advance notice of at least three months to the lending Ministry/Department and the employee concerned. Clearly this is not to be done arbitrarily and at the whims and fancies of the official respondents. She submits that the official respondents have acted in a cavalier fashion. She has never given any cause for complaint in her official dealings and had a blemishless record of service in the post from which she has been removed abruptly. Calling on her, who is of the rank a Director to “assist” the Deputy Director is also a humiliating feature of the transfer order. She submits that she has an aged mother who is suffering from various illnessness and a copy of her mother's discharge summary is produced as Annexure A12.

6. As grounds the applicant argues that her transfer and repatriation to parent cadre before expiry of the deputation tenure and without giving advance notice as stipulated under Annexure A10 is illegal, arbitrary and capricious to the extreme. The order is violative of the fundamental right of the applicant under Articles 14 and 21 of the Constitution of India. No case existed for her abrupt removal and she has been rendering outstanding service in the post as evidenced in her ACR obtained for the last

three years. While admitting that relaxation in norms is permitted under the DOP&T OM (Annexure A10) it cannot be done arbitrarily. Annexure A3 only mentions the DOP&T had agreed for relaxation without giving any particular reason why it was necessary to do so. The applicant had come through a due procedure of selection. In the case of the 6th respondent, no such procedure has been followed and she is very much junior to the applicant in so far as the post in their respective Central Services is concerned.

7. When the case was heard on 8.1.2018 for the first time, this Tribunal had directed to maintain status quo existing as on that date.

8. The respondents filed a preliminary statement on 12.2.2018. The statement admits the contentions made in the OA regarding the Recruitment Rules and nature of work involved in the CBFC. An important point is made that the post in question is of a sensitive nature and the officers who are incumbents are required to be rotated frequently. It is further maintained that the DOP&T had agreed to waive the notice period and hence the premature transfer and repatriation of the applicant is in order. In any case the impugned order relates to the deployment of several officers and not of the applicant alone. Hence there is no arbitrariness or other illegality in passing the order.

9. Interestingly the preliminary statement was verified by Respondent No.,6 with her signature given above the seal 'Parvathy V; Regional Officer – Central Board of Film Certification, Thiruvananthapuram.' On 28.2.2018 on scrutinizing the said statement, this Tribunal wanted to know how the reply statement on behalf of all the respondents is seen filed by Respondent No.6 and whether she possessed the necessary authorization. Learned counsel for the applicant submitted that on the strength of the interim orders passed by this Tribunal, the applicant is still continuing in the post of

Regional Officer. On 22.5.2018 a memo was filed by the Senior Central Government Panel Counsel enclosing a communication addressed to him sent by Under Secretary to Government of India, Ministry of Information and Broadcasting stating that Ms.Parvathy, Respondent No. 6 has been nominated by the Ministry to file reply statement on behalf of the respondents.

10. Coming back to the merits of the case, a reply statement was filed on 26.2.2018. Additional information in the said statement is provided about how IIS officers, having been professionally trained on Media, Communications and Information matters are better suited for discharging the functions of cinema certification. It was also maintained that the three month notice period mandated under the DOP&T OM had been waived and a true copy of the DOP&T note dated 3.1.2018 was produced as Annexure R.1. It was further maintained that the status quo order of this Tribunal had been issued on 8.1.2018 while the applicant had been relieved with effect from 5.1.2018 with the incoming officer taking charge.

11. Shri Mohammed Al Rafi, learned counsel for the applicant argued that the applicant who is a Class I Officer of one of the premier Central Services has been treated shabbily. She had come through a due selection procedure and had been transferred from New Delhi to take charge of the post at Thiruvananthapuram on deputation basis clearly under the impression that she would be posted there for four years. The DOP&T guidelines issued at Annexure A10 also give this perception. The provision of waiver of notice period is only a clause to be utilized in exceptional circumstances. In so far as the service of the applicant in the Regional Office of CBFC, Thiruvananthapuram is concerned, there has been no room for any complaint whatsoever against her. In fact she has procured outstanding grading in the ACR during

the three years she has so far been in Thiruvanthapuram. Yet she has been abruptly ordered out without even a day's notice. This is arbitrariness of an extreme kind.

12. Shri Anilkumar, Sr.PCGC on the other hand submitted that the impugned order in question is not specific to the applicant and seeks to deploy seven officers of the Indian Information Service which is also a Group A Central Service to the Regional Offices under CBFC, one of which is at Thiruvananthapuram. In that respect no discrimination can be alleged by the applicant. Just as the OM at Annexure A10 mentions that deputation period will be for four years it also qualifies the tenure adding “*or until further orders*”. It is admitted that in the case of premature reversion of a deputationist to parent cadre, it is necessary to take prior concurrence of DOP&T for relaxing the said condition. This has been obtained as is seen from the note of DOP&T at Annexure R1 dated 3.1.2018. He submits that the order of transfer and relief of the applicant from Thiruvananthapuram had occurred before the OA came to be filed and hence the *status quo* order of this Tribunal issued on 8.1.2018 was infructuous and does not benefit the applicant.

13. We have considered the pleas made by both sides as well as the documents on offer. Firstly it will be useful to examine the admitted facts. The applicant is a senior officer of a Group A service viz., the Indian Economic Service. While working at the Ministry of Consumer Affairs, she had applied in response to a published notification calling for applications to the post of Regional Officer, CBFC at Thiruvananthapuram on deputation basis, after taking due approval of her Cadre Controlling Authority viz., the Department of Economic Affairs. She was asked to appear for an interview wherein she came out successful and was accordingly posted as Regional Officer on 10.9.2014.

14. The impugned orders in question were issued on 20/22.12.2017 posting Ms.

Parvathy to take over as Regional Officer in the place of the applicant. No reason is given in the said order effecting premature repatriation of the applicant as well as 6 others. So also Annexure R1 communication from DOP&T mentions no reason whatsoever for resorting to the step of waiver of the mandatory three months advance notice on premature repatriation. Clearly, we discern a strong element of arbitrariness in the conduct of the respondents herein. An officer belonging to one service being selected on her request for a position under another department and deployed on deputation can ordinarily expect a tenure as indicated in the posting order. The deputation is more in the nature of tripartite agreement and is effected only with the consent of the official concerned, the borrowing department and the lending department,. Being so, premature repatriation of a deputationist ought to be resorted only after giving a reasonable notice to the official as well as to the parent department by the lending department. We have no information whatsoever of the applicant;s Cadre Controlling Department, viz., the Department of Economic Affairs being in the picture at all in the matter of repatriation of the applicant. In the parent cadre when an official is selected and posted on deputation out of his cadre, it leads to a chain reaction and very often structured deployment of personnel is made keeping the period of deputation of the exiting employee in mind. In the instant case from the evidence before us DEA appears to be totally in the dark.

15. Also grounds for such premature repatriation either such as unsatisfactory performance by the deputationist or other reasons should ideally be communicated to the parties by giving reasonable notice. The law is clear on this point. The premature termination of deputation is to be resorted to, if necessary, on the ground of unsatisfactory work or some proven misconduct. It has been held by the Hon'ble

Supreme Court that the provisions of Article 311 of the Constitution of India would be attracted to all appointments which may be permanent, temporary, contractual appointments for a specific period etc. This position has been made clear in ***Purushothamlal Dhingra Vs. Union of India – Air 1958 SC 36*** and ***Moti Ram Deka Vs. North Eastern Railway, Union of India – AIR 1964 SC 600***. The Mumbai Bench of this Tribunal in ***Sushovan Banarjee, IPS Vs. Union of India – OA 387 of 2010*** has clearly stated the deputationist's situation in the event of premature repatriation thus:

“31. Viewed from this angle, a deputationist's position cannot be considered to be so tentative and vulnerable as to throw him out at the whims and fancies of a particular person, that too without any notice and without adhering to the principles of natural justice. It is a reversal for a senior officer to be repatriated prematurely to his department in an abrupt and sudden manner. Even if he does not have an indefeasible right to continue on deputation till the completion of his tenure, he has a limited right to be informed of reasons for his premature repatriation in advance so that he may put up defence before the higher authorities. He does have a legitimate expectation to that effect. This would be compliance with the minimum requirement of the principles of natural justice. A sudden and abrupt repatriation without notice or opportunity, therefore, has to be regarded as arbitrary, unfair and unjust exercise of discretion, which is prohibited by law, particularly by equality clause enshrined under Articles 14 and 16 of the Constitution of India. Such an action cannot be justified on the touchstone of reasonableness as it would also be hit by the #Wednesbury Principle of Unreasonableness#, a principle which has been consistently followed since last many decades.”

16. The arbitrary manner in which the respondents have conducted themselves can be discerned from the fact that the mandatory relaxation in notice period was obtained on 3.1.2018 well after the issuance of impugned orders Annexures A1 and A2. The 5th respondent viz., the DOP&T also appears to have routinely dealt with the proposal of respondent No.1 Ministry as is seen from their failure to add any reasoning to their note at Annexure R.1. Prior permission required under the rules clearly does not imply permission sought and obtained on *expost facto* basis.

17. Two seminal judgments of the Hon'ble Supreme Court have been presented by the

applicant's side which are very much to the point when we consider the question as contained in this OA. Firstly emphasizing the distinction between 'transfer on deputation' and 'appointment on deputation', the Hon'ble Supreme Court in ***Ashokkumar Ratilal Patel's case – (2012) 7 SCC 757*** has laid down thus:

"14. However, the aforesaid principle cannot be made applicable in the matter of appointment (recruitment) on deputation. In such case, for appointment on deputation in the services of the State or organization or State within the meaning of [Article 12](#) of the Constitution of India, the provisions of [Article 14](#) and [Article 16](#) are to be followed. No person can be discriminated nor is it open to the appointing authority to act arbitrarily or to pass any order in violation of [Article 14](#) of the Constitution of India. A person who applies for appointment on deputation has an indefeasible right to be treated fairly and equally and once such person is selected and offered with the letter of appointment on deputation, the same cannot be cancelled except on the ground of non-suitability or unsatisfactory work.

15. The present case is not a case of transfer on deputation. It is a case of appointment on deputation for which advertisement was issued and after due selection, the offer of appointment was issued in favour of the appellant. In such circumstances, it was not open for the respondent to argue that the appellant has no right to claim deputation and the respondent cannot refuse to accept the joining of most eligible selected candidate except on ground of unsuitability or unsatisfactory performance".

The Hon'ble Apex Court again in ***Union of India and another Vs. S.N.Maity and another – (2015) 4 SCC 164*** has held:

"15. The controversy that has emerged in the instant case is to be decided on the touchstone of the aforesaid principles of law. We have already opined that it is not a case of simple transfer. It is not a situation where one can say that it is a transfer on deputation as against an equivalent post from one cadre to another or one department to another. It is not a deputation from a Government Department to a Government Corporation or one Government to the other. There is no cavil over the fact that the post falls in a different category and the 1st respondent had gone through the whole gamut of selection. On a studied scrutiny, the notification of appointment makes it absolutely clear that it is a tenure posting and the fixed tenure is five years unless it is curtailed. But, a pregnant one, this curtailment cannot be done in an arbitrary or capricious manner. There has to have some rationale. Merely because the words 'until further orders' are used, it would not confer allowance on the employer to act with caprice."

18. We have gone on to consider the alleged better suitability of the incoming officer, Respondent No.6. She is an IIS (Indian Information Service) Officer. Officers to

this service are purportedly trained in media communication and information matters and she herself was working as Deputy Director of the Department of Audio Visual Publicity (DAVP). The applicant, although she is not from a media related service had answered a notification calling for applications and was declared selected after coming out successful in an interview conducted by the Additional Secretary (Films), Information and Broadcasting Ministry. Also in the three years she has worked in the Thiruvananthapuram office, there has been no instance reported wherein she has fallen short in the discharge of her duties. Also in terms of seniority, the applicant is senior and is a Director level officer under the Government of India, It is also seen that in the past the Regional Officers of the CBFC have hardly ever been staffed by IIS Officers. Considering these factors, we are unable to come to a conclusion that Respondent No.6 being an IIS officer is in any way better suited for the post, especially when we see no evidence of a due process undertaken before posting her as Regional Officer at Thiruvananthapuram.

19. Thus on an appreciation of all factors before us, we are of the conclusive opinion that the impugned orders need to be set aside *qua* the applicant. Respondents 1 to 5 are directed to allow the applicant to work as Regional Officer, Central Board of Film Certification, Thiruvananthapuram until completion of her deputation period. There is a difference of opinion whether the applicant is continuing to hold the post by virtue of this Tribunal's *status quo* order or had been relieved before the order was obtained and contrary positions have been taken by the contending counsel. We have seen that Censor Certificates dated 13.4.2018 and 3.5.2018 have been signed by the applicant as Regional Officer (Annexures A14 and A15) and hence we presume that she continues to hold charge. However, in the event that she had been relieved before the

status quo order came into effect, we hereby direct that she is to be posted back to the said post forthwith.

20. O.A is disposed of as above. No order as to costs.

(E.K. Bharat Bhushan)
Administrative Member

(U. Sarathchandran)
Judicial Member

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Applicant's Annexures

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| Annexure A-1 | - | True copy of the Order No. 156/2017-IIS dated 20.12.2017 issued by the 4 th respondent. |
| Annexure A-2 | - | True copy of the Order No. A-20022/170/2016-Admn dated 22.12.2017 issued by 3 rd respondent. |
| Annexure A-3 | - | True copy of the Order No. M-11011/11/2017-DO(FC) dated 04.01.2018 issued by the 2 nd respondent. |
| Annexure A-4 | - | True copy of the Order No. A-20022/17/2014-Admn. dated 05.01.2018 issued by the 3 rd respondent. |
| Annexure A-5 | - | True copy of the Office Memorandum No. M-11011/6/DO(FC) dated 17.12.2013 issued by the 1 st respondent. |
| Annexure A-6 | - | True copy of the Office Memorandum No. 13019/2/2013-IES dated 21.10.2013 issued by the Deputy Director Department of Economic Division (IES Divison). |
| Annexure A-7 | - | True copy of the Office Memorandm No. 11011/6/2013-DO(FC) dated 21/08/2014. |
| Annexure A-8 | - | True copy of the Order No. 11011/6/2013-DO(F.C.) dated 10/09/2014 issued by the 1 st respondent. |
| Annexure A-9 | - | True copy of the gazette notification dated 24.10.2014 issued by the 1 st respondent. |
| Annexure A-10 | - | True copy of the Office Memorandum No. |

6/8/2009-Estt (Pay II) dated 17/06/2010 issued by the 5th respondent.

- Annexure A-11 - True copy of the interim order passed by the CAT Bench at Hyderabad in O.A./21/1152/2017 dated 05/01/2018.
- Annexure A-12 - True copy of the Discharge summary of the applicant's mother.
- Annexure A-13 - True copy of the circular No. 03/09/2013 dated 11/09/2013 issued by the Central Vigilance Commission.
- Annexure A-14 - True copy of the certificate dated 03/05/2018 issued by the applicant for the Malayalam film B.TECH.
- Annexure A-15 - True copy of the certificate dated 13/04/2018 issued by the applicant from the film "MOHANLAL"

Respondent's Annexures

- Annexure R-1 - True copy of the DoP&T ID Note No. 1285742/17-Estt.(Pay-II) dated 03.01.2018.

PPS to Member