

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 181/00401/2017

...R.I.D.A.Y., this the 23rd day of March, 2018.

CORAM:

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

V.K. Hamsakoya, 51 years,
S/o. Kuttikoya, Chargemen/Line,
Electrical Sub Division, Agatti – 682 553,
Residing at: Vadaku Koodam House,
Agatti Island, Kavaratti,
U.T. of Lakshadweep – 682 553.

- Applicant

[By Advocate Mr. T.C. Govindaswamy]

Versus

1. The Administrator,
Union Territory of Lakshadweep,
Kavaratti – 682 555.
2. The Secretary (Power),
Administration of Union Territory of Lakshadweep,
(Department of Electricity),
Kavaratti – 682 555.
3. The Executive Engineer,
Chargemen/Line,
Electrical Sub Division,
Kavaratti – 682 555.
4. Shri. P.P. Maviya,
Chargemen/Line,
Electrical Sub Division,
Kavaratti – 682 555. - Respondents

[By Advocate Mr. S. Manu]

The application having been heard on 20.03.2018, the Tribunal on
23.3.18 delivered the following:

O R D E R
Per: Bharat Bhushan, Administrative Member

O.A No. 401 of 2017 is filed by Shri V.K. Hamsakoya, Chargeman working in the Electrical Sub-Division Agatti, aggrieved by Office Order bearing No. F. No. 36/8/2014/Estt./Ele. dated 16.05.2017 (Annexure A-1) issued by the 3rd respondent transferring him to Minicoy Sub-Division. He has sought the following reliefs:-

“(i) Call for the records leading to the issue of A-1 and quash the same to the extent it relates to the applicant;
(ii) Direct the respondents to allow the applicant to continue at Agatti Island as if Annexure A-1, has not been issued at all;
(iii) Award costs of and incidental to this application.
(iv) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.”

2. To narrate the facts in brief, the applicant was appointed as an Electrician/Chargeman during the year 1992. He had worked in various islands under the Lakshadweep Administration such as Agatti, Bitra, Minicoy and Kavaratti. As per the impugned order, he has now been transferred to Minicoy. The applicant submitted a detailed representation (Annexure A-4) on 22.05.2017 narrating various personal difficulties such as the imminent marriage of his daughter, ongoing construction of his house, studies of his children, etc., so that he may be retained in Agatti itself. He specifically requested in his representation that he may be retained at least for one year at Agatti so that the marriage of his daughter can be conducted. He also pointed out that there are vacancies of Chargeman/Electrician at Androth and Bitra islands where he will be happy to serve.

3. As grounds, the applicant states that Annexure A-1 order has been issued without due application of mind and is not based on relevant consideration of material facts. When two vacancies are available at Agatti transferring the applicant at this juncture is not in personal interest. He further argues that the person who issued the impugned order has no power to issue the order and he submits that normally personnel are allowed to continue their service in their home island and in this case, the applicant has been needlessly discriminated against.

4. When the matter was listed for admission on 25.05.2017, an interim order was issued by this Tribunal not to relieve the applicant from his present station. This interim order is still active.

5. Per contra, the respondents have filed the reply statement refuting all the contentions except those which are specifically admitted. It is conceded that there are vacancies of Chargeman/Electrician at Agatti, Androth, Chetlat, Bitra, Kadamath, Kalpeni and Kavaratti. There are two vacant posts in Minicoy as per Annexure R-1 (a). There is an immediate need to post personnel at Minicoy. The respondents are duty bound to distribute available staff strength among different stations in order to ensure optimum utilisation of human resources.

6. In so far as the 4th respondent, who is now transferred to Agatti in the place of the applicant, is concerned, he has been working at

Kavaratti since 2013 and is due to retire on 30.04.2018. He sought for a transfer to his native island, Agatti on 16.03.2017. The applicant on the other hand has been working at Agatti for the last seven years since April, 2010. So, all these facts were duly considered while issuing the transfer order at Annexure A-1.

7. The applicant has filed a rejoinder reiterating most of his contentions in the O.A. He stated that he has been chosen for a transfer to Minicoy when vacancies are available at Agatti itself. He goes on to narrate his family problems and the ongoing construction of his house.

8. Mr. T.C. Govindaswamy, learned counsel for the applicant and Mr. S. Manu, learned Standing Counsel for the Lakshadweep Administration have been heard and all documents / records perused.

9. A catena of judgments discourage interference in transfer matters. By way of illustration, the view of the Hon'ble Supreme Court in *Abni Kanta Ray v. State of Orissa and Ors. reported in (Suppl) 1995*

(4) SCC 169 is quoted below:-

"49. It is settled law that a transfer which is an incident of service is not to be interfered with by the courts unless it is shown to be clearly arbitrary or vitiate by malafides or infraction of any professed norm or principle governing the transfer. The transfer of the Additional Registrar of the Cuttack Bench of the Orissa Administrative Tribunal being on facts in public interest, there was no permissible ground available to the Tribunal for quashing the same. The Division Bench of the Tribunal which quashed the said

transfer on the ground of malice of the Chairman of the Tribunal did so against the material on record and the facts beyond controversy which borders of judicial impropriety."

10. Also the respondents have convincingly argued that there is a need to beef up the number of personnel in order to ensure appropriate quantity of electrical supply in Minicoy. Further, in *Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey and Ors. 2003 (4) SCC 2004* held:

"4. Transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by malafide or infraction of any prescribed norms of principles governing the transfer (see Ambani Kanta Ray vs. State of Orissa, (Suppl.) 4 SCC 169). Unless the order of transfer is vitiated by malafide or is made in violation of operative guidelines, the Court cannot interfere with it. (see Union of India vs. S.L. Abbas 1993 AIR (SC) 2444). Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by malafide or is made in violation of operative any guidelines or rules the courts should not originally interfere with it. In Union of India & Ors. Janardan Debanath & Anr. 2004 (4) SCC 245 it was observed as follows:

"No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of malafide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. vs. Shri Bhagwan (2001) 8 SCC 574".

5. In the present case, the Tribunal categorically came to hold that malafides were not involved and the High Court did not

disturb that finding. That being so, the High Court's further direction that the respondent No.1 shall be posted somewhere in M.P. is clearly not sustainable. No reason has been indicated to justify the direction. That part of the order of the High Court is vacated. Appeal is allowed to the aforesaid extent. No costs."

It is commonly understood that transfer is an exigency of service for every employee. The applicant in this case has been working at the present station for over seven years and has continued for nearly a year now on the strength of the interim order issued by this Tribunal in May, 2017. He has not been able to bring any meaningful charges of arbitrariness or malafide on the part of the respondents. His contention while conceding that the authority who issued the transfer order is incompetent to do so as the current incumbent sitting in that post was only holding charge, is a convoluted and unacceptable ground for challenging the transfer. In any case, his request as per Annexure A-4 was to retain him at Agatti "at least for one year".

11. On a consideration of all factors, we have no hesitation in concluding the O.A as devoid of merit. We dismiss the same. We, accordingly vacate the interim order given. No costs.

(Dated, 23rd March, 2018.)

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

(U. SARATHCHANDRAN)
JUDICIAL MEMBER

Applicant's Annexures

Annexure A-1 - A true copy of the Office Order bearing F. No. 36/8/2014/Estt./Ele. dated 16.05.2017.

Annexure A-2 - A true copy of offer order bearing No. F No. 37/4/2004-Estt./Ele./1709 dated 25th May, 2004, issued by the 3rd respondent.

Annexure A-3 - A true copy of order bearing F. No. 37/2/2009-Esst./Ele./906 dated 30.03.2010 issued by the third respondent.

Annexure A-4 - A true copy of representation addressed to the 3rd respondent, a true copy of which dated 22.05.2017.

List of Annexures of the Respondents 1 to 3

Annexure R1(a) - True copy of letter F. No. 2/3/2004-Ele (M)/189 dated 09.05.2017 submitted by the Asstt. Engineer to the 2nd Respondent herein.
