

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 181/00830/2017

Wednesday, this the 21st day of November, 2018

CORAM

**HON'BLE MR.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE MR.ASHISH KALIA, JUDICIAL MEMBER**

M.K.Ponnachan
S/o.the late Kunju Kunju, aged 59 years
Head Constable B No.324, Minicoy Police Station
Union Territory of Lakshadweep
Presently residing at ALSW Quarters, Minicoy Island
Union Territory of Lakshadweep, Pin – 682 559 ... **Applicant**

[By Advocate Mr.Antony Mukkath]

V.

1. Superintendent of Police
Police Headquarters
Kavaratti
Union Territory of Lakshadweep- 682 555
2. Circle Inspector of Police
Minicoy Police Station
Union Territory of Lakshadweep, Pin-682 559 ...

(By Advocate Mr.S.Manu)

This application having been finally heard on 15.11.2018, the Tribunal on 21.11.2018 delivered the following in the open court.

ORDER

Per: MR.ASHISH KALIA, JUDICIAL MEMBER

The reliefs sought by the applicant in the Original Application are as follows:

“(i) to call for the records leading to Annexure A-9 Order dated 27.9.2017 of the 1st respondent and to set aside the same to the extent it transfers the applicant from Minicoy Police Station to Kavaratti Police Station;

(ii) To issue appropriate direction or order directing the respondents 1and 2 to retain the applicant in Minicoy Police Station till the date of his superannuation from service on 30.4.2019;

(iii) To grant such other reliefs which this Tribunal deems fit, just and proper in the circumstances of the case; and

(iv) To allow the above O.A with costs ”

2. The brief facts of the case are as under:

The applicant entered in service as Police Constable under the Lakshadweep Police and posted at Kavaratti on 16.8.1985. The applicant was transferred and posted to Minicoy Police Station from Amini Police Station on 25.9.2014 (Annexure A-1). Accordingly, applicant is presently working as Head Constable, Minicoy Police Station. Applicant was transferred 7 times during his career from 1985 to 2014 and he obeyed all the transfer orders. Applicant is

suffering from Type 2 Diabetes Mellitus and NBFID for the last 16 years and he has developed Proliferate Retinopathy and severe painful Neuropathy and he is under the treatment of Dr.P.Ramakrishnan in Cochin Hospital, Ernakulum. Medical certificates are produced and marked as Annexures A-2 to A-6. His wife is working as Foreman (Civil) Grade-I under the Andaman Lakshadweep Harbour Works Department. Due to these reasons, his wife requested for transfer to Minicoy which was granted by her department (Annexure A-8). Applicant is due for retirement on 30 April 2019.

3. On 27.9.2017, first respondent has transferred the applicant from Minicoy to Kavaratti Police Station (Annexure A-9). He made a representation vide Annexure A-10 on 3rd October 2017 and the same remains undisposed. Aggrieved by Annexure A-9 transfer order, applicant has approached this Tribunal for redressal of his grievances.

4. Notices were issued to the respondents. They have entered appearance and filed reply statement. Respondents submitted that the applicant was not singled out or discriminated by the impugned order. By this transfer order, 9 persons were transferred and it was done considering the functional requirement and administrative exigencies and taking into account the efficiency of the applicant, he was posted at Kavaratti. Respondents submit that there is no

illegality, arbitrariness, discrimination or violation of Articles 14 and 21 of the Constitution of India as contended by the applicant.

5. In the year 2010, applicant had submitted representation to transfer him from Agatti to Amini. In the year 2013, submitted representation to retain him at Amini. In the year 2014, again he submitted a request to transfer him from Amini to Minicoy. All the requests were considered by the department. Respondents further submits that better treatment is available at Kavaratti compared to any other islands of the Lakshadweep and prayed for dismissal of the Original Application.

6. Rejoinder thereto has been filed by the applicant denying the submissions made in the reply statement and reiterated the averments made in the O.A.

7. Heard Mr. Antony Mukkath, learned counsel for the applicant and Mr. S. Manu, learned standing counsel for the respondents at length and perused the records.

8. Learned counsel for the applicant relied upon Annexure A-11 O.M dated 30.9.2009. Para 2 of the same reads thus:

“ 2. In the context of the need to make concerted efforts to increase representation of women in Central

government jobs, these guidelines have been reviewed to see whether the instructions could be made mandatory. It has been decided that when both spouses are in same Central Service or working in same Deptt. and if posts are available, they may mandatorily be, posted at the same station, it is also necessary to make the provisions at Paras 3(iv) and (vi) of the O.M. dated 3.4.86 stronger as it is not always necessary that the service to which the spouse with longer service belongs has adequate number of posts and posting to the nearest station by either or the Department may become necessary.”

9. A clear reading of this Office Memorandum depicts that when both spouses are in same Central Service or working in same Deptt. and if posts are available, they may mandatorily be posted at the same station. Emphasis is laid down by the government “is mandatory” and simple idea behind this O.M is, as far as possible, husband and wife should be posted in same station so that they may lead a normal family life.

10. In the present case, applicant is suffering from various diseases and his wife took a transfer to Minicoy in order to take care of her husband. Even otherwise, Government of India has mandatorily laid emphasis that during the last year of service before superannuation, choice posting should be given to the employee concerned. No doubt, the department has shown magnanimity to the applicant in the past years. The respondent has not stated in their reply that there is no vacancy. In fact, they laid emphasis on administrative exigencies.

This contention of the respondents does not sound very good particularly in the case of the applicant who has served the department for last so many years complying with all previous transfer orders. Thus, under the Government guidelines/rules, he may be accommodated in the present station itself as done by the Department earlier.

11. Thus, we are of the view that the Original Application has merit on its side and it succeeds. Annexure A-9 transfer order is hereby set aside in respect of applicant only. He should be allowed to continue till his retirement on 30.4.2019 at the present place of posting. With this observation, present Original Application is disposed of. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures

Annexure A1 - Photocopy of the order dated 25.9.2014 of the 1st respondent

Annexure A2 - Photocopy of the Medical Certificate issued by Dr.P.Ramakrishnan, Cochin Hospital, Kochi

Annexure A3 - Photocopy of the Biochemistry Report dated 23.5.2017 Cochin Hospital, Kochi

Annexure A4 - Photocopy of the Ankle Brachial Index Report dated 23.5.2017 Dr.P.Ramakrishnan, Cochin Hospital, Kochi

Annexure A5 - Photocopy of the case summary Discharge Record dated 16.9.2016 of the Dr.Thomas Cherian, Little Flower Hospital & Research Centre, Angamaly

Annexure A6 - Photocopy of the Endoscopy Reports of the Dr.G.N.Ramesh, Aster Medicity, Cheranelloor

Annexure A7 - Photocopy of the Medical Bill dated 22.9.2017 Pallimukku Sevana Medicines

Annexure A8 - Photocopy of the Order dated 14.3.2016 of the Administrative Officer (ALHW), Andaman Lakshadweep Harbor Works

Annexure A9 - Photocopy of the Order dated 27.9.2017 of the 1st respondent

Annexure A10- Photocopy of the representation dated 3.10.2017 alongwith lab reports of the applicant to the 1st respondent

Annexure A11 - Photocopy of the Office Memorandum No.28034/9/2009-Estt(A) dated 30.9.2009

Annexure R1(a) True copy of the transfer policy circulated by the Lakshadweep Administration as per order F.No.12/3/2012 – Services dated 22.2.2012

Annexure R1(b) True copy of the representation dated 15.1.2010 submitted

by the applicant for transferring from Agatti to Amini

Annexure R1© True copy of the transfer order F.No.1/6/96 – Estt (Pol.) dated 8/4/2003

Annexure R1(d) True copy of the representation dated 19.3.2013 submitted by the applicant for retention

Annexure R1(e) True copy of the transfer order F.No.1/29/2011 – Estt (Pol.) dated 10.4.2013 retaining the applicant at Amini

Annexure R1(f) True copy of the representation dated 5.4.2014 submitted by the applicant for transfer to Minicoy

Annexure R1(g) True copy of the transfer order F.No.1/7/2013 – Estt (Pol.) dated 25.9.2014.

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