

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00232/2018

Thursday, this the 7th day of February, 2019

C O R A M :

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

M.Rajendran,
S/o.late Ramunni Nair,
Driver Grade II,
Regional Science Centre,
Calicut – 673 006.
Residing at Naduthodi House,
PO Pulikkal, Malappuram – 673 637.Applicant

(By Advocate – Mr.R.Sreeraj)

v e r s u s

1. The Director General,
National Council of Science Museums,
Sector V, Block – CN, Bidhan Nagar, Calcutta – 700 091.
2. The Secretary,
National Council of Science Museums,
Sector V, Block – CN, Bidhan Nagar, Calcutta – 700 091.
3. The Director,
Nehru Science Centre,
National Council of Science Museums,
Dr.E.Moses Road, Worli, Mumbai – 400 018.
4. Shri.P.M.Shaneesh Kumar,
Driver, Visveswaraya Industrial and Technological Museum,
VITM, Bangalore – 560 001.Respondents

(By Advocate Mr.Sunil Jacob Jose [R1-3])

This Original Application having been heard on 25th January 2019,
the Tribunal on 7th February 2019 delivered the following :

O R D E R

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

The O.A is filed by Shri.M.Rajendran aggrieved by Annexure A-1
order dated 22.2.2018 issued on behalf of 1st respondent transferring him

from Regional Science Centre, Calicut to District Science Centre, Thirunelveli, which is in another zone. He seeks the following reliefs in the O.A. :

1. To quash Annexure A-1 order of transfer in so far as it relates to the applicant and his substitute, the 4th respondent and direct the respondents to permit the applicant to continue to work at Calicut.
2. Such other relief as may be prayed for and this Hon'ble Tribunal may deem fit to grant.
3. Grant the cost of this Original Application.

2 The brief facts are : it is submitted that the applicant being a Driver, as per the approved guidelines on mobility of officers and staff members, is not liable to be transferred in the normal course and even when transferred if it can only be within the same zone (copy of the guidelines is available at Annexure A-2). He emphasised that the wording of the Transfer Guidelines supports the retention of employees in the respective units subject to availability of posts. The applicant submits that he and the 4th respondent were subjected to transfer earlier in 2008 and now in spite of there being a total of 53 Drivers in the cadre, they have again been subjected to transfer through Annexure A-1. He has cited the instance of one Shri.Prasad who has been working as Driver in Calicut since 1997 onwards and has not been subjected to transfer till now.

3 The applicant has questioned the competence of the Director General, National Council of Science Museums (NCSM) who had issued the transfer orders based on the recommendations made in the 143rd meeting of the Directors Committee of NCSM held on 29.1.2018, in the light of the stipulation in Clause 45 of the NCSM Bylaws. He alleges that the NCSM does not have a regular Director General since the year 2015 and the present

incumbent of the post is appointed on contract basis, which does not confer on him all the powers vested with the Director General, NCSM. He also points out that Shri.Biswajit Manumder, the 2nd person affected by Annexure A-1, has approached the Bangalore Bench of this Tribunal and got a stay in his favour.

4 As grounds the applicant reiterates that being a low paid post, Drivers are not normally liable to be transferred. He submits that there are two posts of Drivers at Calicut and no administrative exigency exists to transfer him out to Thirunelveli which is in South Zone whereas Calicut comes under Mumbai Office, in West Zone in, deviation of Annexure A-2 Transfer Guidelines.

5 The applicant has also filed rejoinder and additional rejoinder reiterating his contention over the competence of Director General, NCSM who has been reemployed on contract basis and also with regard to the genuineness of Annexure R-6.

6 Per contra, the respondent has strongly opposed the contentions raised in the O.A. A preliminary objection has been raised that the applicant had, without exhausting the statutory remedy of filing a representation before the authorities, rushed to the Tribunal for redressal of his grievance. On the merits of the case, they submit that as per Clause No.3 & 17 of appointment order of the applicant, a copy of which is available at Annexure R1, he is liable to be transferred to any Science Museum/Centres under the control of NCSM and that the decision of the NCSM is final with regard to Rules and Byelaws as framed and amended from time to time. It

is further submitted that the applicant has accepted his appointment in Regional Science Centre, Calicut, on the terms and conditions as contained in the said letter of appointment. It is submitted that on all his postings the conditions contained in his first appointment order with NCSM will remain in force. It is submitted that as per clause 2(B) of the Transfer Guidelines it is necessary that all India diversity is maintained and efforts should be made, to the extent possible, to have atleast 25% of the strength posted from other states or regions. The transfer order is issued in public interest with the approval of the competent authority as per the provisions in Byelaws of NCSM, approved transfer guidelines and as per the terms and conditions of employment.

7. With regard to the competence of Director General it is submitted that the issue is not germane to the matter of his transfer. The Director General has full powers as is provided under the byelaws of the society for transferring any employee from one unit of NCSM to another unit in the exigency of work. This apart, appointment of Director General need not be a field of concern for the applicant since it is not related to his transfer. Besides, the Director General, NCSM has power even to relax any of the provisions of the transfer guidelines or issue such general or special directions as may be necessary. It is reaffirmed that appointment of the Director General to the post was done with the approval of the Appointments Committee of the Cabinet.

8 In support of their contentions the respondents have relied on the judgment of the Hon'ble Apex Court in **State of U.P v. Gobardhan Lal** wherein it has been held that an employee holding a transferable post

cannot claim any vested right to work at a particular place as the transfer order does not affect any of his legal rights and the Courts cannot interfere with a transfer/posting which is made in public interest or on administrative exigency. Further in a catena of judgments, the Hon'ble Apex Court has held that a challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are appellate authorities over such orders and attempt to assess the niceties of the administrative needs and requirements of the situation concerned, for the reason that the Courts or Tribunals cannot substitute their own decisions in the matter of transfer, for that of the competent authorities and even allegations of malafides when made must be such as to inspire confidence or are based on concrete materials and not to be entertained on the mere making of it.

9 The respondents have filed additional reply statement reiterating their contentions in the reply and submitted that the applicant himself has been transferred twice first to Science City, Kolkata on his reinstatement to service in NCSM and thereafter from there to RSC, Calicut as per his own request. Hence it is pointed out that the applicant cannot now turn around and state that the drivers are not subjected to transfer.

10 We have heard Shri.R.Sreeraj, learned counsel for the applicant and Shri.Sunil Jacob Jose, learned counsel for the respondents. We have perused all the available records and pleadings.

11 The challenge in the Original Application is against the transfer of the applicant who is a Driver appointed at the Calicut Unit of the respondent

organisation. He has, by the impugned order at Annexure A-1, been subjected to a transfer to Tirunelveli Station of the same organisation. His opposition to the transfer is based on two grounds, primarily. Firstly, he challenges the administrative expediency reported as a reason for his transfer. He has come to Calicut and has been working there since 2008 on the basis of his own request. The employer agency, who are the official respondents in the case, are an All India organisation with several units and Museums in different parts of the Country. Although the transfer guidelines, as it is called, seems to indicate that the transfer of personnel are to be made on need basis, the transfer of the applicant cannot be interpreted as done without any reason.

12 When the case was initially heard, Mr.Sunil Jacob Jose referred to the urgent need to have the services of a Driver at Tirunelveli Station whereas in Calicut there are two incumbents. We do not see any reason to dispute the administrative need that is referred to. Secondly, the challenge is on the basis of a contention raised that the authority who issued the transfer order is not competent to do so. A perusal of the impugned order at Annexure A-1 reveals that the order was based on the recommendations of the 143rd meeting of the Directors Committee of NCSM which was held on 29 January 2018 and the transfer was ordered by the Director General of NCSM who is the first respondent. The competence of the Director General to transfer the employee is questioned on the basis of the argument that the present person who is holding the post was appointed on contract basis and being so, he does not possess the powers to transfer employees. Shri.Sunil Jacob Jose brought on record the orders bestowing necessary powers on respondent no.1. Besides, it is a specious argument to narrate that the

Director General who is the Chief Executive of NCSM does not have powers to transfer a Driver. Clearly, the applicant appears to be stretching this point too far.

13 As has been put forward in the reply statement, there is a catena of judgments which question the mandate if exercised by Courts and Tribunals in transfer matters. We are not required to scrutinise too closely, placing ourselves in the role of an administrative organisation, to see whether a transfer is necessary or not. In case we do so, it would clearly involve encroachment into the territory of administrative decision making. We do not propose to do so.

14 After examining all factors, we are of the view that the Original Application clearly lacks merit. Accordingly we dismiss the Original Application. No costs.

**ASHISH KALIA
JUDICIAL MEMBER**

**E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER**

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List of Annexures

1. Annexure A1 - True copy of the Office Order No.10/2018 dated 22.2.2018 issued by the Deputy CpA(MC), National Council of Science Museums, Block-GN, Sector-V, Bidhan Nagar, Kolkata – 700 091.
2. Annexure A2 - True copy of the Approved Guidelines on Mobility of Officers and Staff Members'
3. Annexure A3 - True copy of the Order No.I-13015/5/1900 dated 19.6.2008 issued by the Section Officer, National Council of Science Museums, Block-GN, Sector-V, Bidhan Nagar, Kolkata – 700 091
4. Annexure A4 - True copy of the Office Order No.08/2016 dated 27.2.2016/8.3.2016 issued by the Secretary, NCSM, Block-GN, Sector-V, Bidhan Nagar, Kolkata-700 091
5. Annexure A5 - True copy of the letter No.4/1/2009-EO(SM-II)(Part) dated 23.10.2017 issued by the Deputy Director (EO-SM.II), Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, Secretariat of the Appointments Committee of the Cabinet.
6. Annexure A6 - True copy of the letter F.No.9-40/2015-M.II(Pt.file4) dated 9.11.2017, issued by the Under Secretary to the Government of India, Ministry of Culture
7. Annexure R1 - Photocopy of the Memorandum of appointment No.NSC/3/112/91 dated 14.3.1991.
8. Annexure R2 - Photocopy of the Minutes of the 143rd Meeting of Directors Committee held on 29.1.2018
9. Annexure R3 - Photocopy of the list of employees who have been transferred from Western Zone/joined on transfer in Western Zone during last 15years.
10. Annexure R4 - Photocopy of the letter dated 23.10.2017.
11. Annexure R5 - Photocopy of the statement showing transfer of drivers from one unit to another unit in the past.
12. Annexure A7 - True copy of the letter F.No.9-40/2015-M.II(Pt.file2) dated 23.2.2018 issued by the Under Secretary to the Government of India, Ministry of Culture.
13. Annexure A-8 - True copy of the OM dated 16.3.2018 issued by the Dy CoA (MC), NCSM, Kolkatta
14. Annexure R6 - Photocopy of the letter F.No.9-40/2015-M.II (Pt.file 4) dated 19.2.2018.

15. Annexure R7 - Photocopy of the letter F.No.9-40/2015-M.II
(Pt.file 2) dated 23.2.2018.

16. Annexure R8 - Photocopy of the letter F.No.9-77/2004-M.II
dated 24.8.05

17. Annexure R9 - Photocopy of the order dated 25.8.05.
