

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.180/00948/2018

Friday, this the 4th day of January, 2019

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

K.S. Sebastian, S/o.K.U.Scaria, aged 55 years
 Assistant Director (Marketing), Now under orders
 of transfer to Guwahati
 Coconut Development Board, Kera Bhavan
 SRVHS Road, Ernakulam South
 Cochin – 16

..... **Applicant**

(By Advocate – Mr.M.Paul Varghese)

v e r s u s

1. Chief Coconut Development Officer
 Coconut Development Board
 Kera Bhavan, SRVHS Road
 Ernakulam South, Cochin-16
2. Secretary, Coconut Development Board
 Kera Bhavan, SRVHS Road
 Ernakulam South, Cochin – 16
3. The Chairman
 Coconut Development Board
 Kera Bhavan, SRVHS Road
 Ernakulam South, Cochin – 16
4. Union of India represented by its Secretary
 Ministry of Agriculture and Farmers Welfare
 New Delhi – 110 001

..... **Respondents**

(By Advocate – Mr.P.Vijayakumar for R1-3, Mr.Sreedutt.S , ACGSC for R4)

This Original Application having been heard and reserved for orders on 20.12.2018, the Tribunal on 4.1.2019 delivered the following :

ORDER

Per: Mr.Ashish Kalia, Judicial Member

The applicant holds Post Graduate Diploma in Marketing Management, Post Graduate Diploma in Computer Applications and Executive Post Graduate Diploma in International Business. He was promoted as Statistical Investigator with effect from 11.2.1998, and later promoted to the post of Assistant Marketing Officer on 18.2.2009. Lastly, he was promoted as Assistant Director (Marketing) with effect from 30.3.2015 vide Annexure A-

1. On 24.9.2018, he was reverted from his post of Assistant Director (Marketing) to Assistant Marketing Officer vide Annexure A-2. Annexure A-2 was challenged by the applicant before this Tribunal by filing O.A No.796/2018 and an interim order was issued on 27.9.2018 directing the respondents that no action shall be taken in pursuance to Annexure A-2 till the next posting date.

2. Now the applicant is aggrieved by a posting order issued by the Chairman, Coconut Development Board to posting him at Regional Office, Guwahati with immediate effect on work arrangement basis for a period of three months (Annexure A-4). The said order further states that the official stands relieved from 19.11.2018 afternoon and to report at Guwahati forthwith and that he shall render necessary assistance to the Director. It is further mentioned that he is not entitled for daily allowance during the priod

of work arrangement.

3. Applicant states that he is an asthmatic patient and is presently under treatment for HT/Wheeze. His mother, aged 80 year old, is also suffering from severe asthma as well as heart ailment and she needs constant attention and care. The applicant's wife expired in March 2006 and his son is a student of final year Engineering and daughter is seeking admission for M.Phil. Citing these reasons, he has sought the following reliefs:-

- “(i) Call for the records leading to Annexure A4 and set aside the same.
- (ii) Issue appropriate directions or orders to the respondents to allow the applicant to continue in the post of Assistant Director (Marketing) at the Head Quarters of the Coconut Development Board at Kochi, where the post exists.
- (iv) Grants such other reliefs which this Tribunal may deem fit and proper to grant, in the facts and circumstances of the case.
- (v) Award the costs of this proceeding.”

4. Respondents entered appearance through counsel Mr.P.Vijayakumar for R 1-3 and Mr.S.Sreedutt, ACGSC for R4 and filed reply statement. In the reply statement, respondents state that while the applicant was working as Assistant Market Officer at CDB Kochi, the post of Marketing Officer fell vacant temporarily on account of the incumbent Smt.Deepthi Nair taking an overseas assignment on deputation at Jakarta. Meanwhile, the post of Marketing Officer was re-designated as Assistant Director (Marketing)

without any financial benefit. Later, on repatriation of Smt.Deepthi Nair, the applicant herein was to be reverted back as Assistant Marketing Officer. On issuance of necessary order of reversion, it was challenged by applicant by filing O.A 796/2018 before this Tribunal. Reply filed by the department therein states that the applicant was not entitled to hold on any additional post of Assistant Director (Marketing) in the absence of a sanctioned post and framing of Recruitment Rules.

5. Respondents further states that Annexure A-4 is only an order of posting the applicant on work arrangement basis for a period of 3 months at Guwahati and the Regional Office at Guwahati in Assam has been the Nodal Office governing the activities of the Board over all the seven states of North-East India, including Assam, Tripura, Meghalaya, Nagaland, Arunachal Pradesh, Sikkim and Manipur. It has been decided by the Board that special efforts should be made to promote the projects of the board over the seven states including propagation of cultivation of coconut and promotion of coconut based industries. Accordingly 10% of the total budget of the Board has been ear-marked for North Estern State during 2018-19. This allocation comes to Rs.19.3 crores but out of this funds only above Rs. 80 lacs could be effectively applied due to tardy implementation. To ensure that the said office is equipped to launch the proposed expansion, six officers have been deployed on work arrangement basis for a period of 3months. The deployment are made not against any sanctioned post but only on adhoc and

officiating basis. Lastly, it is submitted that transfer is an incident and integral part of service and the applicant is not entitled to seek any immunity from posting at other places under exigency of service and the present posting is only on temporary basis. Respondents prayed for dismissal of the O.A.

6. Heard both sides and perused the records.

7. The applicant being an Assistant Marketing Officer, he has been posted on exigency of service to Guwahati for implementation of a project of Coconut Development Board. Applicant submits personal grounds as well as alleges malafides against the respondents. During the course of argument, this Tribunal has put a query to the respondents as well as applicant that whether his services are really needy being an Assistant Marketing Officer/Assistant Director (Marketing)?

8. Applicant has submitted in the affidavit that:

"I was involved in the propagation of 'three-tier farmer collectives' viz. Coconut Producer Societies (CPS), Federation of Coconut Producer Societies (CPF), Coconut Producer Companies (CPC), Eligibility to become member of a Coconut producer Society is to have minimum of ten yielding coconutpalms as per the norms of the CoconutDevelopment Board. This activity was especially intended to encourage the coconut producers to take up value additional of coconut by taking advantage of economies of scale. I was involved in

this activity and rejuvenation of the existing coconut farms, under the scheme 'Rejuvenation and Replanting of Coconut Palms' and recommendation of the assistance like subsidies in connection with the rejuvenation component of the said scheme and setting up of sales outlets for coconut products in Malappuram District. Sanctioning and disbursement of planting subsidy was not involved in any of my activities, either at Malappuram or elsewhere. “

9. Respondents in their affidavit submitted that

“Cultivators are first mobilized and motivated to form Coconut Producers Societies (CPS), Implementation of the schemes “Laying out of Demonstration Plot” (LODP) and “Replanting and Rejuvenation Scheme” (R&R) are offered through such societies.”

10. In a nut shell, the respondents have laid emphasis on the fact that applicant's services are very much required at the place of posting. This Tribunal is of the view that transfer/posting is an incident of service and it cannot be questioned unless or until *malafide* is alleged. In the entire application, we do not find anything against the respondents in regard to the *malafide* in transfer. Out of the 6 officers posted to Guwahati for a period of three months, five of them have already joined at the new posts in Guwahati.

11. In view of the Hon'ble Supreme Court judgment in **Union Of India And Ors vs S.L. Abbas**, 1993 SCALE (2)718, the transfer is an incident of service. We find no reason to interfere with the impugned order at Annexure

A-4. The interim order already passed is vacated. The Original Application fails to convince this Tribunal and hence rejected. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures

Annexure A1 - True copy of the order dated 30.3.2015 of the 2nd respondent

Annexure A2 - True copy of the order F.No.1604/2012-Admn dated 24.9.2018 of the 1st respondent

Annexure A3 - True copy of the interim order dated 27.9.2018 in O.A No.796/2018 of this Tribunal along with the covering letter dated 4.10.2018

Annexure A4 - True copy of the order with F.No.597(1)/2016-Devdated 19.11.2018 of the 1st respondent

Annexure A5 - True copy of the slip dated 17.11.2018 issued to the applicant by the P.S Mission Hospital, Maradu

Annexure A6 - True copy of the Medical Certificate dated 19.11.2018 issued to the applicant by the P.S Mission Hospital, Maradu

Annexure R2(a) - True copy of the order of deployment dated 15.11.2018

Annexure R2(b) - True copy of the order of deployment dated 19.11.2018

Annexure R2(c) - True copy of the memo/notice dated 21.11.2018

Annexure A7 - True copy of the relevant portion of the list of Employees of the Coconut Board as on 6.12.2018, taken from the official website of the Coconut Development Board

Annexure A-8 - True copy of the prescription dated 17.11.2018 by the Doctor of the P.S Mission Hospital, Maradu

Annexure A-9 - True copy of the O.P Cash bill dated 17.11.2018 of the P.S Mission Hospital, Maradu

Annexure R2(d) - True copy of the progress report related to formation of coconut producers societies in Kerala achieved from 2011-12 upto June 2018 in Kerala

Annexure R2(e) - True copy of the relevant file note related to Districtwise allocation for LODP Scheme in Kerala during 2017-18

Annexure R2(f) - True copy of the achievement statement

Annexure R2(g) - True copy of the details fo officiers in charge of CDB Kerala for 2012-13 and 2018-19

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