

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 181/00924/2018

Friday, this the 8th day of March, 2019

CORAM:

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

Dr. Murakiba (Homoeopathy), aged 33 years,
 D/o. Mohammed Iqbal,
 U.P. Community Health Centre, Androth Island,
 Lakshadweep, Pin – 682 551. **Applicant**

(By Advocate : Mr. Aashique Akthar Hajjigothi)

V e r s u s

1. The Administrator, Union Territory of Lakshadweep,
 Kavarati Island, Lakshadweep, Pin – 682 555.
2. The Secretary, Medical Health Services,
 U.T. Of Lakshadweep, Kavarati Island,
 Lakshadweep, Pin – 682555.
3. Dr. Fathahudheen (Homoeopathy), I.G.H. Kavarati,
 U.T. of Lakshadweep, Pin – 682 555. **Respondents**

(By Advocate : Mr. S. Manu)

This application having been heard on 01.03.2019 the Tribunal on 08.03.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The reliefs claimed by the applicant are as under:

- “i) To modify Annexure A3 order dated 9.11.2018 so as to continue the applicant in the present station till normal period for the consideration for transfer is completed.
- ii) To issue any other appropriate order or directions which this Honorable Tribunal may deem fit and proper in the facts and circumstances of the case.

iii) Award costs incidental to this application.”

2. The brief facts of the case are that the applicant is a homeopathy doctor working on contractual basis in community Health Centre, Androth. Before joining the present station she had worked in Public Health Centre, Kilthan for more than five years. After completing more than the maximum tenure the applicant made a request for getting transferred to her native island i.e. Androth island. Considering her request she was transferred to Androth island by Annexure A2 order. Applicant just after completing one year and three months she had been transferred to Public Health Centre, Chetlath by transferring the 3rd respondent from IGH, Kavaratti to Androth. The applicant has made a representation to the 2nd respondent stating the difficulties. The transfer of the applicant is before completing the normal period of posting of three years as per transfer policy and further more that the applicant is five months pregnant and she has a one and half years old child, a four and a half years old child and mother. However, no decision has been taken on his representation. Aggrieved the applicant has filed the present OA.

3. When the matter came up for admission on 12.11.2018 after hearing on interim relief this Tribunal directed the respondents not to give effect to the impugned order at Annexure A3 in respect of the applicant.

4. Notices were issued to the respondents. They entered appearance through Shri S. Manu who had filed a reply statement contending that the applicant is a homeopathic physician working on contract basis. The applicant has relied on Annexure A5 transfer policy of the administration in support of her challenge to Annexure A3. The applicant being a contract employee is not covered by Annexure A5 in the matter of transfers and postings. The contractual appointment is for a period of one year with one day break after each spell of 89 days. The contract employees are bound to work at the place of their posting as per the terms of the contract. The applicant was initially appointed under National Rural Health Mission for a period of 89 days on short term contract basis vide Annexure R1(a). She was posted at Primary Health Centre, Kiltan on the basis of a representation submitted by her to the 1st respondent stating that her husband was appointed as Junior Engineer on contract basis in Lakshadweep Public Works Department office at Kiltan. The applicant continued on contract basis at Primary Health Centre, Kiltan from 27.6.2012 to 24.1.2017 and she attended duty there only on 638 days. She availed leave for maternity purpose two times and was out of station either on duty or on leave for remaining days. The applicant was given opportunities to work at her native island Androt considering her requests wherein she had stated that she was pregnant and her husband and aged mother was not able to accompany her. All her requests were considered by the Department with sympathy and she was provided several opportunities to work at Androt on work arrangements. The 3rd respondent who has been substituted in the place of the applicant is also a native of Androt and he has already worked more than

8 years outside the native island. All Homoeo Medical Officers working under the Department on contractual basis except one are natives of Androt Island. The Department has 5 female homoeo Medical Officers hailing from Androt Island only. Therefore, permitting the applicant to remain in the native island as long as she wishes is not practical and justified. The applicant has accepted the contractual appointment knowing very well the condition that the department will be placing her at any island according to the requirements. There is a specific condition in the agreement to the effect that the applicant is agreeable to serve in any of the islands of the Union Territory of Lakshadweep as per the requirements of the department. The department has resorted to redeployment of Homeo Medical Officers so as to ensure presence of a Homoeo Medical Officer in every inhabited island other than Bitra. Respondents pray for dismissing the OA.

5. Heard Shri Aashique Akthar Hajjigothi, learned counsel appearing for the applicant and learned Standing counsel for the Lakshadweep Administration. Perused the records.

6. The applicant is a homeopathic physician working on contract basis. As alleged by the applicant after completing more than the maximum tenure she made a request for getting transferred to her native island i.e. Androth island. Considering her request the respondents transferred her to Androth island by Annexure A2 order. However, just after completing one year and three months she had been transferred to Public Health Centre, Chetlath by transferring the 3rd respondent from IGH, Kavaratti to Androth. Aggrieved

by her transfer order applicant made Annexure A4 representation stating that her family consists of two minor children having age of 4½ and 1½ years, husband working as a construction contractor at Androth and old aged mother. Moreover, she is stated to be carrying and is in the fifth month of pregnancy. We find that all these aspects have not been considered by the respondents. Further, we know that applicant being a contractual doctor is not covered by Annexure A5 transfer policy of the administration. However, keeping in view the fact that the applicant has two minor children and an old aged mother and the fact that she is stated to be carrying which is in the fifth month of pregnancy, we feel that ends of justice would be met if we direct the respondents to allow the applicant to stay in the present station for a period of ten months from today. Ordered accordingly.

7. The Original Application is disposed of as above. No order as to costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

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

“SA”

Original Application No. 181/00924/2018**APPLICANTS' ANNEXURES**

Annexure A1 - True copy of the representation made by the applicant for getting transferred to current station from the earlier station dated 4.1.2017.

Annexure A2 - True copy of the transfer order (F.No. 4/47/2012-Ayush) from which applicant was transferred from the earlier station to present station dated 27.7.2017.

Annexure A3 - True copy of the transfer order (F.No. 1/21/2018) dated 9.11.208 by which the applicant is transferred from current station i.e. CHC Androth to PHC Chetlath.

Annexure A4 - True copy of the representation made by the applicant to the second respondent by submitting her grievances dated Nil.

Annexure A5 - True copy of the transfer policy of the administration of the Lakshadwep (F. No. 12/03/2012-Services) dated 7th March, 2012.

RESPONDENTS' ANNEXURES

Annexure R1(a) - True copy of the office order F. No. 1/27/2010-NRHM/Ayush dated 11.6.2012.

Annexure R1(b) - True copy of the representation of the applicant dated 12.4.2012.

Annexure R1(c) - True copy of the order F. No. 1/27/2010-NRHM (2) dated 9.10.2012.

Annexure R1(d) - True copy of the office order F. No. 4/47/2012-Ayush dated 23.3.2013.

Annexure R1(e) - True copy of the office order F. No. 4/47/2012-Ayush dated 28.11.2013.

Annexure R1(f) - True copy of the office order F. No. 4/47/2012-Ayush dated 1.9.2014.

Annexure R1(g) - True copy of the office order F. No. 4/13/2011-
Ayush dated 1.7.2015.

Annexure R1(h) - True copy of the office order F. No. 4/47/2012-
Ayush dated 27.1.2017.

Annexure R1(i) - True copy of the office order F. No. 4/47/2012-
Ayush dated 27.5.2016.

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