

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00662/2018

Tuesday, this the 26th day of November, 2019

C O R A M :

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

C. Sreenivas, Assistant Engineer (Civil),
Postal Civil Sub Division-II, Sreepadam Building,
Fort PO, Kerala Circle, Thiruvananthapuram – 695 023.
Residing at Amritha, ANRWA-J-1, Amritha Nagar,
Papanamcodu PO, Thiruvananthapuram – 695 018.Applicant

(By Advocate Mr.Vishnu S. Chempazhanthiyil)

v e r s u s

1. Union of India, represented by the Secretary,
Department of Posts, Dak Bhavan, New Delhi – 110 116.
2. The Chief Engineer (Civil), Headquarter, Postal Civil Wing,
Department of Posts, Dak Bhavan, New Delhi – 110 116.
3. The Chief Postmaster General, Kerala Circle,
Thiruvananthapuram – 695 033.
4. The Superintending Engineer (P&A), Postal Civil Wing,
Department of Posts, Dak Bhavan, New Delhi-110 116.Respondents

(By Advocate Mr.V.A. Shaji, ACGSC)

This application having been heard on 18th November, 2019, the Tribunal
on 26th November 2019 delivered the following :

O R D E R

HON'BLE Mr. ASHISH KALIA, JUDICIAL MEMBER

The relief sought by the applicant are as follows :

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i) Call for the records leading to the issue of Annexure A1 and set aside Annexure A1 in as much as the applicant is transferred out from the post of Assistant Director (Building), Office of the CPMG, Thiruvananthapuram.

ii) Direct the respondents to retain the applicant in the post of Assistant Director (Building), Office of the CPMG, Thiruvananthapuram.

iii) Call for the records leading to the issue of Annexure A8 and set aside Annexure A8.

iv) Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice;

v) Award the cost of these proceedings to the applicant.

2. The applicant was working as Assistant Director (Building) in the office of CPMG, Thiruvananthapuram. He has been transferred as Assistant Engineer (Civil) in PCSD-II, Thiruvananthapuram. He has challenged the transfer on the ground that the normal tenure as per the transfer policy prescribed is 4 years and he has been transferred in the middle of his tenure. He has been transferred pre-maturely contrary to the guidelines. He has submitted representations on 2.5.2017 and 15.6.2017. He has highlighted the fact that the present transfer was not a bonafide exercise of power and was the consequence of his recommendations for punitive action against three IPS offices including the present PMG at Kochi Region for causing financial loss by drawing HRA while not occupying the post attached residential quarters. He has earlier filed O.A.No.180/573/2017 which was disposed of by this Tribunal with a direction to the respondents to consider the aforesaid representations of the applicant dated 2.5.2017 and 15.6.2017 and take a decision on the representations. Thereafter Review Application No.52/2017 was filed and the same was also rejected. The applicant has made a request to the competent authority to cancel the transfer order and to permit him to

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complete the tenure as Assistant Director (Building) at Circle Office in Trivandrum or alternatively he may be posted as Assistant Director (LC) in Circle Office as he was a law graduate.

3. Notices were issued to the respondents who put appearance and filed detail reply statement through learned counsel Shri.V.A.Shaji. It is submitted that his representations was decided by the competent authority by way of speaking order in which it has categorically been informed that transfer and posting of officials of Postal Civil Wing is governed by guidelines issued vide OM dated 12.10.2012 and the transfer of the applicant had been ordered based on the recommendations of the transfer and placement committee which are in accordance with transfer policy guidelines dated 12.10.2012. There is no malafide intention as alleged by the applicant. It is further stated that the applicant had highlighted several extraneous matters in the O.A to weigh his contentions but these facts do not find place in the proceedings of the transfer and placement committee. Lastly it is submitted that the transfer order has been issued in accordance with para 10 of the transfer policy for Civil Wing Officers and Officials issued vide Omdated 12.10.2012. As the applicant's service was urgently required for the ongoing civil works in the Postal Civil Wing, the applicant had been transferred locally in the Postal Civil Sub Division – II, Trivandrum as there was no alternative with the administration. The respondents therefore prayed for dismissal of the O.A.

4. Heard learned counsel for the parties at length and perused the records as also appreciated the legal position. The short question raised by the applicant herein in this O.A is whether his transfer is punitive with malafide intention or whether the perusal of the impugned transfer order reflects the fact that 19 officials were transferred by the said order and that the applicant has been transferred from one Sub Division to another within the same station ie. Trivandrum. However, Shri.Vishnu.S.Cempazhanthiyil, learned counsel for the applicant raised the contention that the applicant's transfer is punitive in nature because he has made certain complaints where loss to the organization has been pointed out which was the sole reason for his transfer. Thus, it is a punitive transfer, is not acceptable for the simple reason that the applicant has not placed on record any material or evidence to show that he was singled out immediately after making such complaints. The transfer order is routine in nature by which several officials were transferred and thus the stand taken by the applicant that it is a punitive measure is not proved in the eyes of law. Mere allegation is not sufficient in the civil proceedings where two alleged facts have to prove by placing on record cogent evidence to substantiate the same. The applicant has also not placed on record any material, in which, it is stipulated that he is not liable to be transferred in the middle of the tenure. But when administrative exigencies are there, as pointed out by the learned counsel for the respondents, due to ongoing civil work in the Postal Civil Wing, the applicant was transferred for being a Civil Engineer to the PSDC-II, Trivandrum, which is not a far away place from the present place of posting of the applicant. Learned counsel for the respondents has

relied upon the judgment passed by the Apex Court in **State of U.P & Ors. v. Gobardhan Lal (2004) 11 SCC 402** in which the Hon'ble Apex Court has held that :

the transfer is prerogative of the authorities concerned and court should not normally interfere therewith except :

1. Transfer order is shown to be vitiated with malafide
2. Issued in violation of any statutory provision or
3. Having been passed by an authority not competent to pass such order.

While deciding it is further 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, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts and tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of malafides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer....”

5. We have noted that the applicant is liable to be transferred on all India basis and actually has no legal right to be posted at a particular circle or to a particular place. Another judgment cited by the learned counsel for the respondents is **S.C.Saxena v. Union of India (2006) 9 SCC 583** wherein it is held that :

“In the first place, a Government servant cannot disobey a transfer order by not reporting at the place of posting and then go to court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representationas to what may be his personal problems...”

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6. The ratio of the aforecited cases squarely covered the case of the applicant. This Tribunal has also noted the fact that the applicant has shown his willingness to join to another post ie. Assistant Director (LC), being a law graduate.

7. In the entire conspectus of the facts and circumstances of the case, we find that no case has been made out for interference in the transfer order. Accordingly the O.A is dismissed with no order as to costs.

(Dated this the 26th day of November 2019)

**ASHISH KALIA
JUDICIAL MEMBER**

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

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List of Annexures in O.A.No.180/00662/2018

1. **Annexure A-1** – A copy of the order No. 4-13/2012-CWP/Vol.IV/313 dated 27.4.2017 issued by the Superintending Engineer in the office of the 1st respondent.
2. **Annexure A-2** – A copy of the representation dated 2.5.2017 submitted by the applicant to the 1st respondent.
3. **Annexure A-3** – A copy of the representation dated 15.6.2017 to the Secretary and Chairman (PS Board).
4. **Annexure A-4** – A copy of the order No. ST/1/1/7/2016 dated 5.5.2017 issued by the Asstt. Postmaster General (Staff), Office of the CPMG.
5. **Annexure A-5** – A copy of the OM No. 44/2007-CWP/1016 dated 12.10.2012 issued by the Govt. of India, Ministry of Communications ^ IT, Department of Posts.
6. **Annexure A-6** – A copy of the order dated 18.7.2017 in OA No. 180/00573/2017 of the Hon'ble Tribunal.
7. **Annexure A-7** – A copy of handing over note and the charge report of the applicant.
8. **Annexure A-8** – A copy of OM F. No. 5-14/2017-CWP/390 dated 11.8.2017 issued by the 1st respondent.
9. **Annexure A-9** – A copy of the dissent note submitted by the applicant.
10. **Annexure A-10** – A copy of the last page of the Salvage Committee Report.
11. **Annexure RA1** – A copy of the order of the Hon'ble Tribunal dated 16.10.2017 in RA No. 52/2017 in OA No. 573/2017.
