

(2022) 02 CAT CK 0039

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00426 Of 2021

Chinju Surendran, Postal Assistant, (Savings Bank Control Organization), PA(SBCO), Muvattupuzha

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 25-02-2022

Acts Referred:

Constitution Of India, 1949 — Article 226

Citation : (2022) 02 CAT CK 0039

Hon'ble Judges : P. Madhavan, Member (J); K.V. Eapen, Member A

Bench : Division Bench

Advocate : Sajeev Kumar K. Gopal, Thomas Mathew Nellimoottil

Final Decision : Dismissed

Judgement

K.V. Eapen, Member A

1. The applicant is a Postal Assistant in the Savings Bank Control Organization [PA(SBCO)] of the Department of Posts, Kerala Circle. She was posted to Muvattupuzha and is now seeking a transfer back to the Vaikom Head Office from there. She has challenged the order produced at Annexure A4, as impugned order dated 11.06.2021 issued by the third respondent, in spite of the fact that consequent to this order she has already joined at Muvattupuzha. She wants to be posted again at Vaikom, as it is closer to her place of residence. She prays for the following reliefs in the OA:-

"I. To set aside Annexure A4 order vide no. ST42-18/2021 issued from the office of the 2nd respondent and allow the petitioner to continue at Vaikom Head Office;

II. To direct the 2nd respondent to revert the applicant back to Vaikom HO by considering Annexure A-7 request submitted by the applicant and also in the light of Annexure A-1 transfer guidelines.

III. Declare that the applicant is entitled to get the benefit of Annexure A-1

transfer guidelines and she can continue at Vaikom HO as PA(SBCO) for a further period of two years;

IV. Grant such other reliefs as may be prayed for and the court may deem fit to grant, and

V. Grant the costs of this Original Application."

2. The applicant joined service on 18.04.2011 as PA(SBCO) at Head Office Muvattupuzha. She later got transferred to Vaikom and joined there on 14.02.2018 after a period of seven years at Muvattupuzha. On 14.01.2021, she made a representation for extension of her service at Vaikom, possibly because her normal tenure of three years at Vaikom was coming to an end, a copy of which has been produced at Annexure A2. She submits that she had asked for the Ernakulam Head Office as her second alternative in the same request. She was, however, transferred to Perumbavoor HO, which is almost 57 kilometers by bus from her place of residence. Under these circumstances she asked for a modification of her rotation transfer asking once again to be posted at Muvattupuzha where there was a vacancy and since it was more convenient for her as it was only 35 kilometers by bus from her place of residence. This request was considered by the authorities and an order dated 11.06.2021, produced as the impugned order at Annexure A4, was issued, modifying her earlier order of posting at Perumbavoor and posting her at Muvattupuzha. As per the respondents, on receipt of this order, the applicant joined as the Postal Assistant (SBCO) Muvattupuzha H.O on 26.06.2021. She then availed Casual Leave for three days from 28.06.2021 to 30.06.2021. After rejoining, she submitted a leave application requesting Child Care Leave for 60 days with effect from 02.07.2021. This was not allowed and she then remained absent with effect from 02.07.2021 without permission. The respondents submit that the applicant, in effect, has been on unauthorised absence from 02.07.2021. However, the applicant submits that she submitted another request on 23.07.2021 to the 3rd respondent (produced at Annexure A5) asking to be allowed to 'work from home' because of the fact that she had a nine month old baby and seven year old son. It is also submitted by her that she had to go on leave immediately after joining at Muvattupuzha, as a MTS staff was confirmed Covid positive, and she had close contact with her and thus had to be in quarantine. She requested to be allowed to work from home in the representation at Annexure A5, stating that she can bring the pending work to her house and finish all the required 'pendencies' including scrutiny of the vouchers of SBCO. She also mentioned that she had been suffering from a long list of comorbidities like heart valve leak, splenomegaly, fibromyalgia, arthritis, spinal abnormalities and fatty liver disease, besides the fact that she was also a lactating mother. Thus, she requested authorities to either grant her permission to work from home or to allow her to continue on Child Care Leave. However, this too was rejected by the leave sanctioning authority. After this she again applied for Extra-Ordinary Leave(EOL) with medical certificate, due to one of her comorbidities, 'Sandhivatha' which also

was rejected by the leave sanctioning authority.

3. The applicant submits that, meanwhile, another Postal Assistant, Sh. Abhilash A. S, who was transferred to Vaikom HO in her place was transferred to the Perumbavoor H.O by an order dated 10.08.2021 produced at Annexure A6. The applicant's contention is that by virtue of this transfer, a post of PA(SBCO) has again fallen vacant at Vaikom. Since this was the position, she made another request on 25.08.2021 for her transfer back to Vaikom, which has been produced at Annexure A7. However, her apprehension is that the Annexure A7 request will not be considered by the third respondent and that the vacant post will be filled by transferring some other person to that place, overlooking her legitimate claim. Further, it is her contention that after she sent her request on 18.05.2021 vide Annexure A3 when she was at Vaikom, asking for modification of her transfer from Perumbavoor to Muvattupuzha, she came across new guidelines, dated May 19 th 2021 issued by the Postal Department in the wake of the Covid situation. These guidelines have been produced in the O.A at Annexure A1. These guidelines direct that in view of the Covid-19 pandemic and considering the well being of employees the rotational transfer guidelines in respect of rotational transfer of all Group C, Group B (gazetted and non-gazetted), and Group A (JTS and STS) Officials/ officers working in the circles are to be relaxed. Clause II of guidelines has allowed an extension of one year to all those who have completed their post tenure of four (4) years on non-sensitive posts. Further, clause III allows extension of one year to all those who have completed their post tenure of three (3) years in sensitive posts and who cannot be rotated at the same station provided their past record is up to the mark and clean. In addition, clause VI allow CPMGs of the Circles to grant over and above one year further extension upto six years on a non-sensitive post [covered in clause II] in cases of extreme distress on compassionate grounds.

4. After having coming to know about these guidelines allowing relaxation due to the Covid situation, the applicant submits that she sent an email on the very next day following issue of the guidelines, i.e., on 20.05.2021, to give her the benefit of these guidelines and to retain her at Vaikom itself. It appears, however, that the respondents did not consider this request and instead issued the order dated 11.06.2021, produced at Annexure A4, modifying her transfer from Perumbavoor HO to Muvattupuzha HO. It is also to be noted that the applicant immediately then joined at Muvattupuzha. Her contention is that the third respondent, who is Post Master General, Central Region, Ernakulam was wrong in transferring her to Muvattupuzha in violation of these transfer guidelines because, as per the guidelines, she was entitled to get one year extension as per the Clause II and further extension upto six years on a non-sensitive post in case of extreme covid related distress as per clause VI. Her request to continue at Vaikom should have properly considered. Thus, the crux of her case is that the Annexure A4 order by which she has been transferred from Vaikom to Muvattupuzha is in complete violation of the Annexure A1 rotational transfer guidelines due to the Covid situation issued by the 1st respondent. It is

also submitted by her that, from her place of residence which is on the border of Kottayam and Ernakulam districts it is difficult to reach Muvattupuzha, as it involves change of three buses. She is unable to undertake the journey to Muvattupuzha in view of her poor health conditions. She, therefore, prays that she should be accommodated at Vaikom, which would not cause any prejudice to anybody as the post there is vacant. However, she apprehends that her representation at Annexure A7 will not be considered properly.

5. After the applicant filed the O.A, this Tribunal, in its hearing, on 02.09.2021, directed the respondents not to fill up the vacancy at Vaikom, till a short reply statement was filed. The respondents have submitted a reply statement in which they state that the Savings Bank Control Organization (SBCO) is a very important and crucial organization in the Postal Department as it is dealing with the checking of all savings bank transactions under a head post office and its sub post offices, including branch post offices. It is the primary unit which acts as a watchdog to curb fraudulent savings bank transactions. The SBCO has been set up in each Head Post Office to maintain control over the savings bank accounts and to carry out day to day checks of the work done by the Savings Bank Branch. This post which is occupied by the applicant as PA(SBCO) is thus very important in the hierarchy of the Department of Post. However, instead of continuing to do her duties after she joined at Muvattupuzha, the applicant has remained on unauthorised absence from 02.07.2021. She had joined as P.A(SBCO) Muvattupuzha only on 26.06.2021. In addition, it is submitted that her residence at Ernakulam District is only 29 kilometers away from Muvattupuzha and, that earlier, she was at Vaikom which was 22 kms away. Her postings at Muvattupuzha and at Vaikom reveal that the Department has been conscious of her situation and has always striven to give her comfortable posts ever since her induction into the service in 2011. It is also submitted by the respondents that the tenure which was prescribed for the SBCO Cadre was earlier 4 years in a post but had been later revised to 3 years in 2019. The applicant, after her transfer from Muvattupuzha where she had first joined in 2011, assumed charge of Postal Assistant (SBCO) at Vaikom, on 15.02.2018. The 3rd respondent (Post Master General, Central Region) called for requests on 04.01.2021 from SBCO officials like the applicant who were completing their tenure in 2021. The applicant had made a representation on 14.01.2021 where she indicated three choices;

- a. Extension at Vaikom HO
- b. Ernakulam HO
- c. Kochi HO

6. It is submitted by the respondents that these requests could not be considered as there were already Postal Assistants in position at Ernakulam and Kochi HO, whereas there were at least two SBCO units elsewhere without even one Postal Assistant. Keeping this in view, the transfer order dated 02.02.2021 at

Annexure R3 was issued to ensure at least one Postal Assistant at each SBCO. It was also sought to keep each Postal Assistant due for rotation transfer in 2021 within a reasonable daily commuting distance from his/her residence. Thus, the applicant was transferred and posted as PA SBCO Perumbavoor HO through the Orders dated 02.02.2021 at Annexure R3. However, instead of joining, she submitted a representation dated 18.05.2021 produced at Annexure A3, requesting for her transfer to Muvattupuzha. She brought out many issues in this representation, such as lack of conveyance, her medical conditions, medical conditions of her parents, looking after her children, etc. These issues were sympathetically considered by the respondents and she was transferred to Muvattupuzha vide the impugned order at Annexure A4 dated 11.06.2021 modifying her earlier transfer to Perumbavoor. It is submitted, therefore, that the Annexure A4 order has been issued by the Department solely for the benefit of the applicant after due sympathetic consideration. She then joined at Muvattupuzha HO on 26.06.2021. However, almost immediately on 25.08.2021 she requested for transfer back to Vaikom based on the guidelines produced by her in the O.A at Annexure A1 vide the representation at Annexure A7. It is also submitted that, meanwhile, Abhilash A. S who was posted at SBCO Vaikom, requested for a transfer to Perumbavoor HO on 'immunity in transfer ground' being the Circle Secretary of Bharatiya Postal Savings Bank Control Organisation Employees Association. This request was also considered and approved on 10.08.2021 and it is when the post at Vaikom thus fell vacant again, the applicant submitted her new representation dated 25.08.2021 (Annexure A7).

7. The respondents submit that this request cannot be considered at present as the 10 SBCO P.As who completed tenure in 2021 had been all shifted after their completion of tenure as per the orders dated 02.02.2021. Further, 9 of them have joined in the new place of posting despite various personal constraints. It is submitted that it is unfair at this stage to grant only the applicant the consideration of shifting her back to her former station, that too, after showing maximum consideration for her personal problems in deciding the alternate place of posting at Muvattupuzha. The details of the postings of the 9 Postal Assistants who had been initially transferred along with the applicant have been produced in the reply statement. It is submitted that the applicant has been on unauthorised absence from 02.07.2021 from Muvattupuzha. She has been frequently applying for Child Care Leave, Extra Ordinary Leave, etc., stating child care/medical reasons. It is submitted that the seal, name/designation of the authority who have issued medical certificates in her case are not legible or clear. A decision was taken not to grant her leave and she was directed to join duty to clear up the pending work at Muvattupuzha HO. The post there had been unmanned ever since Shri Abhilash A S, was transferred to Vaikom HO on 06.05.2021. Thus, it is in these circumstances that her pay and allowances have been withheld with effect from 15.07.2021. It is submitted that while the sanctioned strength of SBCO Muvattupuzha HO consists of two P.As the working strength is nil ever since the unauthorised absence of the applicant with effect from 02.07.2021. The

duties of the SBCO PA have to be carried out by the SBCO staff in the absence of any SBCO PA from 07.05.2021, thus adversely affecting the work. Further, another PA from another post office has been temporarily deputed to work in the SBCO branch, as the applicant has not reported for duty since 02.07.2021. It is submitted by the respondents that the pendency of work in the SBCO branch and the non-posting of a regular PA (SBCO) can facilitate frauds and misappropriation of public money. It is also submitted that as per the latest medical certificate about the applicant, received by them dated 09.08.2021, the disease mentioned is "Santhivatha". In addition, it is submitted that the applicant has been continuously on regular leave such as Earned Leave, Child Care Leave, EOL on medical certificate, EOL without medical certificate, medical leave etc., ever since she joined service on 18.04.2011. The respondents have submitted that in her 10 years of service, she has been on 1790 days of leave. She cannot be also considered as per the guidelines at Annexure A1 – Clause VI as the welfare measure is extended to extreme Covid related distressed officials only.

8. In essence therefore the respondents submit that the applicant's request for extension at Vaikom cannot be considered now as she had already completed one full tenure of three years at Vaikom HO on 15.02.2021. Further, other officials who had completed their tenure in 2021 were also shifted vide the letter dated 02.02.2021. In addition, a request from one of the officials, Shri. K. N. Sreekumar, PA, SBCO Pala HO, is also pending for transfer to Vaikom HO. It is submitted that Shri K. N. Sreekumar P.A is posted at SBCO Pala HO and is due for retirement in July 2022 and that his request for transfer for Vaikom HO is a long pending one. All requests of the applicant had been considered on the other hand including her request to be posted at Muvattupuzha. The request for posting back along with extension at Vaikom on basis of the new Annexure A1 guidelines cannot be considered at this stage after she has left the post as administrative exigencies do not provide for the same due to the details given earlier. Even her 'work from home' request cannot be considered as there is a risk element in allowing her to carry original vouchers to her house. The competent authority has already rejected her requests for CCL as well as permission to work from home after 23.07.2021. In any case, as per the concerned DoPT OM, only persons with disabilities and pregnant women employees are to be exempted from attending office and they could continue to work from home. It is submitted that no exemption has been given to lactating mothers in the DoPT OM produced at Annexure R6. Further as stated, her request for transfer to Vaikom cannot also be considered at present since Shri K. N. Sreekumar is a more senior PA and his request for transfer to Vaikom is a long pending one. It is submitted that not only is Shri K. N. Sreekumar far senior to the applicant, having less than a year for retirement, the applicant still has more than 28 years of service left and has worked only in just 2 H.Os in 10 years. The respondents reiterate that Muvattupuzha is only 29 kilometers from her residence and that she had worked in that particular office for 6.9 years. In any case transfer orders cannot be issued solely as per the convenience of the

officials but have to be issued according to administrative exigencies. Her medical leave requests were rejected as they were not legible and not issued by authorised medical attendants. She was then directed to join her duties to clear the pendency of work at Muvattupuzha.

9. The respondents have also relied on various judgments including that of the Hon'ble Delhi High Court in WP(C) 518/2013, *Manoj Kumar Gupta Vs. Union of India and Ors* delivered on 29.01.2013. In this judgment it has been laid down that it is for the administration to take appropriate decisions for transfer and posting of staff keeping in view administrative exigencies. Further, such decisions taken by the administration shall not be interfered with by the Courts, unless they are vitiated either by malafide or by some extraneous considerations or there is some kind of prohibition under the Service Rules for such transfer etc. There is a reference in the judgment to the directions of the Hon'ble Apex Court in *National Hydroelectric Power Corporation Ltd v Shri Bhagwan & Ors.*, (2001), 8 SCC 374, wherein the Hon'ble Apex Court had laid down that Government employees do not have any legal right to be posted forever at any one particular place since the transfer of a particular employee is not only an incidence but a condition of service necessary in public interest. Further, in *Manoj Kumar Gupta, supra*, the Delhi High Court has also observed that the scope of judicial review is very limited in matters of transfers and that Courts while exercising jurisdiction under Article 226 of the Constitution should not go into the question as to whether the transfer was done in public interest or not, as that would require the adjudication on facts which is not in the ambit of jurisdiction. The same judgment also referred to the observations of the Apex Court in *State of M.P v S. S. Kourav & Ors.* (1995), 3 SCC 270, that Courts cannot go into the question of relative hardship and that the same will not be a ground for judicial review, as it is for the administration to consider the facts of a given case and mitigate the real hardship in the interest of good and efficient administration. In view of these clear judgments it is submitted that the request of the official cannot be considered. It is also to be considered that the P.As who were transferred on completion of tenure vide order dated 02.02.2021, produced at Annexure R3, all joined at the new place of postings. No extensions have been given to anyone despite the requests received, in view of the audit nature of SBCO and because most SBCOs were functioning single handedly without supervisors.

10. In her rejoinder the applicant has questioned the contentions raised by the respondents in their reply statement. It is submitted that the distance from her home (as she has shifted residence after her marriage) to Muvattupuzha HO is as much as 42 kms, for which she has to change three buses. Further, she has all the medical ailments which have been outlined earlier and is thus unable to take long travels. Thus it is perfectly justified on her part to seek a transfer to a nearby office. In addition, she has produced along with the rejoinder a copy of various medical certificates, including a newly issued certificate by the Medical Board of General Hospital Ernakulam dated 07.12.2021 (produced at Annexure A8). It is seen that the Board has diagnosed her with cervical disc disease,

coccydynia and fibromyalgia and advised her to avoid prolonged journeys which may adversely affect her health condition. At the same time she is also advised regular exercise to prevent deterioration. Other certificates have been produced from different hospitals and laboratories at Annexure A9 to A11. All these documents, she submits, reveal that her health condition is not that good to have a frequent travel to Muvattupuzha. She also submits that these requests have not been considered by the respondents who have rejected her case in spite of medical certificates. Though she has worked at Muvattupuzha for seven years from 2011 to 2018, she had been given only three years at Vaikom from 2018 to 2021. There is still a vacancy at the Vaikom Head Office and the only reason to deny the posting as per the respondents contentions in the reply is that all others have joined and that it would be unfair to allow her request to be specially considered. Such a reason cannot be justified as hers is a legitimate request on medical grounds. Any contention that the maximum consideration has been given to her personal problems is absolutely incorrect and denied. There was no consideration given to her request to retain her at Vaikom or to transfer her to Ernakulam or Kochi. On the other hand she was first transferred to Perumbavoor and then to Muvattupuzha. In effect, her major service has always been at Muvattupuzha and not at Vaikom. Further she submits that there is no risk element in allowing her to work from home due to her health condition. The contention that the Muvattupuzha HO will be affected in the event of her not joining her duties is denied. It is submitted that the male members of the Postal Departments working as P.As are being preferred and their requests considered, but not her request in spite of the fact that she is having so many family and medical issues. The transfer guidelines produced at Annexure A1 have been reiterated by another transfer guideline dated 28.01.2022 produced at Annexure A12. Thus, the respondents are bound to follow these guidelines, instead of favouring other male officers like K. N. Sreekumar. She submits that her medical conditions, which are so many in number, are unique, as none of the other officials are having such medical issues. This should thus be considered along with the fact that she has a 7 year old and a one year old child.

11. We have considered all these contentions and also heard Mr. Sajeew Kumar K. Gopal, learned counsel for the applicant and Mr. Thomas Mathew Nellimoottil, learned counsel for the respondents. At the outset we would state it is not possible as has been laid down in a catena of cases, by different courts including the Hon'ble Apex Court and various Hon'ble High Courts, and as brought out in the cases referred to earlier, for forums like Tribunals to enter into an analysis of comparative difficulties and issues faced by employees as opposed to administrative exigencies of Government Departments. This is particularly relevant if the transfer was conducted for an administrative exigency and there has been no clear case of malafide, arbitrariness or illegality established in the facts and circumstances. In this case the respondents have shown that they have given postings to 10 P.A SBCOs including the applicant in different Head Post Offices on completion of their tenure due to the overall shortage of sufficient staff

for ensuring that work in different offices does not suffer. They had taken a decision to post at least one PA at each head post offices to the extent possible so that the work relating to the SBCO does not suffer. It may be admittedly correct that the applicant has various medical health issues combined with various personal issues. She has only now, after the O.A was filed produced a Medical Board recommendation in the rejoinder. The respondents could reconsider the matter suitably if this is acceptable as per Rules, though we note that the applicant has spent almost 4.9 years of the total 10 years' service on leave in some way or the other. The respondents have shown that consideration has been given to her requests. During the hearing it was stated by the respondents counsel that the applicant's husband is a bank employee, who is working at a Branch which is close to Muvattupuzha, though we are not in a position to verify the said contention.

12. We would again reiterate that the options in front of this Tribunal are limited to interfere in transfer matters. We would advise the applicant to involve herself in her work and remain/stay at Muvattupuzha so that she is in a better position to serve the public therein as well as look after her health. The primary commitment of a government employee should be the interest of the public she serves. From all accounts, the work of the SBCO is a particularly crucial one as there are a large number of frauds in rural/semi-urban post offices where the banking facilities are used by common people. In addition, the town of Muvattupuzha has sufficient medical/health institutions where she will be able to get proper treatment for her many ailments. We are not, therefore, in a position to accept the contentions of the applicant. The O.A is accordingly dismissed without any order to cost.