

(2014) 02 KL CK 0203

High Court Of Kerala

Case No: OP (CAT). No. 4580 of 2013 (Z)

Union of India

APPELLANT

Vs

M.H.R. Khasmi

RESPONDENT

Date of Decision: Feb. 7, 2014

Hon'ble Judges: T.B. Radhakrishnan, J; A. Muhamed Mustaque, J

Bench: Division Bench

Advocate: P. Parameswaran Nair, ASG of India, Advocate for the Appellant; S. Radhakrishnan, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Thottathil B. Radhakrishnan, J.

Union of India challenges a decision of the Central Administrative Tribunal.

2. Respondent joined service as a Senior Technical Assistant in the Anthropological Survey of India at Dehradun. He was selected by the Union Public Service Commission and appointed as Assistant Director of Census Operations to Lakshadweep in November, 1995. On routine transfer, he was sent to Bangalore in 1998 from where, in 2007, he was transferred to Gujarat. In April, 2010, he was transferred to Lakshadweep. When he completed a period of two years in Lakshadweep, he requested for a transfer to Bangalore on two professed grounds available among the transfer norms. Firstly, Lakshadweep is a hard station and on completion of the fixed tenure, he was entitled to seek a posting to a station of his choice. Secondly and more importantly, he had the support of spouse ground because his wife is a Teacher in a school in Karnataka and she can never be transferred out of the State of Karnataka. However, he was transferred by the establishment to Uttarakhand. The Tribunal was told by the establishment that there was a disciplinary proceedings against him on account of alleged modification of ACR entries of a subordinate officer. To our query, we are told that those proceeding relate back to 2006 to 2009, and those disciplinary proceedings are concluded. Therefore, a concluded disciplinary proceedings cannot be put against a

person to keep him out from a station. The plea of the Department that he was transferred to Lakshadweep on his own request also did not find favour with the learned Tribunal, which on examination of papers found that though the transfer order to Lakshadweep was initially drafted as if it is one on request, later it has been clarified that it was on public interest and not on any request. With these factors, we cannot hold that the Tribunal had acted illegally or against the interest of the establishment or that the impugned order results any injustice to the establishment vis-à-vis the employee, who has two well established grounds as per the professed norms for transfer. The learned Tribunal has decided the matter also relying on the decision of the Honourable Supreme Court of India in State of U.P. and Others Vs. Ashok Kumar Saxena and Another Etc.,. No error of jurisdiction or illegality has been made out. This original petition, therefore, fails.

In the result, this original petition is dismissed in limine.