

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

OP (CAT).No. 101 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN OA 229/2013 of CENTRAL ADMINISTRATIVE
TRIBUNAL, ERNAKULAM BENCH DATED

PETITIONER/REVIEW APPLICANT:

P.BEEVI AGED 44 YEARS, AGED 44 YEARS, W/O. HAMZA,
PANDINJARALATHU HOUSE, M.L.A. ROAD, PALLAPPURAM,
PONNANI P.O., KERALA - 679577.

BY ADVS.SRI.C.A.MAJEED

SRI.K.H.ASIF

SMT.RAAGA R.RAMALAKSHMI

SRI.K.J.SHARATH KUMAR

RESPONDENTS/APPLICANT/RESPONDENTS:

1. GOPALAN.N.T, S/O. CHATHAPPAN, SUB POST MASTER,
PONNANI SOUTH POST OFFICE, RESIDING AT
NEDUVEDITHARAYIL, ADALUR P.O., THAVANNUR- 679 573.
2. UNION OF INDIA, REPRESENTED BY NITS SECRETARY,
DEPARTMENT OF POSTS, NEW DELHI - 110 001.
3. THE POST MASTER GENERAL, NORTHERN REGION, KERALA
CIRCLE, KOZHIKODE - 673 011.
4. THE SUPERINTENDENT OF POST OFFICES, TIRUR DIVISION,
TIRUR - 676104.

R2-R4 BY ADV. SMT.I. SHEELA DEVI, CGC

R1 BY ADV. SRI.MARTIN G.THOTTAN

R1 BY ADV. SMT.R.JAGADA BAI

R BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 23-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P. (CAT0 No.101 of 2015

APPENDIX

EXT.P1- CERTIFIED COPY OF THE ORDER IN O.A.NO.229/2013 DATED 14.11.2014 PASSED BY THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

EXT.P2- A PHOTOCOPY OF THE O.A.No.229/2013 FILED BY THE FIRST RESPONDENT APPLICANT BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

ANNEXURE A3-A COPY OF THE ORDER OF THE SUPERINTENDENT OF POST OFFICES, TIRUR DIVISION, TIRUR MEMO NO.B1/ROTATION/2013 DATED 13.03.2013 TRANSFERRING THE APPLICANT TO MARANCHERI POST OFFICE.

ANNEXURE A1- A COPY OF THE DISABILITY CERTIFICATE ISSUED BY THE ASSESSMENT BOARD GOVERNMENT TALUK HEAD QUARTERS HOSPITAL, PONNANI UNDER NO.9/AUG/09 DATED 12.8.2009.

ANNEXURE A2- A COPY OF THE IDENTITY CARD FOR PERSONS WITH DISABILITIES ISSUED BY THE GOVERNMENT OF KERALA, SOCIAL WELFARE DEPARTMENT UNDER NO.MLD01100003 DATED 25.11.2010.

ANNEXURE A4- A COPY OF THE GUIDELINES FOR ROTATIONAL TRANSFERS ISSUED BY THE DIRECTOR GENERAL IN LETTER NO. P&T N.69/4/79/-SPB-1 DATED 12.11.1981.

ANNEXURE A5- A COPY OF THE ORDER OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH IN O.A.NO.290/2012 DATED 31/10/2012.

ANNEXURE A6- A COPY OF THE CLARIFICATORY ORDERS ISSUED BY THE MINISTRY OF PERSONAL (PG AND PENSION NO.A-B 14017/41/90-ESST.9RR0 DATED 10.5.1990 AND THE DEPARTMENT OF PERSONAL & TRAINING BEARING NO.OM NO.AB-14017/16/2002-ESST(RR) DATED 13.3.2002.

ANNEXURE A7-A COPY OF THE ORDER OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH IN O.A.NO.449/2010 DATED 3.9.2010.

EXT.P3-A PHOTOCOPY OF THE REPLY STATEMENT FILED BY THE DEPARTMENT RESPONDENTS 3 AND 4 IN O.A.NO.229/2013 BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BRANCH.

EXT.P4-A PHOTOCOPY OF THE REJOINDER FILED BY THE 1ST RESPONDENT APPLICANT IN O.A.NO. 229/2013 BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

ANNEXURE A8- A COPY OF THE GOVERNMENT OF INDIA MINISTRY OF COMMUNICATION, NEW DELHI, VIDE LETTER NO. 8-4/2007-INV DATED 30.10.2007.

ANNEXURE A9- A COPY OF THE LETTER OF COMPLAINT RECEIVED FROM FATHIMA ACCOUNT HOLDER AGAINST SMT.P.BEEVI, MPKBY AGENT AND ITS ENGLISH TRANSLATION.

ANNEXURE A10- A COPY OF THE REPORT DATED 19.3.2013 MADE BY THE APPLICANT AGAINST SMT.P.BEEVI, MPKBY AGENT TO THE RESPONDENT NO.3 REGARDING THE FRAUD COMMITTED BY HER.

ANNEXURE A11-A COPY OF THE REPORT DATED 26.3.2013 MADE BY THE APPLICANT AGAINST SMT.P.BEEVI, MPKBY AGENT TO THE RESPONDENT NO.3 REGARDING THE FRAUD COMMITTED BY HER.

ANNEXURE A12- A COPY OF THE APPLICATION DATED 17.10.2013 MADE BY THE APPLICANT TO THE RESPONDENT NO.3 UNDER RTI ACT AND ITS TRANSLATION.

ANNEXURE A13- A COPY OF THE LETTER NO.VIG/RTI/18/13-14 DATED 30.10.2013 RECEIVED FROM RESPONDENT NO.3.

ANNEXURE A14; A COPY OF THE REPORT NO.GL/24/2013 DATED 26.8.2013 OF THE INSPECTOR PONNANI SUB DIVISION REGARDING THE FRAUD CONDUCTED BY P.BEEVI.

ANNEXURE A15: A COPY OF THE REPORT NO. SB/MPKBY/DLG DATED 12.9.2013 MADE BY REPONDENT NO.3 REGARDING THE FRAUD COMMITTED BY P.BEEVI.

ANNEXURE A16- A COPY OF THE REPORT DATED 24.3.2007 MADE BY THE APPLICANT AGAINST SMT.M.SUSHMA, MPKBY AGENT TO THE RESPONDENT NO.3 REGARDING THE FRAUD COMMITTED BY HER.

ANNEXURE A17- A COPY OF THE APPEAL DATED 26.10.2012 PREFERRED BY THE APPLICANT AGAINST PUNISHMENT IMPORTED BY RESPONDENT NO.3.

ANNEXURE A18- A COPY OF THE APPELLATE ORDER NO.STA/30-16/12-13 DATED 10.8.2013 DROPPING THE ENTIRE ENQUIRY PROCEEDINGS.

ANENXURE A19- A COPY OF THE LETTER OF COMMENDATION NO.SB/DLGS/GS DATED 20.7.2010 ISSUED BY THE RESPONDENT NO.3 CONFERRING AWARD OF EXCELLENCE TO THE APPLICANT.

ANNEXURE A20-A COPY OF THE LETTER OF COMMENDATION NO.L/RPLI/MISC/11-12 DATED 14.6.2011 ISSUED BY THE RESPONDENT NO.3 CONFERRING AWARD OF EXCELLENCE TO THE APPLICANT.

ANNEXURE A21- A COPY OF THE JUDGMENT DELIVERED BY THE HON'BLE SUPREME COURT IN CIVIL APPEAL NO.7308 OF 2008 DATED 16.12.2008.

EXT.P5- A PHOTOCOPY OF THE NEWS REPORTED IN MADHYAMAM DATED 5.1.2015 EVIDENCING PASSING OF EXT.P1 ORDER.

EXT.P6- A PHOTOCOPY OF THE SECOND NEWSPAPER REPORT TARNISHING THE PETITIONER'S REPUTATION IN LIGHT OF EXT.P1 ORDER PUBLISHED BY MALAYALA MANORAMA DATED 14.1.2015.

EXT.P7- A PHOTOCOPY OF THE REVIEW APPLICATION FILED BY THE REVIEW APPLICANT BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

ANENXURE R1-A1- A PHOTOCOPY OF THE ORDER DATED 14.11.2014 IN O.A.NO.229/2013 PASSED BY THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

EXT.P8- A PHOTOCOPY OF THE ORDER DATED 18.5.2015 IN R.A.No.180/004/2015 AGAINST THE ORDER DATED 14.11.2014 IN O.A.NO.229/2013 PASSED BY THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

RESPONDENT'S EXHIBITS ;NIL

TRUE COPY

P.S. TO JUDGE

AL/-

**P.R.RAMACHANDRA MENON &
ANU SIVARAMAN, JJ.**

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O.P.(CAT).No.101 of 2015

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Dated this the 23rd day of July, 2015

JUDGMENT

Anu Sivaraman, J.

This Original Petition(CAT) is filed challenging the order of the Central Administrative Tribunal, Ernakulam in Original Application No.229 of 2013 dated 14.11.2014 in as much as it contains observations against the petitioner who was not a party to the Original Application. The petitioner against whom observations were made in the judgment had filed Review Application No.180/4/15 which was dismissed by the Central Administrative Tribunal by order dated 18.5.2015.

2. The first respondent, who was the applicant before the Tribunal had filed the Original Application challenging Annexure A3 order transferring him, a Sub Post Master, from Ponnani South Post Office to the Marancheri Post Office. It was stated that he is a physically handicapped person having an orthopaedic disability of over 50%, and that his transfer was unjustified and illegal. A reply statement was filed by the respondents in the Original Application on 15.5.2013 contending that the Member of Parliament of Ponnani Constituency had reported a complaint against the applicant on 31.10.2012 alleging that the petitioner herein who was the Chairperson of the Ponnani Municipality, had complained that the applicant was behaving badly towards the public

and should be transferred. It is stated that an enquiry was conducted by the Inspector, Posts, Ponnani Sub Division and statements of the petitioner and other Mahila Pradhan Agents were recorded. The Regional Office of Posts thereupon directed the transfer of the applicant, it was stated. It was further stated that similar complaints had arisen at the Tavanur Sub Post Office where he had worked earlier and disciplinary action was taken against the first respondent. The applicant thereafter filed a rejoinder to the reply raising serious allegations of misappropriation and fraud against the petitioner. Annexures A14 and A15 documents were produced by him alleging that the petitioner who was also a Mahila Pradhan Agent had collected amounts towards Post Office Recurring Deposit but failed to credit the amounts to the accounts of the account holders. The petitioner apparently was warned not to repeat her conduct and an enquiry was also ordered but it was contended that no action was taken against her. It was also alleged that it was at the petitioner's instance that the first respondent had been transferred out from Ponnani. However, even at the stage, no steps were taken to implead the petitioner as a party in the Original Application.

3. On these pleadings, the Tribunal proceeded to consider the O.A. filed with the following prayers.:

"(1) Quash the order at Serial 10 of Annexure-A3 transferring the Applicant from Ponnani South Post Office to Marancheri and order that the Applicant be retained at Ponnani South Post Office till the completion of his tenure.

(2) any such remedy deemed fit and proper as this Hon'ble Tribunal may be pleased to order".

4. After adverting to the pleadings and the documents produced by the first respondent, the Tribunal by order dated 14th November 2014 held that the respondents had trivialised the serious allegations made against the petitioner and that it is evident from the pleadings that it is the displeasure of the petitioner towards the first respondent which paved the way for his transfer. The Tribunal held as follows:

"17. Taking into the totality of the facts and circumstances involved in this case, this Tribunal is of the view that impugned Annexure A3 transfer order qua the applicant was vitiated by unsubstantiated extraneous considerations and was based on the pressure exerted on the respondents by Member of Parliament from Ponnani Constituency and also by the Municipal Chairperson of the Ponnani Municipality. The Tribunal is of the view that 1st respondent Secretary, Department of Posts, has to take serious steps for reporting the matter to the police or other competent investigating agency for investigating the misappropriation of money by the aforesaid Mahila Pradhan Agent as found in Annexure A-14 and A-15 documents."

18. " In the result, Annexure A3 transfer order qua the applicant is quashed and set aside. Respondents shall consider

posting the applicant at a place that would facilitate easy access for him from his house without involving multiple changing of buses or other public transport”.

“19. Registry is directed to send a copy of this order to Respondent No.1 to consider the observations in paragraph 17 of this Order and to examine the circumstances under which the allegations against Mahila Pradhan Agent were played down by the 3rd respondent by Annexure A-14 and Annexure A-15 communications, without reporting the matter to the appropriate investigating agency for investigating into the crime involved in such allegations”.

5. It is the observations contained in para 12, 14, 17 & 19 of the judgment that the petitioner was aggrieved by. On coming to know of the contents of the said judgment, the Petitioner filed a Review Application No. 180/4/15 seeking the expunging of the portions of the judgment containing adverse remarks against her. The Review Application was dismissed on circulation of papers by Ext.P8 order. Aggrieved, the petitioner has approached this Court filing this O.P. (CAT).

6. Heard Sri. C.A.Majeed, learned counsel appearing for the petitioner, Sri. Martin G. Thottan, learned counsel appearing for the first respondent, and Smt.I.Sheeladevi, learned Central Government Counsel appearing for the respondents 2 to 3. The counsel for the petitioner submitted that the instant case is one which does not come

within the ambit of the decision of the Apex Court in **Rajeev Kumar & Another v. Hemraj Singh Chauhan and Others (2010 (4) SCC 554)** wherein it was held that an order of the Central Administrative Tribunal cannot be challenged before the High Court by a person who was not a party before the Tribunal. The petitioner is a person against whom adverse remarks have been incorporated in the judgment without making her a party and hearing her. She had also filed the Review application in the first instance before the Tribunal seeking to expunge the said remarks which was dismissed by the Tribunal. These facts give her the locus-standi to challenge the order of the Tribunal, and this O.P. is therefore maintainable, it is contended. On the merits of the case it is contended by the counsel for the petitioner that she came to know of the strictures passed against her by the Central Administrative Tribunal from newspaper reports which are produced as Ext.P5. She is a Mahila Pradhan Agent in Ponnani and was also the Municipal Chairperson. She claims that even from the documents produced by the first respondent before the Tribunal, it was clear that no account holder had made any complaints of any nature against her. She states that the allegations made against her by the first respondent before the Tribunal were accepted in toto by the Tribunal and the adverse remarks were made against her without hearing her

in a proceedings to which she was not a party. Her review application was also dismissed without going into her contentions, it is argued.

7. The learned counsel for the first respondent attempted to sustain the finding in the judgment pointing out that the transfer was engineered by the petitioner to get back him for reporting the misappropriation perpetuated by her. He also contended that the petitioner was a person who was causing serious disruption in the work of the post office and several complaints preferred by him against the petitioner had remained unattended due to her political influence and clout.

8. The Central Government Counsel appearing for the official respondents stated that the observations were made without impleading the petitioner as a respondent in the Original Application. The scope of the Original Application, as is evident from the prayers which are extracted earlier was only with regard to the transfer of the applicant/first respondent. The consideration of the materials produced by the parties to the Original Application should have been confined to the matters in dispute between them in the Original Application, it is submitted.

9. We have considered the rival contentions advanced in the case and have gone through the records produced. In the nature of

the allegations raised against the petitioner in the rejoinder, she ought to have been made a party to the proceedings and heard before any observations were made against her. Further, this court finds that the Original Application having been filed challenging an order of transfer, the tribunal ought to have considered only those questions germane to the issue at hand. The conduct of the petitioner or the proceedings to be taken against her were not the subject matter of the Original Application, even incidentally, and she was not a party to the Original Application.

10. Even if the allegations that the transfer of the first respondent was vitiated by malafides as much as it was issued on the basis of the complaint made by the Member of Parliament, that cannot, by itself, lead to the inference that the petitioner was behind the transfer in order to down play the allegations of financial misappropriation made against her. The further statement in paragraph 14 that the respondents were over awed by oral complaints of the Member of Parliament and the petitioner and had acted on their request 'even without any complaints in writing' should have been considered by the Tribunal only for the purpose of deciding correctness or otherwise of the order of transfer. The further finding contained in paragraph 17 of the judgment and the directions issued

to the first respondent, the Union of India represented by the Secretary, Department of Posts to examine the circumstances under which the allegations against the petitioner were played down by the third respondent, in our opinion, ought not to have been issued without the petitioner being on the party array and being given an appropriate opportunity to defend her case. In appropriate proceedings, the competent among the respondents has the power and authority to look into the allegations raised against the petitioner also.

11. In the above circumstances, the observations contained in paragraph 17 and the directions contained in paragraph 19 of the order of the Tribunal shall stand vacated. The competent among the respondents who is empowered to enquire into misconduct committed by a Mahila Pradhan Agent may take necessary steps pursuant to Annexure A15.

The O.P.(CAT) is disposed of as above.

Sd/-

P.R.Ramachandra Menon, Judge

Sd/-

Anu Sivaraman, Judge

al/-

True copy

P.S to Judge