



IN THE KERALA ADMINISTRATIVE TRIBUNAL AT
THIRUVANANTHAPURAM

Present:

The Hon'ble Mr. P K Kesavan, Administrative Member

Dated this the 18th of June 2026

OA-950/2026

Applicant(s):

- 1) Dr.Reena K J, aged 59 years, W/o Gopinathan P.K., Working As Director of Health Services, Health & Family Welfare Department, Directorate of Health Services, Thiruvananthapuram, Pin - 695035 (under orders of transfer as the Director, Regional Public Health Laboratory, Ernakulam, Pin - 682035), residing at Puthukulangara House, Kuttur P.O, Thrissur, Kerala- 680013

By Advs. ARAVINDAKSHAN PILLAI S P , PETER JOSE
CHRISTO , ANAND S A , AMMU PILLAI L , ANNAPOORNA L & ASWATHY N

Respondent(s):

- 1) State of Kerala represented by Secretary, Health & Family Welfare Department, Government Secretariat, Thiruvananthapuram, Pin - 695001,, Kerala
- 2) Dr.Meenakshy V, Additional Director of Health Services (Family Welfare), Directorate of Health Services, Thiruvananthapuram, Pin - 695035,, Kerala

GOVERNMENT PLEADER

Original Application praying inter alia that in the circumstances stated in the application, the Tribunal may be pleased to stay the operation and implementation of and all proceedings pursuant to Annexure-A4, so as to enable the applicant to continue as the Director of Health Services, pending disposal of the Original Application.

The Original Application come up for admission and upon perusing the application and upon hearing the arguments of Adv. Aravindakshan Pillai S.P, Anand S.A, Ammu Pillai.L, Annapoorna. L, Aswathy. N and Peter Jose Christo, Counsels for the Applicant, Government Pleader for the Respondent 1, this Tribunal passed the following:

ORDER

The 1st respondent has filed a short reply statement and sought permission to file a detailed statement, if found necessary.

2. The scope for judicial intervention in transfer matters is well laid out through a catena of judgments of the Hon'ble Apex Court. It is well settled that such orders can be subjected to judicial review if the orders are issued by an authority not competent to do so, if the order is in violation of statutes or if it has been issued by a colorable exercise of authority.

3. Annexure A4 transfer order as modified in Annexure A5, is challenged by the applicant on all these three counts. It is contended that these orders are issued by a Joint Secretary who is at a lower cadre in the administrative structure and is not authorized to issue such orders. It is specifically contended that Rule 6 of the Kerala Health Services (Medical Officers) Special Rules, 2010 specifically provide that option for placement once exercised shall be final. The applicant had exercised option for placement in the Administrative Branch in the Service and the present order is transferring her to the post of Director, Regional Public Health Laboratory, Ernakulam which is not a post in the Administrative Branch of the Service.

Annexure A4 order was issued without any reference or report from any other sources, by one Joint Secretary. There are two reasons cited in the order of transfer. The first reason is that the applicant has completed 3 years in the present post and the selection process for appointment of a regular Director of Health Services (DHS) is under the consideration of the Government. The second reason cited is that the applicant had availed 15 days of leave during the epidemic period. However the second reason was deleted by Annexure A5 order dated 15.06.2026. Though there is no tenure prescribed for the post of DHS as per the Special Rules, the applicant was initially appointed for a tenure of two years. Thereafter it was extended by one year by order dated 20.08.2025 and this tenure ends only on 19.08.2026. The transfer is ordered before completing this tenure, for no valid reasons, on wrong assumptions which were partly rectified subsequently. All these tantamount to colorable exercise of authority, is her contention.

4. In the short reply statement the 1st respondent admits that under the Special Rules there is no prescribed period of appointment for the DHS. When Annexure A1 order was issued for a tenure of 2 years, the applicant accepted the same with open eyes. This tenure ended on 22.02.2025. Extension of one year tenure ordered in Annexure A2 has to be taken w.e.f 23.02.2025 and it has ended on 22.02.2026. The present transfer is ordered purely in public interest. Rule 5 of the Special Rules is with regard to the option to be exercised by the employees. It cannot be taken to mean that the Government in public interest cannot transfer the employee after protecting the pay and status of the post. In this case the applicant has been transferred as Director, after upgrading the post of Senior Consultant and her pay has been protected.

Further, appointment of Heads of Departments is governed by Rule 28A and Rule 37 of Part II Kerala State and Subordinate Services Rules, 1958 (KS & SSR). Accordingly the Government is empowered to appoint even an officiating or permanent officer of an All India Service to any State Service or category thereof, notwithstanding anything contained in the General Rules or the Special Rules. A qualified, competent, eligible person being available in the State Service does not bind the State Government to promote him as Head of service as per the Special Rules, if he is not suitable for the post. This suitability in service parlance goes beyond qualification, competence and eligibility but it necessarily partakes an element of desirability in larger public interest. Annexures A4 & A5 orders are issued in public interest and the applicant cannot contend nor dictate that the Government does not have the authority to issue such orders.

5. Learned counsel for the applicant, in addition to reiterating her contentions in the Original Application, points out that the respondent is trying to strengthen the illegal transfer order by finding out reasons which were not there when the order was issued. This is struck by the dictum laid down by the Hon'ble Apex Court in ***Mohinder Singh Gill and Another Vs. Chief Election Commissioner (1978 KHC 478)***. Paragraph 8 of the said judgment reads as follows.

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. In Gordhandas Bhanji (AIR 1952 SC 16) (at p. 18): "Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by

the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

6. Learned Special Government Pleader reiterated the contention that the applicant has been transferred to Ernakulam which is nearer to her home station. She has already completed 3 years and her substitute has joined the post on 13.06.2026. The option exercised by the applicant under the Special Rules does not grant her an assured posting as DHS. The salary and other benefits attached with the post of DHS is protected by upgrading her transferred post to that of DHS. It is also contended that under the Rule 11 and 12 of the Rules of Business of the Government read along with Rule 3 (c), the Joint Secretary is competent to sign orders on behalf of the Governor. Annexures A4 & A5 orders have been issued by exercising this authority. Reliance is also placed on the judgment of ***State of UP & Others Vs. Gobardhan Lal (2004 KHC 1853)***. Paragraph 7 of the said judgment reads as follows.

"7 It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for

redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.”

7. The applicant was included in the panel of officers for selection to the post of DHS. After considering the panel in detail, the Principal Secretary to the Government issued Annexure A1 order appointing the applicant as DHS for a period of two years, even though the Special Rules do not provide for any tenure. This was further extended for a period of one year vide Annexure A2 order dated 20.08.2025. This order does not say that it has any retrospective effect. Contentions to the contrary are not sustainable. As per the 2010 Special Rules, the category of DHS comes under the Administrative Cadre. The method of appointment to this post is through direct appointment by selection from category 2, i.e., Additional Directors of Health Services / District Medical Officers (Health) and equated categories. The applicant was transferred from the post of DHS by Annexure A4 order on the ground that she has completed 3 years and the selection process for appointment of a regular DHS is under consideration of the Government. Another reason cited in Annexure A4 that the applicant had availed 15 days of leave during the epidemic period, which was subsequently deleted through Annexure A5 order. Annexure A5 order further states that considering the prevailing public health situation in the State, particularly the ongoing surveillance and response

activities relating to Shigella and Nipah outbreaks and taking into account the administrative exigencies of the Government and the Health Services Department, the post of DHS cannot be left vacant until regular appointments are made. However there is nothing to show that any process for selecting a new incumbent DHS has been set in motion. There is also no contention that any selection process was initiated in this regard, once the one year tenure, as contended by the respondent had expired on 22.02.2026.

8. The contention of the respondent that there is no violation of Special Rules by transferring the applicant from the administrative cadre has to be examined against Rule 6 which states that the option once exercised shall be final. Other than a casual denial, this respondent does not support this contention by way of any Rule or executive order. The contention of the applicant that her transfer is in violation of the Special Rules is *prima facie* found sustainable.

9. The contention that the Joint Secretary is competent to issue Annexures A4 and A5 orders as well as the contention of the applicant that these orders were issued with *mala fide* intentions also require further examination.

10. In the light of the above facts and circumstances of the case, this Tribunal finds merit in the prayer to grant interim order by way of staying the implementation of all proceedings pursuant to Annexure A4, as modified in Annexure A5. Accordingly implementation of Annexure A4, as modified in Annexure A5, shall not be implemented for a period of two weeks. The applicant shall be allowed to continue as DHS.

Post after two weeks.

Sd/- P. K KESAVAN, ADMINISTRATIVE MEMBER

(True Copy)

Assistant Registrar (Judicial)

Abn/-

Annexure A1- True copy of the G.O.(Ms) No. 53/2023/H&FWD dated 23.02.2023.

Annexure A2- True copy of the G.O.(P) No. 271/2025/H&FWD dated 20.08.2025.

Annexure A4- True copy of the G.O.(Rt) No.2000/2026/H&FWD dated 12.06.2026.

Annexure A5- True copy of the G.O.(Rt)No.2009/2026/H&FWD dated 15.06.2026.

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