

कार्यालय, रक्षा लेखा महानियंत्रक
उलान बटार रोड, पालम, दिल्ली छावनी- 110010

Important Circular
(Through website only)

No. AN/X/10062/6/2016/CAT/SVP

Dated 28.02.2017

To,

The All PCsDA/CsDA

Subject: Hon'ble CAT, Mumbai Bench and CAT, Chandigarh Bench Judgements dated 02.01.2017 & 04.01.2017 respectively:- Communication thereof.

The undersigned is directed to forward herewith for information copies of order dated 02.01.2017 delivered by Hon'ble CAT Mumbai Bench and order dated 04.01.2017 delivered by Hon'ble CAT Chandigarh Bench. The orders of Hon'ble Tribunals, in transfer cases, which are as per the department policy, are self explanatory. The contents of the above orders may please be taken note of and brought to the notice of the Counsel(s) defending the UOI/Department in similar type of cases before different Hon'ble Tribunals / Courts.

Post copy of this communication may please not be awaited.


(Sandeep Lakhanpal)
28.2.2017
SAO (AN)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI.

NO. CAT/MUM/JUDL/OA- 444/16 and 445/16 | DATE :- 02/01/17
From 72

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The Registrar,

Central Administrative Tribunal
Bombay Bench,
Gulestan Building No. 6., 3rd /4th floor,
Dr. Ghanshyam Talwatkar Marg, (Prescot Road),
Fort, Mumbai - 400 001.

To

1 Shri/Smt. B Lahiri
Advocate for the Applicant.

2 Shri/Smt. R. G. Agarwal
Advocate for the Respondents.

through (AT) Bench
(02 copy judgments)

(02 copy judgments)

Subject :-- OA No. 444/16 and 445/16.

Shri S.V. Pardikar and O/S Applicant

Vs.

D/O ordnance Factory and O/S Respondents

Sir,

I am directed to forward the accompanying
of Judgement dated 21/12/2016, issued by this
Tribunal, in the above matter.

Yours faithfully,

Ravanna

Two
Encl: One Judgement
& OA Copies

FOR REGISTRAR

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, CAMP AT NAGPUR.

O.A.No.444/2016

and

O.A.No.445/2016

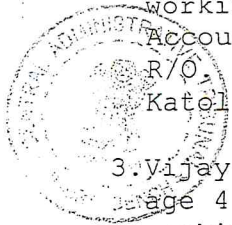
Dated this *Wednesday* the *21st* day of December, 2016.

Coram: Hon'ble Shri Arvind J. Rohee,
Member (Judicial).
Hon'ble Ms. B. Bhanathi,
Member (Administrative).

(O.A.No.444/2016)

1. Shri Shraavan Vithoba Pardikar,
age 54 years, working in the post
of Senior Auditor,
Accounts Office, O.F. Chanda, R/O, Plot No.25,
Sanmarg Nagar, Hudkeshwar Road,
Nagpur-440034.
2. Mahendra Charansingh Pendar,
age 52 years,
working in the post of Senior Auditor,
Accounts Office, O.F. Chanda,
R/O, 38/A, New Jagruti Colony,
Katal Road, Nagpur-440013.
3. Vijay Bahiyalal Nandanwar,
age 49 years,
working in the post of Senior Auditor,
Accounts Office O.F. Chanda,
R/O. Flat No. 102, Plot No.237/A-B,
New Amar Nagar, Nagur-440034.
4. Suresh Yadavrao Khapre,
age 42 years,
working in the post of Senior Auditor,
Accounts Office, O.F. Chanda,
R/O. Itwari City Post Office,
Dharaskar Road, Nagpur-440002.
5. Ravindra Shivshankar Dhakate,
age 44 years,
working in the post of Senior Auditor,
Accounts Office, O.F. Chanda,
R/C, Old Mangalwadi,
Near Chinteshwar Mandir,
Itwari, Nagpur-440008.
6. Bipin Popatlal Joshi,
age 57 years,
working in the post of Senior Auditor,

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Ms. B. Bhanathi, Member (Administrative)

Accounts Office, O.F. Chanda,
R/O, Parshva Apartment,
Nikalas Mandir Road,
Itwari, Nagpur-440008.

7. Anantkumar Anandrao Kumbhare,
Age 48 years,
working in the post of Senior Auditor,
Accounts Office, O.F. Chanda,
R/O. Plot No.100, Chikli Road,
Manewada, Nagpur-40024.
8. Narendra Kehsvrao Khadtarkar,
age 45 years,
working in the post of Senior Auditor,
Accounts Office, O.F. Chanda,
R/O, At Post Patansaongi,
Tahsil:Saoner, District Nagpur-441113.
9. Thameshwar Waghmare,
age 58 years,
working in the post of Senior Auditor,
Accounts Office, O.F. Chanda,
R/O, Plot No.55,
Somalwada, Nagpur-440015.
10. Suresh Ramaji Darukar,
age 57 years,
working in the post of Senior Auditor,
Accounts Office, O.F. Chanda,
R/O, Plot No.19, Shiv Shakti Nagar,
Manewada, Nagpur-440034.
11. Deodatta Dhananjay Bakde,
age 52 years,
working in the post of Senior Auditor,
Accounts Office, O.F. Chanda,
R/O, Plot No.102, Pande Layout,
Khamla, Nagpur-440025.
12. Ritesh Nandkumar Kotangale,
age 44 years,
working in the post of Senior Auditor,
Accounts Office, O.F. Chanda,
R/O, Anand Road, Indora,
Post Bezonbagh, Nagpur-440004.
13. Ravindra Rachpalsingh Pathania,
age 52 years,
working in the post of Senior Auditor,
Accounts Office, O.F. Chanda,
R/O, Plot No. 74, Bupesh Nagar,
Boargaon, Nagpur-440013.

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14. Gajanan Pandurang Gonnade,
age 51 years,
working in the post of Senior Auditor,
Accounts Office, O.F. Chanda,
R/O, Flat No.105,
Techops Tower, Umred Road,
Nagpur-441204.

... Applicants.

(By Advocate Shri B. Lahiri)

Versus

(OA.No.444/2016)

1. Union of India, through '
The Controller General of Defence,
Accounts (CGDA),
Ulan Batar Road,
Palam, Delhi Cantt.110 010.
2. Principal Controller of Accounts (Fys.),
10/A, Shaheed K. Bose Road,
Kolkata-700 001.
3. Controller of Finance and Accounts (Fys.),
Accounts Office,
Ordnance Factory
Ambajhari, Nagpur-440 021.
4. Jt. Controller of Finance and Accounts (Fys),
Accounts Office,
Ordnance Factory Chanda,
Bhadrawati, District-Chandrapur-442 501.

... Respondents.

(By Advocate Shri R.G. Agarwal)

WITH(OA.No.445/2016)

1. Anant Manohar Tamboli,
age 56 years,
working in the post of Senior
Auditor, Accounts Office,
O.F. Varangaon,
R/O, Flat No.101, Vidisha Appt.,
Khare Town, Dharampeth, Nagpur-440010.
2. Raju Bhakrusao Mahajan,
age 55 years,
working in the post of Senior Auditor,
Accounts Office, O.F. Varangaon, R/O,
Jagnath Budhwari, Bajirao Line,
Nagpur-440013.
3. Someshwar Narayan Chhapparghare,

age 51 years,
working in the post of Senior
Auditor, Accounts Office,
O.F. Varangaon, R/O, Plot No.17,
Godhni Road, Zingabai Takli,
Nagpur-440030.

4. Sidnath Damodar Kamble,
age 57 years,
working in the post of Senior
Auditor, Accounts Office,
O.F. Varangaon, R/O, Plot No. 21,
Joshiwada, Post Bhagwan Nagar,
Nagpur-440027.

5. Durgadas Laxman Ahir,
age 41 years,
working in the post of Senior
Auditor, Accounts Office,
O.F. Varangaon, R/O, Plot No. 1566,
Maharshi Dayanand Nagar, Binaki Road,
Nagpur-440017.

...Applicants.

(By Advocate Shri B. Lahiri)

versus

(O.A.No.445/2016)

1. Union of India, through
The Controller General of Defence,
Accounts (CGDA),
Ulan Batar Road,
Palam, Delhi Cantt.110 010.
2. Principal Controller of Accounts (Fys.),
10/A, Shaheed K. Bose Road,
Kolkata-700 001.
3. Controller of Finance and Accounts (Fys.),
Accounts Office,
Ordnance Factory
Ambajhari, Nagpur-440 021.
4. Asstt. Controller of Finance and Accounts
(Fys), Accounts Office,
Ordnance Factory, Varangaon-425308.

...Respondents.

(By Advocate Shri R.G. Agarwal)

Order reserved on : 24.11.2016

Order delivered on : .12.2016

O R D E R

Per: Hon'ble Shri Arvind J. Rohee, Member (J)

This common order will govern and

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dispose off the above referred two Original Applications in which the applicants are similarity placed and have sought same relief against the respondents.

2. The applicants in OA 444/2016 are presently working as Senior Auditors in Accounts Office, Ordnance Factory, Chanda, Bhadravati, District Chandrapur, whereas the applicants in OA.No.445/2016 are working in the same capacity in Accounts Office, Ordnance factory, Varangaon in Bhusawal Tahsil of Jalgaon District. Applicants in both the OAs have completed minimum 2 years of service at their respective stations, which are admittedly recognized as hard tenure stations as per transfer policy. Further applicants in both the OAs applied for their transfer to Ordnance Factory, Ambajhari/Kamptee Nagpur in the same capacity, on completion of prescribed tenure in respective hard stations.

3. According to applicants their names have been included in the list of volunteers maintained by the respondents for the year 2014 and 2015. In the later year, the applicants case was recommended for transfer, subject to availability of vacancy. The order to this effect was issued by the office of respondent no.1 and forwarded it to the respondent no.2 for its compliance.



4. Applicant's grievance is that inspite of the orders having been issued by the higher authorities, respondent no.3 in both the OAs failed to comply with it and the appropriate transfer orders are not issued so far. On representations made, the respondent no.1 vide impugned order dated 08.06.2016 (Annexure A-1) had given evasive reply, by stating that the matter is still under consideration of Competent Authority and it will be settled as per administrative feasibility under intimation to all concerned.

5. Aggrieved by it the applicants approached this Tribunal by filing joint Original Applications for seeking the following reliefs:-

"(a) Direct respondent no.2 to issue transfer and relieving order of the applicants as per the direction issued by Hqrs. Office vide their letter dated 23.03.2016 (Annexure A9) in compliance with the transfer policy notified in the D.A.D. Office manual in respect of transferring/repatriating staff to their choice station on completion of prescribed tenure at hard/tenure station.

(b) Declare that the applicants are entitled to be considered for transfer to their home towns/choice station of their completion of prescribed tenure at hard/tenure station Varangaon.

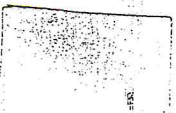
(c) Grant any relief deemed fit and proper in the facts and circumstances of the case including costs."

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6. The above reliefs are based on the following common grounds as mentioned in para no.5 of the OAs. The same are reproduced here for ready reference:-

"5.1 That the inaction in the matter on the part of respondent no.2 in spite of a clear cut and persistent direction of HQrs. To issue release orders of the applicants is totally unheard of and smacks of arbitrariness besides they are wholly illegal being contrary to the transfer policy notified in D.A.D. Office Manual.

5.2 That the norms laid down in the Transfer Policy have been stabilized and have ceased to be of transitory significance. These norms serve the purpose of filling the gaps in the area of wide discretionary powers conferred on the administration. The provisions in the manual are the part and parcel of the internal administrative procedure of the part and Defense Accounts Department. The norms set out therein lays down some criteria to be followed by the competent authorities in discharging their functions so that there may be some uniformity of approach in disposing of similar cases by them. The respondents cannot be allowed to flout these norms so blatantly and arbitrarily under the pretext of 'administrative feasibility'. The general principle of law is that conferment of an arbitrary, sweeping, uncontrolled discretion on an administrative authority violates Article 14 as it creates danger of discrimination among those



similarly situated which is subversive of the equality doctrine enshrined in Article 14 as glaringly visible in the instant case.

5.3 The impugned inaction of respondent no.2 is otherwise bad and unsustainable in law. Hence necessary intervention to give complete justice to the applicants is a judicial necessity in the facts and circumstances of the case."

7. On notice the respondents appeared and by a common reply dated 18.11.2016 resisted the OAs by denying all the adverse averments, contentions and grounds raised in both the OAs. It is denied that the respondents have given evasive reply to the online grievance applications submitted by the applicants. The applicants are seeking necessary directions to respondent no.2 to issue transfer order in terms of the order dated 22.03.2016 issued by respondent no.1 (**Annexure A-9 and Annexure R-1**). It is stated that since transfer order in respect of the applicants could not be issued due to administrative non-feasibility and the matter is still under consideration of the Competent Authority, there is no substance in the OAs.

8. It is stated that as per directions issued by Head Quarters Office vide letter dated 22.08.2016 (**Annexure A-2**) the respondent no.2 issued letter dated 03.10.2016 (**Annexure R-3**) to

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the respondent no.3 Controller of Finance and Accounts Ordnance Factory, Ambajhari, Nagpur with a request to issue transfer order as per the provisions contained in para 13.4 of the transfer policy dated 28.03.2014 (Annexure R-4), in respect of ten officials out of 28 individual, as referred in Head Quarters Office letter dated 22.03.2016 (Annexure A-9), on repatriation from Chanda/Varangaon/Bhandara to their choice stations i.e. Accounts Office, Ordnance Factory, Ambajhari, Nagpur. It is, however, requested that 10 individuals as enlisted in Annexure B to the said letter may be transferred to the affected stations as replacement of individuals listed in Annexure A. Further, the respondent no.1 and 3 were also requested to consider repatriation of remaining 18 individuals as listed in Annexure C of the said letter to their choice stations, since they have already completed prescribed tenure in hard stations. Further, Controller of Finance and Accounts, Ordnance Factory, Kirkee, Pune is also requested vide letter dated 18.10.2016 (Annexure R-5) to explore the feasibility of transfer of volunteers to Ordnance Factory, Chanda, Varangaon and Bhandara from Kirkee group of factories.

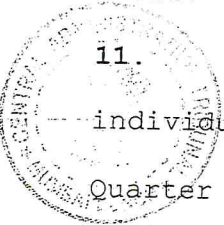
9. It is stated that since the applicants have completed the prescribed tenure at

hard stations viz. Varangaon and Chanda respectively, their request for transfer to the place of their choice was sympathetically considered and necessary orders were issued. It is stated that ~~109~~ station seniors were ordered for the command transfer and 128 individuals were granted exemption from transfer, subject to periodical review. Repatriation of applicants to Ordnance Factory, Ambajhari, Nagpur could not materialize due to acute deficiency in working strength at that point of time at Ordnance Factory, Varangaon, Chanda and for non availability of considerable number of volunteers for Varangaon and Chanda stations. Hence, vide letter dated 22.03.2016 issued by Head Quarter office to the respondent no.2, 28 representations for posting on repatriation to Ambajhari, Nagpur from different hard tenure stations namely Chanda, Bhandara and Varangaon were considered. The respondent no.3 was also requested vide letter dated 02.11.2015 to consider transfer of the individuals subject to placement of suitable substitutes. Hence direction/request of respondent no.1 and 2 was conditional and not voluntary. It is also stated that placement of substitutes to the hard tenure stations presently not being feasible, transfer orders in favour of applicants could not be issued

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by the respondent no.2.

10. It is stated that the working strength of Senior Auditors/Clerks in the Accounts Office, Ordnance Factory, Ambajhari Nagpur is 58, details of which are given in (Annexure R-8). It is stated that amongst them 21 individuals being about 56 years of age are exempted from transfer as per existing transfer policy. 5 individuals out of the above 21 were directed by the Head Quarter Office in the year 2013-2014 for their transfer from Ambajhari. However, this order could not be implemented by respondent no.3 for shortage of staff.



11. It is further stated that 10 individuals have already been ordered by Head Quarter Office or by the respondent no.3 for their transfer from Ambajhari and 2 individuals have been exempted from their transfer as per recommendation of DAPB. These orders also could not be implemented.

12. Out of remaining 25 individuals (58-21+12), 7 individuals did not come under the purview of transfer policy, having been joined after April 2014. 7 individuals have already been volunteered through yearly volunteers list of 2016 for repatriation to their choice station other than Chanda/Bhandara/Varangaon. Further, one individual

had already served in hard tenure stations twice and hence he is ineligible from being posted again to hard tenure station as per transfer policy.

13. This being so the factory strength of ~~10 (58-21+12+7+1)~~ station seniors remained to be considered as replacement of 28 individuals for whom Head Quarter Office has issued directions for repatriation to Ambajhari station. Hence, it is not administratively feasible for the respondent no.3 to issue applicants transfer order and hence it is still kept under consideration. In view of this the impugned order cannot be said to be illegal, arbitrary or improper.

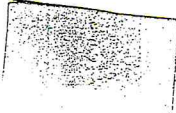
14. It is further stated that as per directives issued by Head Quarter Office vide letter dated 22.08.2016, the respondent no.2 issued order dated 03.10.2016 to respondent no.3 with the request to issue transfer order as per provisions contained in para 13.4 of Head Quarter Office transfer policy dated 28.03.2014 in respect of 10 individuals (out of 28 individuals as referred in Head Quarter Office letter dated 22.03.2016) as centralized in **(Annexure A)**, on repatriation from Chanda, Varangaon, Bhandara to their choice stations i.e. Accounts Office, Ordnance Factory, Ambajhari Nagpur. It is further requested that for 10 individuals mentioned in **(Annexure B)**, their

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transfer orders may be issued by the affected stations as replacement to individuals listed in (Annexure A). The respondent no.1 also directed to respondent no.3 to consider repatriation of rest of 18 individuals as enlisted in (Annexure C) to their choice station, since they have already completed the prescribed tenure in hard tenure stations. Further Controller of Finance and Accounts (Factories), Ordnance Factory, Kirkee, Pune was also requested vide letter dated 18.10.2016 to explore the feasibility of volunteers for Chanda/Varangaon/ Bhandara stations from amongst Kirkee group of factories.

15. It is denied that respondent no.2 did not take any positive step in the matter of transfer of the applicants. As stated earlier vide letter dated 23.03.2016 posting of 28 individuals to Ordnance Factory, Ambajhari from different hard tenure stations is already issued. The respondent no.1 has also directed that their replacement may also be considered from Ordnance Factory, Ambajhari, Nagpur within factory organization.

16. It is stated that posting of substitutes to the hard tenure stations presently not being administratively feasible, transfer orders of applicants could not be issued by respondent no.2.



17. For the above reasons there is no substance in the present OA and hence it is liable to be dismissed.

18. On 24.11.2016 when the matter was called out for final hearing during the Circuit Bench Sitting at Nagpur, we have heard the submissions of Shri B. Lahiri, learned Advocate for the applicants and reply arguments of Shri R. G. Agarwal, learned Advocate for the respondents in both the OA's.

19. We have carefully gone through the pleadings of the parties and the documents relied upon by them in support of their rival contentions. We have given thoughtful consideration to the submissions and advance by both the learned Advocates for the parties.

FINDINGS

20. The only controversy involved in the OAs for consideration of this Tribunal is whether the impugned order/communication dated 08.06.2016 issued by respondent no.2 is liable to be quashed as illegal, arbitrary, unreasonable or improper and the applicants are entitled to the reliefs sought.

21. From perusal of record and particularly the reply of the respondents and various communications/ orders referred by applicants as well as respondents in their

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pleadings, it can safely be said that since the applicants have completed prescribed tenure in hard tenure stations of Varangaon and Chanda respectively, they were eligible for being considered for choice posting at Ordnance Factory, Ambajhari, Nagpur. All the applicants being Senior Auditors, they cannot be posted on their transfer to any other post at the Ordnance Factory, Ambajhari and they can be posted only in Accounts Office, of which total sanctioned strength is 58 inclusive of Senior Auditors, Auditors and Clerks. As such the applicants can be transferred only as Senior Auditors, and to no the other post, unless they voluntarily opt for their request transfer to any other lower post.

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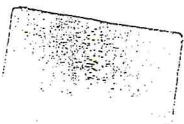
It is true that the transfer policy specifically makes a provision for request transfer at choice stations by the employees who are posted at hard tenure stations, on completion of prescribed period of two years. However, it is obvious that this does not create a vested right in employees nor obligation on the part of the respondents to allow request and to transfer such employees to the place of their choice immediately on completion of prescribed tenure. This is so because, for effecting transfer and posting of any employee at any particular station, there should be

vacancy in the sanctioned strength of his cadre. In the event there is no vacancy then also two employees can apply for mutual transfers, so that they can be accommodated/adjusted in their respective posts. Ofcourse such request for mutual transfer is subject to approval of their respective heads of office. This being so, claim for request transfer by the employees working at hard tenure stations can be entertained and considered only if there is vacancy in the post at the place of choice. It is the general experience that the employees exhibit some reluctance to work in hard tenure stations and if posted there, they opt for request transfer at convenient stations of their choice, immediately on completion of the prescribed tenure. A difficulty crops up when large number of employees working in same cadre at same hard station apply for transfer to same station of their choice, to accommodate all of them. Further normally employees who are posted out side hard area desire to continue at the same station till they complete the prescribed minimum tenure and in some cases they seek extension by way of retention on personal grounds. All these factors need to be considered while processing request transfer by employees who have completed the prescribed tenure in hard stations.

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23. It is obvious from perusal of the record that in the year 2014 the applicants case was considered for request transfer. However, not recommended since other employees who were on list of volunteers prior to 2014 were considered. However, the applicants request was favorably considered in the year 2015 and they were recommended for transfer to Accounts Office, Ordnance Factory, Ambajhari. Nagpur. This was however, subject to availability of sufficient vacancies. It is needless to say that vacancies may be created by transfer, promotion, resignation, retirement or death of an employee.

24. The respondents have given the data regarding sanctioned strength of Auditors, Senior Auditors and Clerks in Accounts Office, Ordnance Factory, Ambajhari, Nagpur. Particulars are also given as to how many request transfers were considered as mentioned in para-9 of the reply. It is obvious from perusal of the record that the respondent no.3 was not in a position to comply with the orders issued by respondent no. 1 and 2 and to issue the transfer orders of applicants in Accounts Office, Ordnance Factory, Ambajhari, Nagpur from Varangaon and Chanda, for want of vacancy. The transfer orders of some of the employees issued earlier were also pending for its



implementation. The respondents have, however, shown bonafides in exploring the possibility of accommodating the applicants by calling upon Ordnance Factory, Kirkee, Pune to find out from Senior Auditors working within their jurisdiction who are prepared to go to Varangaon/Chanda, so that at least some of the applicants can be accommodated. However, it appears that so far the said proposal has not been materialized.

25. From the above discussion, it is obvious that the respondents are not denying or delaying to consider applicants request for and posting at their choice stations. However, for want of vacancy they are not in a position to materialize it in true sense. The indirect consequence of this is that the applicants are required to continue at their respective hard tenure stations beyond the prescribed tenure of 2 years completed way back in 2014. Of course their request will be considered in preference to request made by some such employees later in point of time.

26. This being so, it cannot be said that the impugned order is in any manner arbitrary, illegal or improper, since it is not known as to when the vacancies will be available in Accounts Office, Ordnance Factory, Ambajhari, Nagpur to accommodate applicants. For the above reasons, it

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cannot be said that the respondent have given evasive reply to the online grievance application. This being so at this stage no relief can be granted to the applicants, except that they are entitled to be considered for transfer to the choice station on their completion of prescribed tenure at hard stations. In fact the respondents have considered the applicants twice and their request is still under consideration.

27. (a) In view of this both the OA's are partly allowed, so far as prayer clause 8(b) regarding declaration sought by the applicant.

However, directions to respondents cannot be issued to transfer and relieve the applicants, for want of vacancy at their choice station.



(b) The respondents are, however, directed to keep the applicants request alive and try to accommodate them in batch wise according to their seniority in volunteers list, as and when vacancy in cadre of Senior Auditor occurs in Accounts Office, Ordnance Factory, Ambajhari, Nagpur.

(c) The parties are directed to bear their respective costs of this OA's.

Certified True Copy

Date 10.11.2017

(Ms. B. Bhamathi)
Member (A)

(A. J. Rohee)
Member (J)

VYC

Secretary
Central Administrative Tribunal,
Mumbai Bench, Mumbai

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CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
CHANDIGARH

O.A. No.060/00312/2016

Decided on: 04.01.2017

Coram: HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

Khushali Ram S/o Sh. Dhannu Ram R/o House No. 511 Sahni Vihar
PH-II Baltana (Zirakpur) PB

.....Applicant

Argued by: Mr. Subhash C. Binjola, Advocate

Versus

1. Union of India through Secretary, Govt. of India (Min. Of
Defence) South Block, New Delhi.

2. C.G.D.A., West Block- V, R.K. Puram, New Delhi - 110066.

3. PCDA (Western Command) Chandigarh.

.....Respondents

Argued by: Mr. Ram Lal Gupta, Advocate

ORDER(ORAL)

BY HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)

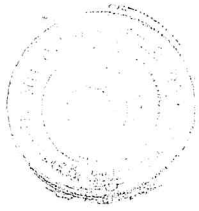
1. Tersely, the facts and material, which needs a necessary mention for the limited purpose of deciding the core controversy involved in the instant Original Application (OA) and emanating from the record is that, applicant Khushali Ram S/o Sh. Dhannu Ram, was appointed on the post of Clerk on 15.01.1991 in the Defence Accounts Department of respondents. Thereafter, he was promoted there to the post of Auditor/ Senior Auditor w.e.f. 01.04.2004. He was working as such in the office of AAO (DEO) in the Defence Accounts Department and was transferred to PCDA (NC) Jammu, whereas one Bhagwan Singh Adhikari, working in the office of Accounts Section MO Chandigarh was also transferred to DPDO

Sullar

Udhampur, vide impugned transfer order dated 17.02.2016 (Annexure A-5) by the Competent Authority.

2. Aggrieved thereby, the applicant has preferred the instant O.A. challenging the impugned transfer order on the following grounds:-

- (a) That the applicant was continuously applying for inter command transfer for the last three years in the half yearly report 03/2013, 09/2013, 03/2014, 09/2014, 03/2015 and 09/2015 but his name was not considered for the last three years despite of the fact a no. of persons were transferred to these stations. Thus CGDA/PCDA (C) Chandigarh has acted arbitrarily without following the set rules and norms.
- (b) That the applicant was transferred to PAO (ORS) Subathu vide PCDA (WC) Chandigarh order no-/021086/15/HYR/10/15 dated 15/01/16 (Annexure A-2) and subsequently cancelled his ibid order and transferred the applicant to Jammu vide order no./02/1088/DAPB dated 17/02/2016 which shows foul play on the part of respondent no. 2 and 3 (Annexure A-5).
- (c) That as per letter dated 20/11/2015 of the respondent no. 2, the respondent has asked the senior most individuals of the organization for transfer to Leh, Srinagar, Rajauri, Bhadrawah, and Poonch but while passing the impugned order of transfer dated 17/02/2016, the respondent have not transferred the applicant to any of these stations, but arbitrarily transferred the applicant to Jammu. Thus the order of the respondent is illegal and arbitrary. Further the respondent has not passed the order strictly according to seniority as many of the persons senior and junior to the applicant have been ignored by the respondent e.g. Sh. Akash Kant Gupta Sr. Auditor (Sr. No. 1) Sh. Ajay Kumar Sr. Auditor (sr. No. 2), Sh. Kaushal Kumar (Sr. No. 15). Sh. Vinod Kumar, Sr. Auditor has been transferred to LAO (A) Patiala despite of the fact that the applicant was continuously applying for Patiala as one of his choice stations for the last three years in the half yearly reports w.e.f. 03/2013 to 09/2016. Some of the other staff have also been transferred to Ambala and Patiala ignoring the seniority of the applicant. Thus, the impugned order dated 17/02/2016 is malafide and arbitrary and is liable to be quashed and set aside.
- (d) That the respondent No. 2 issued transfer order of 56 individuals to North region (J&K) on 05/02/2016 and it was loaded on net on 05/02/2016 but the another order of same date i.e. 05/02/2016 under which the applicant was transferred to Jammu was issued by PCDA (WC) Chandigarh on 17/02/2016 and was shown on net on 17/02/2016 i.e. 15 days after the issue of order i.e.



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05/02/2016 which shows malafide action on the part of respondents otherwise both the orders of same date i.e. 05/02/2016 should have been loaded on net on the same date i.e. 05/02/2016 (Annexures A-4 and A-5)

- (e) That the division bench of Hon'ble High Court in the case of Dr. Dev Parkash Chugh V/s State of Punjab and Others 2005 (4) SCT 736 has held that the department is bound to follow the set policy and it cannot deviate from the same. Sufficient reasons are to be recorded and if no valid and acceptable reason is recorded, the transfer order cannot be sustained. Copy of the judgment enclosed as Annexure A-8."

3. On the strength of the aforesaid grounds, the applicant seeks to quash the impugned transfer order in the manner indicated hereinabove, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

4. The respondents refuted the claim of the applicant and filed the written statement wherein it was, inter-alia, pleaded that the service in the Defence Accounts Department entails all-India transfer liability. The transfer is a part of service conditions for all officers and staff in and out of India. The Department has more than 1000 offices at about 250 locations all over the country which are engaged in providing financial, payment, audit and accounts services to the Armed Forces and other allied organizations. The deployment of officers and staff in the department is decided, as per the requirement of Armed Forces. It was alleged that the posted strength of staff in the department is heading towards continuous decline due to greater attrition rate on account of retirements, promotions to higher grades and eligible staff exploring other avenues outside the department. This rate being much higher than the inflow of new recruits, and there is an acute shortage of staff to the tune of around 35% in the department. This shortage need to be evenly distributed among the field controllers of the department

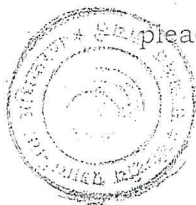
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whose sub-officers are located at more than 250 stations. Keeping in view the existing depleted strength of the establishment, the applicant was stated to have been transferred on administrative exigencies and in the public interest of Armed Forces.

5. According to the respondents, as per the existing transfer policy, posting to the hard tenure station has to be made from amongst volunteers, if available and if the volunteers are not available, then station seniors of all organizations in J & K region, PCDA (WC) Chandigarh, PCDA (NC) Jammu, CDA (PD) Meerut and PCDA (Boarder Road) Delhi Cantt organization are considered for transfer in order to maintain proper functioning of the Defence Accounts Department. It was claimed that keeping in view the vacancy position of Jammu Station, the organization seniority and the request of the applicant, the Defence Accounts Placement Board (DAPB) has recommended the transfer of the applicant to Jammu which is neither a hard nor a tenure station.

6. Sequelly, the specific case of the respondents is that the applicant, out of his total service of more than 25 years, has served at Chandigarh for about 21 years. The respondents have further



pleaded as under:-

“13. The applicant out of total service of more than 25 years, has served at Chandigarh, his present duty station, for about 21 years. For only a period of almost 3 ½ years, he has posted at Subathu. Thus, during this entire period the applicant had remained posted under the same organization PCDA (WC) Chandigarh.

14. The Hon'ble Supreme Court has repeatedly held in several decisions that “transfer is an exigency of service” vide B. Vardha Rao Vs. State of Karnataka AIR 1986, Shilpi Bose Vs. State of Bihar, AIR 1991 SC 352, Union of India Vs. NP Thomas, AIR 1993 SC 1605, Union of India Vs. S.L. Abbas, AIR 1993 SC 2444 etc.

15. In the case of Punjab Vs. Joginder Singh Dhatt AIR 1993 SC 2486, the Apex Court observed that “This Court has time

and again expressed its disapproval of the Courts below interfering with the order of transfer of public servant from one place to another. It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting. Ordinarily, the courts have no jurisdiction to interfere with the order of transfer."

16. The Hon'ble Supreme Court in Abanikanta Ray Vs. State of Orissa (Supp.) 4 SCC 169; 1996 Lab IC 982 held that "It is settled law that the transfer which is an incident of service is not to be interfered with by the courts unless it is shown to be clearly arbitrary or vitiated by malafide or infraction of any professed norm or principle governing transfer."

17. That the scope of judicial review of transfer order under Article 226 of the constitution of India has been settled by Supreme Court in Rajendra Rao Vs. Union of India 1993 1 SSC 148; (AIR 1939 SC 1236), National Hydroelectric Power Corporation Ltd Vs. Shri Bhagwani (2001) 8 SCC 574; (AIR 2001 SC 3309), State bank of India Vs. Anjan Sanyal (2001) 5 SCC 508; AIR 2001 SC 1748. Following the aforesaid principles laid down by the Hon'ble Supreme Court, the Allahabad High Court in Vijay Pal Singh Vs. State of UP (12997) 3 ESC 1668; (1998 ALL LJ 70) and Onkarnath Tiwari Vs. the Chief Engineer, Minor irrigation, Department, UP Lucknow (1997) 3 ESC 1866; (1998 LJ 245), has held that "the principle of law in exercise of its discretionary jurisdiction under Article 226 unless the Court finds that either the order is malafide or that the service rules prohibit such transfer, or that the authorities who issued the orders were not competent to pass the orders".

18. The applicant is not entitled to challenge his transfer orders as he himself was aware that being organization senior he is liable to be transferred.

19. The transfer order issued in respect of applicant is not malafide and service rules do not prohibit such transfers. The transfer order of the applicant was issued on administrative exigency."

7. Levelling a variety of allegations and narrating the sequence of events, in all, the respondents claimed that the applicant remained posted for about 21 years at Chandigarh out of his total service of 25 years and since he was transferred on administrative exigencies and in public interest of Armed Forces, so he is not entitled for any relief. Virtually acknowledging the factual matrix and reiterating the validity of the impugned transfer order, the respondents have stoutly

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denied all other allegations and grounds contained in the O.A. and prayed for its dismissal.

8. Controverting the pleadings in the written statement of the respondents and reiterating the allegations and grounds contained in the O.A., the applicant filed his rejoinder. That is how we are seized of the matter.

9. Having heard learned counsel for the parties, having gone through the record with their valuable assistance and after considering the entire matter and legal position, we are of the firm view that there is no merit, and the present O.A. deserves to be dismissed for the reasons mentioned herein below.

10. Ex-facie the arguments of the learned counsel that the applicant was continuously applying for inter-command transfer for the last three years and since his senior officers were not transferred, so the impugned transfer order is arbitrary and illegal, are not only devoid of merit but misplaced as well.

11. As is evident from the record that the applicant remained posted at Chandigarh for a long period of 21 years out of his total service of 25 years. Now he has been transferred to Jammu vide impugned order. The mere fact that the applicant has earlier applied for inter-command transfer and that his seniors were not transferred, *ipso facto*, are not grounds much less cogent to term the impugned transfer order as illegal, as urged on his behalf. On the contrary, the respondents have duly explained in their written statement that having considered all the relevant factors viz.a viz. vacancy position, transfer policy and request of the applicant, the



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Defence accounts Placement Board (DAPB) recommended his name for transfer to Jammu, which is neither a hard nor a tenure station.

12. That means, it stands established on record that the applicant was transferred on administrative grounds and in public interest. He has miserably failed to prove as to how and in what manner the impugned transfer order is illegal. Moreover, he has miserably failed to specifically plead and substantiate the specific allegations of malice against any particular individual. It is now well settled principle of law that mala fide is very easy to allege but difficult to prove as the onus to prove mala fide lies on the persons who alleges it. The Hon'ble Apex Court in the case State of Punjab & Another Vs. Gurdial Singh & Others. (1980) 2 SCC 471 has ruled as under:-

"9. The question then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfaction - is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated. "I repeat..... that all power is a trust- that we are accountable for its exercise that, from the people, 6 OA No.100/3709/2015 and for the people, all springs, and all must exist." Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power of extraneous to the statute, enter the verdict or

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impels the action mala fides on fraud on power vitiates the acquisition or other official act.”

The same view was reiterated by this Tribunal in T.M. Sampath Vs. Union of India, [OA No. 188/2012 decided on 30.08.2013] and Naresh Wadhwa Vs. Union of India [OA No. 810/2013 decided on 29.10.2013].

13. Meaning thereby, the Competent Authority has transferred the applicant from Chandigarh to Jammu on administrative ground and in public interest after considering the relevant factors like the vacancy position, organization seniority and request of the applicant. Indeed such transfer order cannot and should not be interfered with by the courts. A Government servant holding a transferable post is liable to be transferred and he has no right to remain posted at one place or the other. Such transfer orders issued by the competent authority do not violate any legal right. If the courts continue to interfere with day-to-day transfer orders issued by Government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to the public interest. This matter is no more res integra and is now well settled.

14. An identical question came to be decided by Hon'ble Supreme Court in case Shilpi Bose Vs. State of Bihar AIR 1991 SC 532. Having considered the scope of judicial interference in transfer matter, the Apex Court has observed as under:-

“4. In our opinion, the Courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the Competent Authority do not violate any of his legal rights. Even if a transfer order is passed

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in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department."

15. In the same manner, it was also held by Hon'ble Supreme Court in case Union of India V. S.L. Abbas 1993 (4) SCC 357 that who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it.

16. Sequently, a three-Judge Bench of Hon'ble Supreme Court in cases Major General J.K. Bansal Vs. Union of India & Ors. (2005) 7 SCC 227 and in another case State of M.P. and Another Vs. S.S. Kourav and Others (1995) 3 SCC 20 has observed that the Courts or Tribunals are not appellate forums to decide on transfer of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the Courts or Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundation. In case S.C. Saxena Vs. U.C.I. & Others (2006) 9 SCC 583 it was held by Hon'ble Apex Court that a Government servant cannot disobey a transfer order by not reporting back at the place of posting and then go to a court to ventilate his grievances. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed.

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17. Again the same view was reiterated by Hon'ble Supreme Court State of U.P. Vs. Gobardhan Lal (2004) 11 SCC 402 wherein it was ruled as under:-

"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 off 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 grievances sought to be made. Even administrative guidelines for regulating transfer 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 9 OA No:100/3709/2015 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.

8. 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 or Tribunals cannot substitute their own decisions in the matter of transfer for that of Competent Authorities of the State and even allegations of mala fides 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."



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18. Therefore, it is held that the transfer of the applicant was in public interest and on administrative exigency in the sensitive Accounts Department of Armed Forces, which indeed legally could not and should not be interfered with on the basis of wishful thinking of the applicant and on speculative grounds.

19. There is yet another aspect of the matter which can be viewed entirely from a different angle. It is not a matter of dispute that one Bhagwan Singh Adhikari of Accounts Section was also transferred from Chandigarh to Udhampur along with the applicant vide impugned transfer order (Annexure A-5) by the Competent Authority. Sh. Bhagwan Singh Adhikari had filed a separate Original Application (OA) bearing No. 060/263/2016, challenging the same very impugned transfer order, almost on the similar grounds, as have been pleaded by the applicant in the instant O.A. The said O.A. was dismissed on merits vide order dated 29.03.2016 by a Coordinate Bench of this Tribunal, which otherwise also is relevant in the instant case on the principle of stare-decisis and parity.

20. As indicated hereinabove, once it is held that the Competent Authority has transferred the applicant from Chandigarh to Jammu on administrative grounds and in public interest, in that eventuality, the impugned transfer order is not open to judicial review. Therefore, the contrary arguments of the learned counsel for the applicant, stricto sensu deserve to be and are hereby repelled.

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The ratio of law laid down in the indicated judgments is *mutatis mutandis* applicable to the present controversy and is a complete answer to the problem in hand.



21. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

22. In the light of the aforesaid reasons, as there is no merit, the instant O.A. is hereby dismissed. However, the parties are left to bear their own costs.



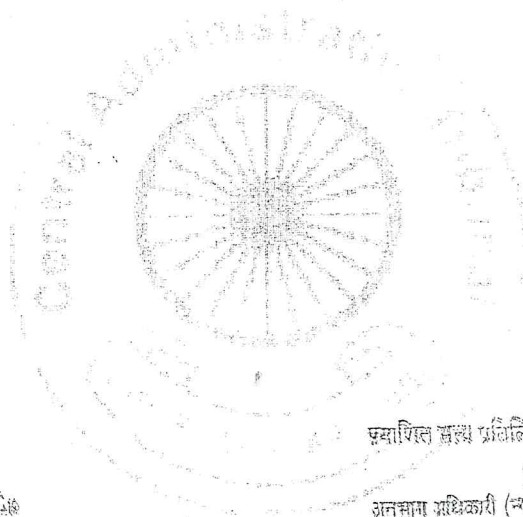
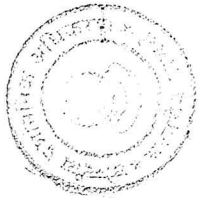
(RAJWANT SANDHU)
MEMBER (A)



(JUSTICE M.S. SULLAR)
MEMBER (J)

Dated: 04.01.2017

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अनुमान अधिकारी (सा) / Section Officer (Judl.)
केन्द्रीय प्रशासनिक न्यायालय
चण्डीगढ़ पीठ / Chandigarh Bench
केंद्र, चण्डीगढ़ / Chandigarh Bench

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अनुमान अधिकारी (सा) / Section Officer (Judl.)
केन्द्रीय प्रशासनिक न्यायालय
Central Administrative Tribunal
चण्डीगढ़ पीठ / Chandigarh Bench
चण्डीगढ़ / Chandigarh

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