

कार्यालय रक्षा लेखा महानियंत्रक  
OFFICE OF CONTROLLER GENERAL OF DEFENCE ACCOUNTS  
उलान बटार मार्ग, दिल्ली छावनी - 110010  
ULAN BATAR MARG, PALAM, DELHI CANTT - 110010

---

Important Circular  
(Through website)

No. AN/X/10062/6/2017/CAT/JR

Dated: 16/03/2018

To

All PCsDA/PCA(Fys)/CsDA

Subject: Transfer Establishment: DAD.

\*\*\*\*\*

Please find enclosed a copy of judgement pronounced by the CAT Mumbai Bench at Nagpur in OA No. OA/2089/2017 for reference.

*Comptroller office*

2. In the above context, the undersigned is directed to request to take a note of this CAT judgement while dealing with similar type of CAT/Court cases. The same may also be brought to the notice of CGSC defending the cases, if any.

*कविता*  
(Kavita Garg)

Encl: As stated above.

Sr. Dy. CGDA (AN)

Copy to:

1. AN-I/II/IV/IX Section (Local)..... for information and necessary action as stated above.
2. Legal Cell (Local).... For information.

*मनोज कुमार*  
(Manoj Kumar)  
Sr. AO (AN)

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, MUMBAI.

NO. CAT/MUM/JUDL/OA-2089/17

DATE :- 13-2-2018

From

1735

The Registrar,

Central Administrative Tribunal

Bombay Bench,

Gulestan Building No. 6., 3<sup>rd</sup> /4<sup>th</sup> floor,

Dr. Ghanshyam Talwatkar Marg, (Prescot Road),

Fort, Mumbai - 400 001.

To

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

✓ Shri/Smt. R. G. Agrawal  
Advocate for the Respondents.

Subject :-- OA No. 2089/17

Smt. Jayshree Remesh and 02 ORs Applicant

Vs.

ordnance Factory and 02 ORs. Respondents

Sir,

I am directed to forward the accompanying  
of Judgement dated 30/01/2018, issued by this  
Tribunal, in the above matter.

Yours faithfully,



FOR REGISTRAR

Encl :- One Judgement  
& OA Copy.

**CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, CAMP. AT NAGPUR**

ORIGINAL APPLICATION No.2089/2017  
Date of Decision: 30<sup>th</sup> January, 2018

**CORAM: Hon'ble Shri Arvind J. Rohee, Member (J)  
Hon'ble Shri R. Vijaykumar, Member (A)**

1. Smt.Jayshree Ramesh, (58 years) Senior Auditor, Accounts Office, O.F. Ambajhari, Nagpur, R/o Plot No.60, Falkey Layout, Kotal Road, Nagpur-440013.
2. Shashikant Deorao Pathak, (59 years) Senior Auditor, Accounts Office, O.F. Ambajhari, Nagpur, R/o Flat No.A/1, Suvarna Sankul Aptt. Hindustan Colony, Amaravati Road, Nagpur-440033.
3. Subhash Krishnaji Dambhare, (58 years) Senior Auditor, Accounts Office, O.F. Amabajhari, R/o, Plot No.49, Rameshwari Road, Kashinagar, P.O., Parbatinagar, Nagpur-440027.

...Applicants.

(By Applicant Advocate: Shri.B. Lahiri)

Versus.



1. The Controller General of Defence, Accounts (CGDA), Ulan Bator Road, Palam, Delhi Cantt.110010.
2. Principal Controller of Accounts (Fys.), 10/A, Shaheed K. Bose Road, Kolkata-700001.
3. Controller of Finance & Accounts (Fys), Accounts Office, Ordnance Factory, Ambajhari, Nagpur-440021.

... Respondents.

(Respondents by Advocate: Shri.R.G. Agrawal ).

Reserved on : 19.01.2018.

Pronounced on : 30.01.2018.

ORDER

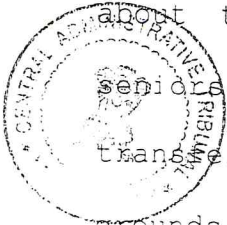
Per:- R. Vijaykumar, MEMBER (A)

These three applicants have contested the orders of relief issued by Respondent No.3 in Reference No.CS/AN/127-101/Tr/Vol-XII dated 27.03.2017 by implementing the transfer orders issued previously by competent authority (Respondent No.1) in accordance with the extant transfer guidelines in Reference No.AN/X/10050/2013/10-2012/TR 102 to 147 dated 18.04.2013 at (Annexure-A-B) Sl.No.19 in respect of Applicant No.1 and in Reference No.AN/X/10050/2014/10-2013/TR-368 to 509 dated 16.05.2014 at (Annexure-A-3 'B') at Sl.No.39 & 43, in respect of Applicant Nos.2 and 3. Previous to this, the Applicant Nos.2 and 3 had been, prior to the 2014 transfer policy, asked in 2013 for their station choices and the transfers have been made based on three choices that they had furnished and they have been accommodated, notwithstanding absence of such provisions in the 2014 transfer policy, in accordance with their three choices at Chanda (choice no.3) and at Bhandara (choice no.1) while in the case of





Applicant No.1 who was transferred in April, 2013 prior to issue of transfer guidelines in March, 2014, she was transferred on administrative requirements and in the context of her objections to transfer by her letter dated 20.12.2012. At the time of issue of those transfers orders, all the three applicants with dates of birth of Applicant No.1 as 10.06.1959, Applicant No.2 date of birth 25.09.1958 and the Applicant No.3 date of birth as 18.05.1959, were all below 56 years of age. In the case of Applicant No.1, she had in letter dated 20.12.2012, having learnt in advance about the preparation of list of names of station seniors at Nagpur, requested for deferment of her transfer from Nagpur up to October, 2014 on the grounds that her husband was a railway employee at Nagpur and was superannuating on 31.10.2014 and that her mother-in-law had medical problems. Based on her request and by reference to the extant transfer policy (prior to the guidelines of 2014), she was accommodated by posting in the same region at Chanda. The three applicants were serving at Ambajhari, Nagpur since 26.06.2006 in the case of Applicant No.1 who was at Sl.No.6 in the seniority list in 2012, since 11.06.2007 in the case of Applicant No.2 who was at serial no.10 in the seniority list and since 14.06.2007 in the case of Applicant No.3 who was at



Sl.No.16 in the seniority list. All the applicants had stayed at Nagpur for seven years at that point in time and were due for transfers. Following the orders, Applicant No.1 made representations on 07.05.2013, 19.08.2013 and 06.01.2014, to all of which, replies rejecting her request were made by the competent authority on 29.07.2013, 04.10.2013 and 07.03.2014. At the time of preparation of station seniority list in 2012, Applicant Nos.2 and 3 in letters dated 20.12.2012 and 21.12.2012 had also sought extension on various grounds although their tenure for transfer and related transfers orders were issued only in 2014 subsequent to the transfer guidelines. Despite the refusal to consider any modification in transfer orders, applicants were not relieved by their Head of Office. Based on CFA, Ambajhari Reference No.CFA(Fys.) Ambajhari DO No.CS/AN/127-101/TRANSFER/IX dated 07.10.2014 requesting amendments of the transfer orders, Respondent No.1 conveyed the decision of the Competent Authority on 23.12.2014 (Annexure R-5) declining to approve any amendment for the seven persons involved including the three applicants and only agreed to a deferment of one SA namely Sh.S.C. Shewale, who is not an applicant in this case, up to 31.03.2015. By these orders, the CFA (Fys.), Ambajhari was directed to relieve them immediately for reporting

to their new place of posting. The applicants were not relieved following these orders, and in this case, applicants assign blame to respondents while respondents cite the continual requests and delaying tactics of applicants. Finally, a letter was sent by the CFA, Ambajhari in Reference No.CS/AN/127-101/TR/Vol-XII dated 23.01.2017 to the office of the Principal Controller of Accounts, Kolkata requesting orders in respect of various transfers orders ordered from 2013 to 2017 which include the above three applicants and specifically referred various issues on the fact that the orders were pending for implementation for a long time and that some individuals including the three applicants had crossed 56/58 years of age. Some other issues on the need to accommodate Senior Auditors who had completed prescribed hard station and tenure stations were also mentioned. It was in response to this letter that the impugned orders, directing the relief of six Senior Auditors including the three applicants, were issued on 27.03.2017. By this time, Applicant No.1 was 57 years old, Applicant No.2 was 58 years old and Applicant No.3 was 57 years old. Although the Applicant No.1 was transferred under the earlier transfer policy, all three applicants filed this joint application on 17.04.2017 challenging the relieving



orders on the basis of transfer guidelines issued on 28.3.2014. The reliefs claimed by the applicants are as under:-

"(a). Direct respondents to cancel the transfer order of applicants named in the letter dated 27.03.2017 issued by respondent No.3 (Ann.A1) and thereby delete the name of applicant no.1 appeared in transfer order dated 18.04.2013 (Annx.A2) and applicant no.2 & 3 appeared in transfer order dated 16.05.2014 (Ann.A3), in compliance with para 8.5 of the transfer policy notified by respondent No.1 vide their letter dated 28.03.2014 (Annx.A4).

(b). Declare that the applicant having crossed the age of 58 years are entitled for exemption from transfer from their present station in tune with the transfer policy of respondents.

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

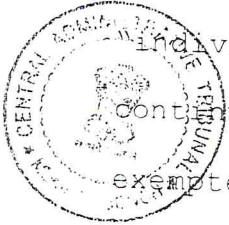
2. Interim relief was sought and granted to applicants on the grounds that the transfer policy normally exempted persons above 56 and 58 years of age from transfer if they desired to continue at the same station. The interim relief continues to the present day.

3. Prior to filing this application, applicants had filed their objections on 31.03.2017, seeking exemption from transfers in separate applications to the Respondent No.1. Applicant No.1 had cited her completion of 56 years of age which made her eligible for exemption from transfer out of home station. Applicant No.2 cited his upcoming retirement in September 2018 and that he had completed 58 years of



age. Applicant No.3 also supported his request for exemption stating that he was over 56 years of age. Applicants cited their age for their inability to move out of Nagpur. In particular, Applicant Nos.2 and 3 cited their family responsibilities in support. In Reference No.G/127-1004/II dated 03.04.2017 each of three requests were rejected by Respondent No.3 by reference to the instructions from Headquarters insisting on their relief

4. The chief objections of the applicants are that para 8.5 of the transfer guidelines requires that individuals over fifty six years of age who wish to continue at their present stations, will normally be exempted from transfer". In the case of applicant no.2, they refer to para 6 (ii) that "Persons above 58 years of age, if not serving at their choice stations, will be repatriated to those stations (if so desired by them) to the extent administratively feasible....." Further, applicants also argue that the reply received on 03.04.2017 was not issued by the competent authority but by the local officer in Ambajhari (Nagpur) and showed that their requests had not been properly considered. Apart from general legal objections, applicants also questioned the delayed implementation by respondents of the orders issued more than three years previously which, according to



them, suggested that the decision was arbitrarily taken without considering their representations and their present circumstances.

5. Respondents have pointed to the fact that the Defence Accounts department has more than 950 offices at about 250 locations all over the country and due to a greater attrition caused by retirements and promotions to higher grades and eligible staff exploring other avenues outside the department, the outflow was more than the inflow and there is acute shortage of staff in the department. While some of the stations were very popular, nearly 86 are categorized as hard and tenure stations and as per the transfer policy guidelines, staff posted at these stations had to be repatriated and other staff working at "other" normal stations were to be posted in their place despite their unwillingness to be so transferred from the normal stations. They also mentioned that Nagpur (Ambajhari) is a popular station while Chanda and Varangaon are hard stations with two years tenure and Bhandara is a tenure station with three years tenure. As against this, applicants were serving at Ambajhari, Nagpur w.e.f. 26.06.2006 for Applicant No.1, from 11.06.2007 for Applicant No.2, and from 14.06.2007 for Applicant No.3. As they were seniors at that station they were required to be transferred. Respondents also

pointed out that there was only seven persons shortage with 77 officers posted in Ambajhari against a strength of 86. As against this, Chanda with an authorized strength of 74, had deficiency of 34%. They mention that in the case of Applicant No.1 who was posted in 2013, this posting of a single person was being made against the repatriation of two volunteers from Chanda factory who had long completed their tenure. In the case of Applicant No.2 and 3 who had for opted for a nearby hard or tenure station of their choice, they have been duly considered. These transfers are, therefore, made from the serving employees and aim at distributing staff to enable minimum operations at less popular hard/tenure stations. The respondents also cited a catena of judgments on the scope for Courts interfering with the orders of transfer of a public servant unless the Court found mala fides or violation of rules or that the authorities who issued the orders were not competent to do so and these aspects were not applicable in the present situation since the orders were issued on administrative exigencies and as per Rules by the competent authority.

6. Respondents also point out that all the applicants were only 53 and 54 years old when their transfer orders were issued. Further, Applicant No.1



had given reasons that her husband was a railway employee who was retiring in October, 2014; that they have no child; and that her mother-in-law had a variety of old age problems. They had considered her case against para-374 of the Office Manual Part-I (Annexure-3) in trying to keep both husband and wife together at the same station since the others reasons given on her mother-in-law's ailment are not covered by the transfer guidelines. Based on this aspect and her tenure at Nagpur, she was posted at Chanda. With reference to the guidelines, they refer to para-14 of the transfer policy which says that "The above indicative guidelines are meant to guide the exercise of transfer of staff to the extent administrative feasible. These guidelines are not intended to create any entitlement of any kind". They state that when the transfer orders were issued, the applicants were well below 56 years of age. Further, they submit that whenever Respondent No.1 gave directions to relieve the individuals immediately, including the applicants, they objected and the matter was again brought before Respondent No.1 which was replied and communicated by Respondent No.2. The claim that the objections and hurdles on implementation of the transfer orders by Applicant No.1 is alleged to be the reason for non-implementation. In particular, they argue that because



of these three applicants who were the most senior in the station especially, Applicant No.1, and the delay in implementation of the transfer order, all the other applicants and persons cited her example to raise their objections to transfer. Respondents also state that 28 individuals who had served at Chanda, Bhandara and Varangaon filed two O.A.Nos.444 and 445/2016 for their repatriation to Nagpur, Ambajhari and Kamptee. This Bench noted the "fact that respondents have considered the applicant (in those OAs) twice and their request is still under consideration." Further, the Bench noted while allowing the OAs partially, "However, directions to respondents cannot be issued to transfer and relieve the applicants, for want of vacancy at their choice station." Finally, this Bench directed "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. Respondents state that some of these individuals could be so accommodated but the remaining are compelled to remain at the hard/tenure stations in conflict with the directions given by this Tribunal and which is solely because of the objections raised by employees such as



the applicants. With reference to the arguments of the applicants that their exemption letters dated 31.03.2017 were not considered by the competent authority, respondents referred to their letter dated 23.01.2017 supra of Respondent No.3 following which, a decision was taken by the competent authority by ordering their relief in reference dated 10.03.2017 (supra). The issues in their grievances had already been communicated in the letter of Respondent No.3 and had been considered and orders of relief had accordingly, been issued by Respondent No.1.

7. In the Rejoinder applicants have emphasised the fact that they were not relieved from the present posting even though the transfer orders were issued in 2013 and 2014. It is, therefore clear, according to the applicants, that the reasons for not relieving them were due to exigencies of service. In this connection, they also refer to the letter of Respondent No.3 dated 23.01.2017 (supra) which conveys the same information. However, they argue that, as on date of proposed relief, Applicant Nos.1 and 3 had completed 57 years and Applicant No.2 had completed 58 years of age and interpreted the transfer policy as lying down that 56 years and 58 years should be exempted from transfers. They opposed the arguments of administrative feasibility proposed by the respondents.

since the transfer policy has now stabilized over the last several years.

8. In Sur-rejoinder, respondents reiterate many of the issues raised through their reply. They urged that applicants especially Applicant No.1 created hindrances to implementing the transfer orders and following her lead, Applicant Nos.2 and 3 followed merely to gain time and to remain at Ambajhari, Nagpur. They also urged the importance of having required staff to ensure functioning at Chanda and Bhandara stations. In a detailed tabular statement that was part of the letter of Respondent No.3 dt.23.1.2017, they show that the deficiency as on 23.1.2017 at five stations was 33% at Ambajhari (Nagpur), 58% at Chanda, 42% at Bhandara and 64% at Varangaon. In particular, they state that if their earlier transfer orders such these are not implemented, it is not possible to repatriate more employees who have completed their postings at hard/tenure stations which was the primary direction issued by this Tribunal. Therefore, many persons had completed more than five to six years at hard stations whereas the specified term was only 2/3 years and had to face great difficulties. Therefore, the respondents objected to any indulgence of the applicants by this Tribunal.



9. During arguments learned counsel for the applicants took this Tribunal through the various facts and circumstances of the matter. He pointed out that Applicant No.2 was retiring in just eight months from the date of final hearing and that the other two applicants had 1½ years left for superannuation. He questioned the delay in relief and ascribed the entire responsibility to the respondents and argued that respondents cannot, now attempt to blame the applicants for not carrying out their own transfer orders. Further, learned counsel also argued that whereas the transfer orders may have been issued in 2013 and 2014, actual orders of relief were only issued in March, 2017 by Respondent No.1, and therefore, the relevant dates for consideration of the facts and circumstances of the applicants was that later date. At that point of time, they attracted the features of transfer policy by which the Applicant No.2 was above 58 years of age and Applicant No.1 and 3 were above 56 years of age and therefore, Applicant Nos.1 and 3 should have been exempted by virtue of Section 8.5 of the transfer policy guidelines and Applicant No.2 would even have the option under Section 6 (ii) of being repatriated to their choice stations if not then serving at their choice stations. In this regard, he also urged reference to the letter



of Respondent No.3 to Respondent No.1 in which these facts were brought to notice and reconsideration was urged. He mentioned in this regard, that in respect of these applicants, superannuation papers had already been processed and in case of Applicant No.2, they had also been sent for relevant sanction.

10. Learned counsel for the respondents argued that there was no violation of the guidelines. The choices were obtained in accordance with extant guidelines and when the applicants gave their options, they were duly accommodated. With regard to the guidelines set out in the transfer policy, learned counsel for the respondents cited the need to consider that all these guidelines were subject to administrative exigencies that prevailed and especially the difficulties faced by the administration because of large numbers of vacancies. In this connection, he also pointed out that the applicants had never raised these objections by approaching the Tribunal after their transfer orders were issued in 2013 and 2014.

11. We have gone through the O.A. alongwith Annexures A-1 to A-7 and Reply filed on behalf of respondents along with its Annexure-R-1 to Annexure R-9, Rejoinder and Sur-Rejoinder filed and have

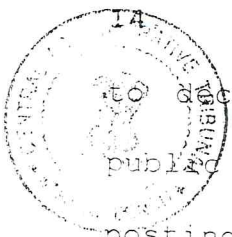


carefully examined the various documents annexed in the case.

12. We have heard the learned counsel for the applicant and the learned counsel for the respondents and have carefully considered the facts, circumstances, law points and rival contentions in the case.

13. The law on judicial intervention into matters of transfer is well settled through a catena of decisions by the Apex Court in, **B. Varadha Rao v. State of Karnataka**, AIR 1986 SC 1955, **Shilpi Bose v. State of Bihar**, AIR 1991 SC 532, **Union of India v. S.L. Abbas**, AIR 1993 SC 2444, **Union of India Vs. N.P. Thomas**, AIR 1993 SC 1605; **Rajender Roy Vs. Union of India**, AIR 1993 SC 1236; **Ramadhar Pandey Vs. State of U.P. & Ors.**, 1993 Supp (3) SCC 35; **N.K. Singh Vs. Union of India & ors.**, (1994) 6 SCC 98 & AIR (1995) SC 423; **Chief General Manager (Tel.) N.E. Telecom Circle Vs. Rajendra Ch. Bhattacharjee**, AIR 1995 SC 813; **State of U.P. Vs. Dr. R.N. Prasad**, 1995 (Supp) 2 SCC 151; **Union of India & Ors. Vs. Ganesh Dass Singh**, 1995 (Supp) 3 SCC 214; **Abani Kante Ray Vs. State of Orissa**, 1995 (Supp) 4 SCC 169; **Laxmi Narain Mehar Vs. Union of India**, AIR 1997 SC 1347; **State of U.P. Vs. Ashok Kumar Saxena**, AIR 1998 SC 925; **Mysore Paper Mills Ltd., Bangalore v. Mysore Paper Mills Officer Association**,

Bhadravati and another, 1999 6 SLR 77, National Hydroelectric Power Corporation Ltd. Vs Shri Bhagwan, (2001) 8 SCC 574; Public Services Tribunal Bar Association Vs. State of U.P. & Ors., AIR 2003 SC 1115; State of U.P. Vs. Siya Ram, AIR 2004 SC 4121; State of U.P. v. Gobardhan Lal, (2004) 11 SCC 405; Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey, (2004) 12 SCC 299; Union of India Vs. Janardhan Debanath, (2004) 4 SCC 245, Masood Ahmad v. State of U.P., 2007 STPL (LE) 39042 SC [2007(6)SLR 469 (SC)];, Airport Authority of India v. Rajeev Ratan Pandey, JT 2009 (10) SC 472, <sup>and</sup> Rajendra Singh v. State of UP and others, 2010 1 SLR 632.



It is entirely upon the competent authority to decide when, where and at what point of time a public servant is to be transferred from his present posting. Transfer is not only an incident but an essential condition of service. It does not affect the conditions of service in any manner. The scope of judicial review in these matters is very limited. The employee, "... a Government servant does not have any vested right to remain posted at a place of his choice, nor can he insist that he must be posted at one place or the other because no Government can function in such manner," as noted in **Rajendra Singh &**

**Anr v. State of Uttar Pradesh & Ors (2009)** supra. As was also held in **Shilpi Bose (1991)** supra,

"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 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. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest."

15. The Hon'ble Apex Court in **Airports Authority of India v. Rajiv Ratan Pandey & Ors (2009)** supra held in para 10 that "... scope of judicial review is limited and High /court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the courts do not substitute their own decision in the matter of transfer."

16. In **National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan, (2001) 8 SCC 574**, it was held that: "No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a



particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned. "This aspect has been reiterated in the decisions of the Hon'ble Apex Court in *Siya Ram* (2004), *KVS v. Damodar Prasad Pandey* (2004) and *N.K. Singh* (2004) supra. In the decision on *Gobardhan Lal* (2004) supra, the Hon'ble Apex Court also emphasised "that transfer is prerogative of the authorities concerned and court should not normally interfere therewith, except when an order of transfer is shown to be vitiated by mala fides, or is in violation of any statutory provision, or has been passed by an authority not competent to pass such an order... No Government can function if the Government servant insists that once appointed or posted in a particular



place or position, he should continue in such place or position as long as he desires."

17. Certain additional exceptions may also apply as when a transfer is made as a punitive measure. The Hon'ble Apex Court has held in **Radhey Shyam Gupta v. U.P. State Agro Industries Corporation Ltd**, CA No. 6344/1998 (in SLP (C) No. 11422 of 1998) dt.15.12.1999 that transfer effected as a punitive measure is also not permissible. Whether a transfer is punitive or not is a question of fact, as held by the Hon'ble Supreme Court in this case. It was permissible for the Court to go behind the order and find out if it was punitive in nature. This aspect of the decision underlying the transfer was also alluded to in the decision of the Hon'ble Apex Court in **Registrar General, High Court of Madras v. R. Perachi & Ors** (2011) supra which held:-

"21. We have considered the submissions of both the counsel. As far as the action of transfer against the first respondent was concerned, the same was on the basis of the report of the Registrar (Vigilance). Besides, the District Judge had also opined that retention of the appellant in his district was undesirable from the point of view of administration. Thus, it involved inter-district transfer. The respondent no.1 had not disputed the power of the High Court to transfer him outside the district, nor did the division bench interfere therein on that ground. This is apart from the fact that transfer is an incident of service, and one cannot make a grievance if a transfer is made on the administrative grounds, and without attaching

any stigma which was so done in the present case."

18. In this case, the employee had also argued that as a result of the inter-district transfer, his promotional prospects were affected by which the transfer orders became punitive in nature. This was because when the panel was drawn up for the district, he was not included since he was already transferred. The Hon'ble Apex Court held that the right to be considered for promotion was a fundamental right but not a right to promotion nor a mere chance of promotion. In the particular case, the employee had been transferred from the district on administrative grounds on the face of a complaint under inquiry and that transfer was not mala fide nor, it held, punitive in nature.

19. The Hon'ble High Court of Delhi in **Udai Vir Singh Rathi v. UOI (Delhi)** in 2013(1) SLR 8 (Delhi), appreciated at length, the observations of the Hon'ble Apex Court in **A.S. Poshani** (1989) supra which was followed in **Mithilesh Singh v. UOI**, (2003) 3 SCC 309 and in **Novartis India Ltd v, State of West Bengal & Ors** in CA No. 7011/2008 (in SLP(C) No. 21254/2007) reproduced below:-

"4. ...Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the

any of the administrative instructions/guidelines are not followed, much less can it be characterised as mala fide for that reason. To reiterate, the order of transfer can be questioned in a court or Tribunal only where it is passed mala fide or where it is made in violation of the statutory provisions.

22. The aspect of administrative exigencies is frequently argued by the employers to support the orders of transfer especially in the context where the guidelines set tenures or other conditions favouring retention of the employee. This term in the context of routine transfers has been previously examined by the Allahabad bench of this Tribunal in **Sukhbir Singh v. UOI & Ors** in OA 1413-1417/2012 decided on 16.5.2014 which noted:-

"Thus, from the above authentic definitions, it is clear that an administrative exigency is a very pressing necessity, a critical necessity and a situation of great urgency. Thus, normal situations or circumstances do not come under the purview of "administrative exigency". If the situation is a "routine situation" or a "normal prevent situation", then the contention of administrative exigency/requirement etc. has to be rejected. Further, to invoke the defence of administrative exigency/requirement or its various synonyms like in the interest of the organization or in public interest, the "pressing need", or the "critical situation" etc must be demonstrated in the pleadings of the respondents duly supported by the office files on the basis of which such counter affidavits are prepared. Thus no summarize, to advance the argument of administrative exigency or its various synonyms as noticed above, the pressing need, critical situation etc. must have been considered by the



Competent Authority in the files and also must have been demonstrated in the counter affidavit. Conversely, in the absence of any pleadings containing details of pressing needs, urgent or difficult situation necessitating a deviation from the professed norms, the defence of administrative exigency and its various synonyms would not be available to the respondent."

23. In the present case, none of the applicants have urged any mala fides or bias nor have they argued that any statutory provisions have been violated or that the orders have not been passed by the competent authority. They have not alleged nor is there any hint of punitive transfer in their cases which are part of a larger bunch of transfers intended to relieve the persons staying for a long time at hard/tenure stations by transfers of persons who had stayed for a long time in the 'normal' and popular stations such as Ambajhari (Nagpur). Their defence rests entirely on the application of the transfer guidelines issued in March 2014, and the lack of administrative exigencies given that, in their view, the transfer policy had gone through several years of implementation and had now stabilised.

#### Findings

24. Transfer order of Applicant No.1 was issued in 2013 and Applicant Nos.2 and 3 were issued in 2014 when they were well below the age of 56 and there is no dispute that as on date of transfer orders these

were issued in strict observance of extant policy guidelines. The applicants individually raised their objections and alongwith the case of Applicant No.1, who had raised several previous objections, they were duly considered and rejected. None of them have approached this Tribunal for relief and it is to be considered that these transfer orders were final and in good order. However, they were not implemented by Respondent No.3 in defiance of orders of Respondent No.1 which were issued in accordance with the transfer policy guidelines. It also transpires that the 2014 guidelines were evolved after obtaining considerable inputs from the staff Association by its letter No.AIDAA/TR Policy/CGDA/2013 dt.07.08.2013. By January-March, 2017, Respondent No.3 evidently presented a fait accompli to Respondent No.1 when he made observations and suggested that there was a need to review the transfers already ordered.

25. These issues have to be considered in the background of the orders of this Tribunal by which juniors who had completed long tenures much above the prescribed tenure at hard/tenure stations were ordered to be repatriated to normal stations and the department was unable to do so. Notably, the learned counsel for applicants also represented applicants in that case. In those orders, the Tribunal found it

difficult to pass categorical directions because of the administrative feasibility in implementation. Moreover, the Tribunal hesitated to inference in legitimate transfer orders in keeping with the law as settled in various decisions of the Hon'ble Apex Court as explored in previous paragraphs. This Tribunal contented itself with broad but clear directions aimed at delivering justice to the applicants in that OA who were not getting the benefits/relief that they deserved under the transfer guidelines and were compelled to remain in hard/tenure stations beyond what was set in the transfer guidelines. It is also clear from the facts presented that the department has a relative surfeit of staff available at normal stations like Nagpur, all wanting to be retained and few willing to go the hard stations. The figures of disparity in staff disposition then and in 2017 show the grave administrative exigencies that prevailed in the department serving on essential functions. It is also noted that the applicants are aware of this problem since there are no averments to the contrary in their replies. The orders of relief have, therefore, to be seen in the dilemma in which the respondents, especially Respondent No.1, found themselves. They could not vacillate as they had been doing earlier and had to follow their own transfer



policy guidelines in the best and just manner possible consistent with staff morale. Between trying to please the persons such as applicants desiring to remain at their 'normal' stations and those agitating against staying any longer at hard/tenure stations, they had to opt for the right decision that could sustain in a court or before this Tribunal. The respondents have significantly referred to the example set by applicants, especially Applicant No.1, of obstructing relief and which encouraged others at the station. If these persons are not relieved, a similar number of persons at hard/tenure stations would have to stay put. In such circumstances, the respondents would also have to face criticism from the Staff Association who had been consulted for evolving the transfer guidelines. The limited staff available and the heavy vacancies at all stations particularly the hard stations, has been strongly and correctly emphasised by respondents.

26. However, it is also true that by the time Respondent No.1 passed orders, Applicant No.2 had crossed 58 years of age and the other applicants were above 56 years of age. The transfer policy in respect of such persons goes to the extent of giving them the option as in Section 6 (ii) which reads as under:-





"6(ii). Persons above 58 years of age, if not serving at their choice stations, will be repatriated to those stations (if so desired by them) to the extent administratively feasible. In making a selection from amongst such individuals, preference will be given to those who have not at all served earlier at the station or whose service at the desired station has been the least."

27. In respect of other two applicants who are above 56 years of age, the relevant provision 8.5 reads as "individuals over fifty six years of age who wish to continue at their present stations, will normally be exempted from transfer". In this context, the transfer orders were issued in 2013 and 2014 and as pointed out above, are undisputed and final. The delay in implementation cannot clearly render them stale. However, the orders of relief were issued only in March, 2017 by which time the transfer policy guidelines were in effect. The applicants could, thereupon, develop a legitimate expectation that these guidelines, evolved three years earlier, would be relevant and became applicable on March, 2017 essentially by the administrative actions of Respondent Nos.3 and 1. Therefore, we may consider the cases of applicants by reference to the transfer policy guidelines as on date of orders of relief in March 2017 for the purpose there are guidelines only of reviewing this particular order in respect of the three applicants. We will, however, need to bear in



mind that these are guidelines only and not statutory provisions and therefore, will need to hold against the touchstone of administrative exigencies and fairness.

28. In respect of Applicant Nos.1 and 3, the clause only states that they will normally be exempted from transfer if they wish to continue at their present stations. The circumstances of these two persons is that even after staying in their present stations for seven years by the time the transfer orders were issued and eleven/ten years till orders of relief, they never wished to move on and they were doing so at the expense of many others who were desperate to come to a normal station. It is not possible for any administration to function especially in the face of an announced transfer policy, when some individuals manipulate their circumstances to subvert the regular operation of an administrative action of the responsible authority. Therefore, it cannot be said that normal conditions prevailed to enable them to gain exemptions. Although there years had elapsed since formulating the transfer policy guidelines, these staff members by their resistance to lawful orders had managed to destabilize the entire mechanism and peremptory action became necessary. In the case of Applicant No.1, the relevant clause hedges the

provision by administrative feasibilities and also by reference to the issue of preference among those who have not served in the earlier station to move to that desired stations. In the case of Applicant No.2, he had already served ten years at this normal station and this clause is not entirely applicable to him. In both cases, administrative feasibility and exigency is the critical aspect and as explained earlier, the respondents faced a dilemma as explained in previous paragraphs.

29. The applicants urge that their letter dated 31.03.2017 was not considered by the competent authority. However, all their grievances especially with regard to their ages had already been raised by Respondent No.3 in his letter dated 23.01.2017 to which strict orders have been issued on 27.03.2017 by Respondent No.1 after due consideration. Therefore, it cannot be said that their request has not been properly considered by the competent authority. In fact, this was only one of the train of requests that the applicants had made to protest the long pending transfer orders and the argument now proposed is plainly improper. As mentioned before, the respondents were caught in a vice by their own procrastination and administrative incapacity between the actions of persons like the applicants and the genuine need as





directed by the orders of this Tribunal to those persons who were languishing in hard/tenure stations and wanted to be repatriated at the normal stations.

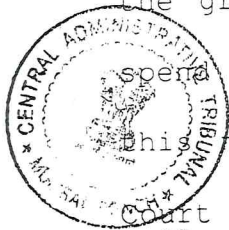
30. Although, there is clearly no case for intervening in the order of transfer issued to Applicant Nos.1 & 3, the case of Applicant No.2 has become slightly different not only by virtue of the <sup>interim</sup> stay granted by this Tribunal in its initial hearing on 19.04.2017 but due to the fact that as on today this applicant has only eight months left to superannuate. With regard to argument that the Applicant Nos.1 and 3 have only 1½ years left from the date of final hearing to superannuation and that Applicant No.2 has only eight months left for superannuation, it is observed that the papers for superannuation have to be forwarded six months prior to superannuation. In these cases, therefore, there is no bar in processing papers on time to enable the applicants to get benefits at the time of superannuation whenever they become due. Therefore, this argument is also not supported by the facts and circumstances of the matter. In fact, if the applicants had cooperated, they could have gone much before and returned to the normal station to superannuate in good order, if necessary with the help of this Tribunal by reference to the same guidelines.





But that was belied by their own actions not only in the last year but ever since their transfers orders were issued in 2013 and 2014.

31. It is not as if this Tribunal does not appreciate the anxieties and need for planning that beset an employee in his last couple of years or months of service. Recalling a definition, 'justice is getting what you deserve, mercy is not getting what you deserve' and grace is getting what you don't deserve, this Tribunal has to consider the relative merits of employees compelled to remain extra years at hard/tenure stations in order to provide them justice as already directed by its order of 21.12.2016 versus the grant of grace for the applicants who wished to spend more years at their normal station. The law in this matter is already settled by the Hon'ble Apex Court as detailed earlier and the scope for judicial review is extremely limited. Administrative exigencies are palpably evident in the situation of the department which excludes any review on considerations other than the basic areas of mala fides, violation of statutory provisions and orders without due authority. These aspects are not at all applicable in the case of the applicants. The balance of equity also goes against the applicants who seek 'grace' in their attempt to disobey lawful orders. Accordingly this



Tribunal prefers to support the need of justice to those who deserve it and not allow the applicants to undermine fair policy for staff management. Further, as pointed out by respondents, the applicants who are station senior at Nagpur have become standard bearers for disobedience of transfer order by all others similarly transferred.



In the circumstances, the OA lacks any merits whatsoever and is, accordingly, dismissed. The interim order passed earlier stands vacated. Considering the grave disobedience of lawful transfer orders by applicants, they shall not be eligible for the lump sum transfer grants and joining time due to them on transfers made at 'state expense'. The legal costs shall be borne by respective parties.

*Sd*  
(R. Vijaykumar)  
Member (A)

*SL*  
(Arvind J. Rohee)  
Member (J)

**Certified True Copy**  
**Date 13-2-2018**

Amit/-

*JW*  
*L*  
*9/2*

*[Signature]*  
Section Officer  
Central Administrative Tribunal,  
Mumbai Bench, Mumbai